

# OREGON BULLETIN

Supplements the 2010 *Oregon Administrative Rules Compilation*

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**KATE BROWN**  
Secretary of State  
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# INFORMATION AND PUBLICATION SCHEDULE

## General Information

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

## Background on Oregon Administrative Rules

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

## How to Cite

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

## Understanding an Administrative Rule’s “History”

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

## Locating the Most Recent Version of an Administrative Rule

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

issue of the *Bulletin* that contains the full text of the amended rule. The *Bulletin* contains the full text of permanent and temporary rules filed for publication.

## Locating Administrative Rules Unit Publications

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

## 2009–2010 Oregon Bulletin Publication Schedule

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

### Submission Deadline — Publishing Date

December 15, 2009	January 1, 2010
January 15, 2010	February 1, 2010
February 12, 2010	March 1, 2010
March 15, 2010	April 1, 2010
April 15, 2010	May 1, 2010
May 14, 2010	June 1, 2010
June 15, 2010	July 1, 2010
July 15, 2010	August 1, 2010
August 13, 2010	September 1, 2010
September 15, 2010	October 1, 2010
October 15, 2010	November 1, 2010
November 15, 2010	December 1, 2010

## Reminder for Agency Rules Coordinators

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

## Publication Authority

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

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# EXECUTIVE ORDERS

## EXECUTIVE ORDER NO. 10 - 01

### PRESERVING AND ENHANCING OREGON'S HISTORIC DOWNTOWNS

Oregon's historic downtowns, including its main street communities and urban commercial neighborhoods, are precious assets to our State. Historic downtowns provide important cultural and civic centers; contribute to the state's economic vitality; advance greenhouse gas reduction goals by creating pedestrian friendly environments; and demonstrate sustainability.

Historic downtowns are repositories of architecturally and historically significant buildings that reflect the aspirations and culture of the communities in which they are located. These buildings provide a sense of place and local identity while offering settings for civic and commercial activities, the arts, and community affairs. Historic downtowns are also a major tourist attraction. Many Oregon communities view cultural heritage tourism as an important economic development strategy because it creates jobs, provides business opportunities, and generates tax revenues for local governments.

Historic downtowns help to reduce greenhouse gas emissions through their embodiment of land use and community design concepts that enable Oregonians to move about without relying completely on the automobile for transportation. These districts are characterized by compact, mixed-use development; the concentration of public agencies, stores, housing and services within close proximity of each other; pedestrian-friendly architecture and urban design; and short blocks with convenient connections. Taken together, these features reduce distances between destinations, thereby allowing people to take short trips by foot rather than by motor vehicle. In larger communities, these compact areas also make public transit more feasible.

Historic buildings were built to last. Their age is a testament to their sustainability. Their adaptive use is an example of recycling. Their enduring popularity reflects the desire of people everywhere to be ennobled and dignified by beauty in their surroundings. The architects of historic buildings applied good design and sustainability principles to the construction of such buildings. They took advantage of time-honored, natural methods of heating and cooling. Continued use of historic buildings takes advantage of the resources and energy embodied in them, reduces the need to consume more natural resources for new buildings, and eases pressures on landfills. The revitalization of historic downtowns lessens the need for new infrastructure at the fringes of urban areas and cuts down on the consumption of farm and forest land for new development.

Oregonians have invested in the infrastructure of historic downtowns. Retaining this infrastructure promotes economic efficiency. Siting and retaining state facilities in compact, pedestrian-friendly central locations, such as historic downtowns, is in the long-term best interest of the State of Oregon.

Recently, Department of Administrative Services (DAS) Facilities Division has made concerted efforts to locate and site state agency

facilities in historic downtowns. The Facilities Division successfully sited facilities for the Department of Human Services, Department of Transportation, Department of Justice, Department of Corrections, and Employment Department in historic districts in Albany, Portland and Salem. To continue to improve upon these efforts, I issue the following Order.

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

1. As part of the established DAS Facilities Division facility siting process (Policy Number 125-6-115), directors of state agencies shall contact the State Historic Preservation Office (SHPO) to seek its assistance in identifying properties in historic downtowns that might meet the agencies' facilities needs and mission in ways that comport with local downtown revitalization objectives.
2. When economically feasible and consistent with the agency's mission and existing law, state agencies shall strive to locate offices in buildings located in historic downtowns that are pedestrian-friendly, sustainable, and compatible with the uses of nearby historic structures.
3. When economically feasible and consistent with the agency's mission and existing law, agencies shall strive to obtain meeting space and lodging accommodations in historic buildings located in historic downtowns. When such space or accommodations are not available, or not suitable, state agencies shall consider meeting space or lodging in non-historic buildings located in pedestrian friendly and/or transit friendly areas in historic downtowns.
4. In consultation with the SHPO, the director of DAS shall develop policies to implement this order as soon as practicable. The policies so developed shall provide for consultation with local officials and the consideration of local planning initiatives intended to enhance the livability and economic vibrancy of historic downtowns. Any parking calculations in the policies shall encourage the retention of historic buildings as well as urban form characteristics of historic areas that minimize the need to make short trips by automobile, thereby reducing local carbon footprints. Directors of state agencies shall cooperate with the DAS and SHPO in implementing this order.

Done at McMinnville, Oregon this 13th day of January, 2010.

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

ATTEST

/s/ Kate Brown  
Kate Brown  
SECRETARY OF STATE

## OTHER NOTICES

### REQUEST FOR COMMENTS PROPOSED APPROVAL OF CLEANUP AT FORMER PORTLAND DOCK COMMISSION

**COMMENTS DUE:** March 3, 2010, 5 p.m.

**PROJECT LOCATION:** 2435 NW Front Avenue, Portland, Oregon

**PROPOSAL:** The Department of Environmental Quality proposes to approve a cleanup of petroleum in the soil at the former Portland Dock Commission. DEQ has determined that the site meets state requirements to protect human health and the environment and that no further action is needed at the site.

**HIGHLIGHTS:** Columbia Rivers Pensioners currently owns the property which currently has a two-story building constructed in 1981, housing offices and an International Longshore and Warehouse Union meeting hall. The City of Portland Commission of Public Docks purchased the property in 1946 from Eastern and Western Lumber Company. The site was formerly used for lumber storage and a car wash. During excavation activities for an addition to the building, an underground storage tank and two sumps were discovered in 2004. Petroleum hydrocarbons were detected in soil and groundwater, and chlorinated hydrocarbons were also detected in groundwater. The source of contamination at the site appears to be associated with historical operations, specifically the former car wash. Specific details and operations of the car wash facility are not known. Leaks from the sumps and piping likely caused the observed subsurface contamination.

**HOW TO COMMENT:** The project file may be reviewed by appointment at DEQ's Bend Office, 475 NE Bellevue Drive, Suite 110, Bend, Oregon 97701. To schedule an appointment to review the file or ask questions, please contact Marcy Kirk at 541-633-2009. To access site summary information and the staff report in DEQ's Environmental Cleanup Site Information (ECSI) database on the Internet, go to <http://www.deq.state.or.us/lq/ECSI/ecsiquery.asp>, then enter 5173 in the Site ID box and click "Submit" at the bottom of the page. Next, click the link labeled 5173 in the Site ID/Info column. Send written comments by 5 p.m., March 3, 2010 to Marcy Kirk, Project Manager at the above address or to [kirk.marcy@deq.state.or.us](mailto:kirk.marcy@deq.state.or.us).

**THE NEXT STEP:** DEQ will consider all public comments received by the close of the comment period before making a final decision regarding the "No Further Action" determination.

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

People with hearing impairments may call the Oregon Telecommunications Relay Service at 1-800-735-2900. Give the phone number (541-633-2009).

### REQUEST FOR COMMENTS A CHANCE TO COMMENT ON NO FURTHER ACTION DETERMINATION FOR ASTORIA AREA WIDE PETROLEUM SITE AREA 3

**COMMENTS DUE:** March 3, 2010

**PROJECT LOCATION:** 585 Hamburg Road, Astoria, Oregon

**PROPOSAL:** Pursuant to Oregon Revised Statute, ORS 465.320, the Department of Environmental Quality (DEQ) issues this notice regarding a proposed No Further Action (NFA) cleanup determination for a portion of the Port of Astoria's property. The DEQ will consider public comments in finalizing its NFA determination. Send written comments on the proposed NFA to Anna Coates, Oregon DEQ, Northwest Region, 2020 SW 4th Avenue, Suite 400, Portland, Oregon 97201, or e-mail to [coates.anna@deq.state.or.us](mailto:coates.anna@deq.state.or.us). by 5 p.m. on Wednesday March 3, 2010.

**HIGHLIGHTS:** The Port of Astoria facility is part of a larger investigation and cleanup site referred to as the "Astoria Area Wide

Cleanup Site". It is divided into five operating areas based on property ownership, geography, and contaminant characteristics. Area 3 formerly contained a Chevron/McCall Oil Bulk Plant located at 585 Hamburg Road in Astoria, Oregon (Chevron Facility No. 206195). The site is bordered by Burlington Northern Railroad tracks to the south, Hamburg Road to the east, Port of Astoria property and the Columbia River to the north, and Port property and Young's Bay to the west.

The site was a marine terminal, including four above-ground bulk-fuel-storage tanks within a walled containment. Three fuel-delivery pipelines extended from the fuel-storage facility to the end of the Port of Astoria's Pier 2. A leak was discovered in one of the pipelines during pressure testing. This leak is a source (among others) of an ongoing petroleum seep into Slip 2 sediments and Columbia River surface water.

In December 2001, DEQ issued an order (DEQ No. ECSR-NWR-01-11) to the Port, Chevron and several other current and past owners and operators at and adjacent to the Port's facilities where releases of petroleum fuels occurred that required investigation and cleanup of petroleum contamination. The site-wide investigation work was completed in 2008, and cleanup alternatives for other areas of the larger area-wide project are in progress.

Chevron completed a removal action in 2002 at their former bulk plant in Area 3 to facilitate redevelopment. Approximately 6,800 tons of petroleum-contaminated soil was excavated from the site and disposed at Hillsboro Landfill, a licensed Subtitle D landfill. A risk assessment was completed for the site to evaluate risk posed by remaining contamination in Area 3. The risk assessment indicates current environmental conditions are protective to human health and the environment.

Site stormwater discharges to the Port of Astoria stormwater system regulated by DEQ's Water Quality Program under a National Pollution Discharge Elimination System (NPDES) permit. The proposed NFA is conditional based on maintaining the NPDES permit and associated best management practices specified in the Stormwater Pollution Control Plan (SWPCP) under the permit.

**HOW TO COMMENT:** Written comments can be sent to DEQ Northwest Region at 2020 SW Fourth Ave., Suite 400, Portland, Oregon 97201-4987. To view the project files please call Dawn Weinberger, File Review Specialist, at (503) 229-6729 to schedule an appointment (ask for ECSI file #2277). If you have any questions, please call the DEQ project manager, Anna Coates, at 503-229-5213 or by email at [coates.anna@deq.state.or.us](mailto:coates.anna@deq.state.or.us).

**THE NEXT STEP:** Once the public comment period has closed DEQ will consider all comments before making a decision concerning the final cleanup remedy.

### PUBLIC NOTICE PROPOSED REMEDIAL ACTION FOR FORMER CHEVRON STATION NO. 9-2382 LAKEVIEW, OR

**COMMENTS DUE:** March 5, 2010

**PROJECT LOCATION:** Corner of Fourth & G Streets, Lakeview, Lake County

**PROPOSAL:** The Department of Environmental Quality (DEQ) is proposing to issue a No Further Action decision regarding cleanup activities at the above referenced site based upon an approval of work done to date and a proposed Risk-Based Corrective Action Plan.

**HIGHLIGHTS:** Petroleum contamination was discovered at the site in 1987; site investigations confirmed the presence of petroleum impacted soil and groundwater, which resulted in the installation of groundwater monitoring wells. Groundwater at the site has been monitored on a regular basis since 1989. The former Chevron Station (No. 9-2382) ceased operations as a retail service station in 2002; the underground storage tanks (USTs) were removed in 2002 and 2003. Contaminants remaining in groundwater at the site have been shown to be present at concentrations below site-specific risk-based concentrations, which are considered to be protective of human health, welfare, and the environment.

## OTHER NOTICES

A conceptual site model was developed and a risk-based assessment performed by Stantec Consulting Corporation, Salt Lake City, Utah, showing that residual petroleum hydrocarbons do not pose an unacceptable risk to human health and the environment by all reasonably likely current and future exposure pathways. The site is in an area served by a municipal water system.

Based upon DEQ's evaluation of the consultant Stantec's findings, there are no pathways by which humans, animals or other "ecological receptors" may be exposed to site-related contaminants. Residual contaminants at the site do not currently produce odors or other nuisance conditions.

If implemented as proposed, the risk-based corrective action plan submitted by Stantec submitted by Chevron's consultant and reviewed by DEQ, will achieve protective conditions at the site as defined in Oregon Administrative Rule (OAR) 340-122-0040.

All documents and reports pertaining to the recommendation of acceptance of the proposed remedial action may be reviewed by appointment, at DEQ's office in Bend, 475 NE Bellevue Drive, Bend OR 97701. To schedule an appointment or make inquiries, contact the project manager, Joe Klemz at (541) 633-2015.

**COMMENTS:** Written comments should be sent to the attention of Mr. Klemz at the address listed above and must be received by March 5, 2010. Questions or comments may also be directed to Mr. Klemz via email at [klemz.joe@deq.state.or.us](mailto:klemz.joe@deq.state.or.us)

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

### PUBLIC NOTICE SELECTED REMEDIAL ACTION AT THE CHEMCENTRAL (AKA UNIVAR, INC.) SITE

**PROJECT LOCATION:** 10821 North Lombard Street, Portland, Oregon

**DECISION:** The Department of Environmental Quality (DEQ) has selected a remedy to address soil and groundwater contamination at the CHEMCENTRAL (aka Univar, Inc.) site located at 10821 N. Lombard Street in Portland, Oregon. The site is identified as #878 in DEQ's Environmental Cleanup and Site Information (ECSI) database. The selected remedial action, consisting of treatment of soil by vapor extraction, groundwater treatment by in-situ remediation, and monitored natural attenuation, has been approved by DEQ's Northwest Region (NWR) Administrator following a public comment period in December 2009.

**HIGHLIGHTS:** Site investigation has identified volatile organic compounds (VOCs) in soil and groundwater beneath the site. Contamination is related to releases from underground storage tanks and an on-site dry well. Soil interim remedial actions undertaken by CHEMCENTRAL/Univar and natural biodegradation have reduced the concentration and extent of contamination; however, based on a 2009 Risk Assessment approved by DEQ, VOCs remain above risk-based levels in soil, and in groundwater around a dry well. A remedy for the site consisting of: 1) treatment of soil by expanding the existing soil vapor extraction system; 2) treatment of groundwater by injection of a non-toxic "carbon donor" to stimulate bacterial destruction around dry well #2; and 3) monitored natural attenuation. The proposed remedy was outlined in a November 2009 Staff Report, and public notice issued on December 1 in The Oregonian and the Secretary of State's Bulletin. No comment was received during the 30-day comment period. A Record of Decision (ROD) was signed by the NWR Administrator on January 11, 2010 approving the remedy. The remedy is protective, addresses the balancing factors outlined in OAR 340-122-090(3), and addresses DEQ's preference for treatment of hot spots required under OAR 340-122-085(5,6,7) and 340-122-090(4).

**SITE INFORMATION:** The project file including a copy of the ROD may be reviewed by appointment at DEQ's Northwest Region Office at 2020 SW Fourth Avenue, Suite #400, Portland, OR 97201. To schedule an appointment to review the file or to ask questions, please contact Dawn Weinberger at (503) 229-6729. Summary information and a copy of DEQ's ROD are available in DEQ's ECSI database on the Internet, go to <http://www.deq.state.or.us/lq/>

ECSI/[ecsiquery.asp](http://www.deq.state.or.us/lq/ECSI/ecsiquery.asp), then enter 878 in the Site ID box and click "Submit" at the bottom of the page. Next, click the link labeled 878 in the Site ID/Info column. The DEQ project manager is Daniel Hafley.

### REQUEST FOR COMMENTS DEQ RECOMMENDS NO FURTHER ACTION FOR CLEANUP OF THE FORMER UNOCAL BULK PLANT AND TERMINAL, COOS BAY

**COMMENTS DUE:** 5 pm on March 2, 2010

**PROJECT LOCATION:** 2395 Bayshore Drive, Coos Bay

**PROPOSAL:** Per OAR 340-120-0078, a 30-day public comment period is required before a proposed No-Further-Action determination can be approved by the DEQ. The current owner of the former Unocal bulk plant and terminal conducted investigation and cleanup of petroleum-contaminated soil and groundwater at Area 1 of the site, located at 2395 Bayshore Drive, (tax lot 400, Map 25S-13W-22DA) Coos Bay. Residual contamination in soil and groundwater at Area 1 is below occupational cleanup levels and thus DEQ recommends No Further Action for investigation and cleanup of Area 1.

**HIGHLIGHTS:** Various petroleum products were delivered to, stored, and transferred from the bulk plant from 1935 to about 2000 under various ownership including Unocal, TOSCO, and ConocoPhillips. Historical releases of petroleum from storage and transfer operations impacted soil and groundwater.

The site was divided into 2 cleanup areas, Area 1 (upland) and Area 2 (waterfront). Area 1 incorporates the portion of the site west of Highway 101 including a smaller portion west of Willow Street. Area 2 consists of the area under Highway 101 impacted by petroleum and the waterfront portion east of Highway 101. This No-Further-Action proposal is only for Area 1. Area 2 requires additional assessment and potentially cleanup.

Investigation activities began in 1988 which included several phases of assessment and cleanup. Tanks and piping were decommissioned and removed in 2006 as well as 39 tons of petroleum-impacted soil. Additional risk assessment and land use review was conducted between 2006 and 2009, concluding investigation activities on Area 1. Residual contamination remains on the site. However, soil and groundwater contamination on Area 1 is below cleanup levels for a commercially or industrially-zoned facility. As long as the site does not have residential uses, the site will be protective of human health and the environment. The site is not zoned residential and will likely not be zoned residential. DEQ recommends No Further Action for investigation and cleanup of Area 1.

DEQ is soliciting public comment on the No-Further-Action recommendation.

**HOW TO COMMENT:** A Summary Report prepared by DEQ presents details about the site and the No Further Action recommendation. The summary report is available online at <http://www.deq.state.or.us/lq/ECSI/ecsi.htm> on the Environmental Site Cleanup Inventory as site # 288 or by contacting the DEQ project manager, Bryn Thoms at 541-687-7424 or at [thoms.bryn@deq.state.or.us](mailto:thoms.bryn@deq.state.or.us). The report can be viewed in person at the DEQ Eugene office by appointment. The Eugene office address and contact information is presented to the right.

Comments on the proposed cleanup need to be received by the Eugene Office, attn: Bryn Thoms, by 5 pm on March 2, 2010. Fax or email comments are acceptable.

**THE NEXT STEP:** Upon completion of the comment period, the comments will be addressed. Once the comments have been adequately addressed, the DEQ may approve, modify, or deny the No Further Action determination for 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, contact DEQ Communications & Outreach (503) 229-5696 or toll free in Oregon at (800) 452-4011; fax to 503-229-6762; or e-mail to [deqinfo@deq.state.or.us](mailto:deqinfo@deq.state.or.us).

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

# NOTICES OF PROPOSED RULEMAKING

## Notices of Proposed Rulemaking and Proposed Rulemaking Hearings

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

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

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

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

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

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### Board of Chiropractic Examiners Chapter 811

**Rule Caption:** Establishes requirements for chiropractic pre-payment plans to address escrow accounts, refunds and treatment plans.

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
3-18-10	9:30 a.m.	Eugene Hilton 66 E. 6th Ave. Eugene, OR

**Hearing Officer:** Dave McTeague

**Stat. Auth.:** ORS 684

**Other Auth.:** ORS 684.155(b)

**Stats. Implemented:** ORS 684.0155(b)

**Proposed Adoptions:** 811-015-0002

**Last Date for Comment:** 3-18-10, Close of Hearing

**Summary:** DIVISION 15, CONSUMER PROTECTION  
811-015-0002 Fees (New Proposed Section)

(1) Pre-Paid Treatment Plans: Chiropractic physicians accepting pre-payment for services planned but not yet delivered must establish an escrow account to hold all pre-payment funds.

(a) Funds may be removed from the escrow account following the delivery of services in such amounts equal to the chiropractors usual and customary charges for like services with any discounted percentage contained in the pre-paid agreement for the contracted treatment plan.

(b) Funds received in advance of the day that services are delivered must be deposited into the escrow account in a timely manner.

(2) The patient's file must contain the proposed treatment plan including enumeration of all aspects of evaluation, management and treatment planned to therapeutically benefit the patient relative to the condition determined to be present and necessitating treatment.

(a) The patient's financial file must contain documents outlining any necessary procedures for refunding unused payment amounts in the event that either the patient or the doctor discharge the others services or therapeutic association.

(b) The treatment plan in such cases where prepayment is contracted must contain beginning and ending dates and a proposed breakdown of the proposed treatment frequency, types of modalities and procedures included in the contracted treatment and methods of evaluating the patients progress or serial outcome assessment plan and method of recording or assessing patient satisfaction.

(3) A contract for services and consent for treatment document must be maintained in the patient's file. It must specify the condition(s) for which the treatment plan is formulated, prognosis and alternate treatment options.

(4) The chiropractic physician is responsible for providing all treatments appropriate and necessary to address and manage the condition including unforeseen exacerbations or aggravations, within the chiropractic physician's licensure, that may occur during the course of time for which the contract is active. This does not include alternative services procured by the patient or treatment by providers other than the treating chiropractor or those under the chiropractor's direct supervision. At any time during the course of the contract, referrals to outside providers shall be made when warranted.

(4) If nutritional products or other hard goods including braces, supports or patient aids are to be used during the proposed treatment plan, the patient documents must state whether these items are included in the gross treatment costs or if they constitute a separate and distinct service and fee. Any additional fees must be explained to the patient in advance and noted in the chart notes.

**Rules Coordinator:** Donna Dougan

**Address:** 3218 Pringle Rd. SE, Ste 150, Salem OR 97302-6311

**Telephone:** (503) 378-5816

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### Board of Examiners of Licensed Dietitians Chapter 834

**Rule Caption:** Prorates license fee monthly instead of annually.

**Stat. Auth.:** ORS 691

**Stats. Implemented:** ORS 691

**Proposed Amendments:** 834-010-0050

**Last Date for Comment:** 2-22-10, Close of Business

**Summary:** Rule lowers license cost.

834-010-0050(2) Initial license fee shall be \$6.25 for each partial or full month through the next odd-year October 31st.

**Rules Coordinator:** Doug Van Fleet

**Address:** 800 NE Oregon St. Suite 407, Portland, OR 97232

**Telephone:** (503) 758-5904

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### Board of Massage Therapists Chapter 334

**Rule Caption:** Adopt the board member stipend.

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
3-8-10	9 a.m.	OBMT Board Rm. 748 Hawthorne Ave. NE Salem, OR 97301

**Hearing Officer:** Kathy Calise, Chair

**Stat. Auth.:** ORS 687.121 & 182.460

**Other Auth.:** HB 2058 (2009)

**Stats. Implemented:** ORS 687.121 & 182.460

**Proposed Adoptions:** 334-001-0055

**Last Date for Comment:** 3-8-10, Close of Hearing

**Summary:** 334-001-0055—Board Member Stipend—The Oregon Board of Massage Therapists hereby adopts a board member stipend of \$100.00 per month for each month a board member serves in their appointment.

During the 2009 legislative session HB 2058 was passed which changed state statute to allow all health related boards the discretion to determine and adopt by rule an appropriate board member stipend. As a semi-independent state agency the Oregon Board of Massage Therapists has had board discretion over its stipend which did not require the board to adopt the stipend by rule. To comply with the new law the OBMT is adding a rule to address the Board Member

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stipend. The stipend of \$100 per month being adopted is the same amount the agency has had in place for nearly a decade. As such there is no change to the budget nor any fiscal impact of this rules adoption.

**Rules Coordinator:** Patty Glenn

**Address:** 748 Hawthorne Avenue NE, Salem, OR 97301

**Telephone:** (503) 365-8657, ext. 4

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

**Rule Caption:** Adopts rule governing procedures for holding hearings for adults convicted of aggravated murder and murder.

**Stat. Auth.:** ORS 144.050, 144.110, 144.140, 183.335, 183.341 & 183.440

**Stats. Implemented:** ORS 144.110(2)(b)(B), 144.120, 163.105 & 163.115

**Proposed Amendments:** 255-032-0005, 255-032-0011, 255-032-0015, 255-032-0025, 255-032-0029

**Proposed Repeals:** 255-032-0026

**Last Date for Comment:** 3-1-10

**Summary:** Division 32 rules govern procedures for holding murder review hearings for adults convicted of aggravated murder under ORS 163.105, and of murder under ORS 163.115 that was committed on or after June 30, 1995. Senate Bill 288, 2007, (2007 Oregon Laws Chapter 717, § 1, 2, amended ORS 163.105 and 163.115 to add the offender's right to a subpoena upon a showing of general relevance and reasonable scope of the evidence sought, and to add a requirements that the Board's final order shall be accompanied by findings of fact and conclusions of law.

**Rules Coordinator:** Michelle Mooney

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

**Telephone:** (503) 945-0914

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

**Rule Caption:** Proposed amendments based on comprehensive review of administrative rules for registered apprenticeship programs.

Date:	Time:	Location:
3-3-10	9:30-11 a.m.	Portland State Office Bldg. 800 NE Oregon St. Portland, OR 97232

3-18-10	10-11:30 a.m.	Pacific NW Carpenters Institute 4222 NE 158th Ave. Portland, OR 97230
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**Hearing Officer:** Stephen Simms

**Stat. Auth.:** ORS 660.120(3)

**Stats. Implemented:** ORS 660.005-660.309

**Proposed Adoptions:** 839-011-0051, 839-011-0141, 839-011-0142, 839-011-0143, 839-011-0403, 839-011-0501, 839-011-0505, 839-011-0510, 839-011-0515, 839-011-0520, 839-011-0525, 839-011-0530, 839-011-0535, 839-011-0540, 839-011-0550, 839-011-0555, 839-011-0560, 839-011-0565

**Proposed Amendments:** 839-011-0000, 839-011-0010, 839-011-0015, 839-011-0020, 839-011-0030, 839-011-0040, 839-011-0050, 839-011-0060, 839-011-0070, 839-011-0072, 839-011-0073, 839-011-0074, 839-011-0078, 839-011-0082, 839-011-0084, 839-011-0088, 839-011-0093, 839-011-0140, 839-011-0145, 839-011-0162, 839-011-0170, 839-011-0175, 839-011-0200, 839-011-0250, 839-011-0260, 839-011-0265, 839-011-0270, 839-011-0280, 839-011-0290, 839-011-0310, 839-011-0320, 839-011-0334, Rules in 839-011

**Proposed Ren. & Amends:** 839-011-0420 to 839-011-0402, 839-011-0440 to 839-011-0404, 839-011-0430 to 839-011-0405, 839-011-0480 to 839-011-0406, 839-011-0410 to 839-011-0407, 839-011-0450 to 839-011-0408

**Last Date for Comment:** 3-17-10

**Summary:** The proposed rule adoptions, amendments and renumberings are a result of a comprehensive review by the Oregon State Apprenticeship and Training Council of the rules governing registered apprenticeship pursuant to the recommendations of the Council's Rules and Policy Task Force. The proposed rule amendments also would implement statutory changes resulting from the enactment into law of SB 416 following the 2007 Legislative Session. In addition to housekeeping and plain language changes, the proposed rule amendments reflect current investigative subpoena requirements, public records requests requirements, changes in compliance review administration and changes to licensing procedures.

**Rules Coordinator:** Marcia Ohlemiller

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

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

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**Department of Administrative Services,**  
**Oregon Educators Benefit Board**  
**Chapter 111**

**Rule Caption:** Amended to include the time frame in which OEGB members have to request a hearing.

Date:	Time:	Location:
2-18-10	10 a.m.	PEBB/OEGB Boardroom 1225 Ferry St. SE Salem, OR 97301

**Hearing Officer:** Denise Hall

**Stat. Auth.:** ORS 243.860-243.886

**Stats. Implemented:** ORS 243.864(a)

**Proposed Amendments:** 111-080-0030

**Last Date for Comment:** 2-28-10, 5 p.m.

**Summary:** OAR 111-080-0030 is amended to include the time frame in which OEGB members have to request a hearing through the Office of Administrative Hearings.

**Rules Coordinator:** April Kelly

**Address:** 1225 Ferry Street, Suite B, Salem, OR 97301

**Telephone:** (503) 378-6588

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**Department of Agriculture**  
**Chapter 603**

**Rule Caption:** Allows new test for *Tritrichomonas fetus* for diagnosis.

Date:	Time:	Location:
2-16-10	1 p.m.	635 Capitol St. NE Salem, OR

**Hearing Officer:** Staff

**Stat. Auth.:** ORS 596

**Stats. Implemented:** ORS 596

**Proposed Amendments:** 603-011-0610, 603-011-0615, 603-011-0620

**Last Date for Comment:** 2-22-10

**Summary:** We received the research results about a new trichomoniasis diagnostic test that is more accurate and less expensive than our current method. This test, known as a quantitative Polymerase Chain Reaction (qPCR) Assay, is more accurate as a single test than are three cultures that are no required by rule to diagnose trichomoniasis. This rule allows procedures to use the new qPCR Assay in place of the culture method for testing their bulls for *Tritrichomonas fetus*.

**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:** Updates the fee schedule for field inspections of seed crops.



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**Date:** 2-19-10  
**Time:** 1:30 p.m.  
**Location:** 635 Capitol St., NE  
Conference Rm. D  
Salem, OR 97301

**Hearing Officer:** Gary McAnnich  
**Stat. Auth.:** ORS 561, 632 & 633  
**Stats. Implemented:** ORS 561, 632 & 633.680  
**Proposed Amendments:** 603-056-0315  
**Last Date for Comment:** 2-22-10, 5 p.m.

**Summary:** The proposed amendments would update the fee schedule for performing seed field inspections and add an application fee. The revenue generated by the existing fee schedule no longer provides sufficient funds to cover the costs of the official inspection program. We proposed to increase the fee schedule to \$6.50 per acre, with a minimum fee of \$50 for each field inspected and no maximum fee per field. We will also add a \$3 application fee for all field inspections, including bean fields in Malheur County. This will be the first fee increase for this program in over 9 years.

**Rules Coordinator:** Sue Gooch  
**Address:** Department of Agriculture, 635 Capitol St. NE, Salem, OR 97301  
**Telephone:** (503) 986-4583

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

**Rule Caption:** Set fees for banking program.

**Date:** 3-1-10  
**Time:** 9 a.m.  
**Location:** 350 Winter St. NE, Rm. 260  
Salem, OR 97301

**Hearing Officer:** Richard Blackwell  
**Stat. Auth.:** ORS 706.530 & 706.544  
**Stats. Implemented:** ORS 706.500  
**Proposed Amendments:** 441-500-0020, 441-500-0030  
**Last Date for Comment:** 3-5-10, 5 p.m.

**Summary:** The rules will revise the annual fees paid by banks and non-Oregon institutions.

**Rules Coordinator:** Shelley Greiner  
**Address:** Department of Consumer and Business Services, Finance and Corporate Securities, 350 Winter St. NE, Rm. 410, Salem, OR 97301  
**Telephone:** (503) 947-7484

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**Rule Caption:** Implements coordination of mortgage lending licensing under the federal S.A.F.E. Act and House Bill 2189.

**Date:** 3-1-10  
**Time:** 10 a.m.  
**Location:** 350 Winter St. NE, Rm. 260  
Salem, OR 97301

**Hearing Officer:** Richard Blackwell  
**Stat. Auth.:** ORS 59.860, 59.900, 59.945, 59.972, 725.505, 725.625 & 2009 OL Ch. 863, § 13a  
**Stats. Implemented:** ORS 59.850, 59.860, 59.865, 59.930, 59.945, 59.972, 725.060, 725.120, 725.190, 725.320 & 2009 OL Ch. 863, §§ 1, 3a-6, 9-10, 12-13  
**Proposed Adoptions:** 441-860-0085, 441-870-0081, 441-730-0026, 441-730-0027, 441-730-0125  
**Proposed Amendments:** 441-850-0005, 441-860-0090, 441-865-0025, 441-865-0060, 441-870-0080, 441-730-0050, 441-730-0070, 441-730-0320  
**Last Date for Comment:** 3-5-10, 5 p.m.

**Summary:** In 2008, Congress passed the Housing and Economic Recovery Act (HERA). Title V of HERA (the S.A.F.E. Act) created minimum standards for states to license mortgage loan originators. To implement these, the Oregon legislature passed House Bill 2189 directing the department to coordinate licensing of mortgage loan originators with the Nationwide Mortgage Licensing System and Registry (NMLSR), to comply with the minimum requirements of the federal S.A.F.E. Act. These rules implement the statutory require-

ments for a new license for mortgage loan originators and make conforming requirements to the rules governing mortgage bankers, mortgage brokers, and consumer finance licensees who employ mortgage loan originators. The proposed rules revise the bonding requirements for mortgage bankers and brokers, update advertising requirements, and change the retention of documents in loan files to meet updated licensing requirements of mortgage loan originators and data needed by the NMLSR. The proposed rules related to consumer finance lenders update the advertising requirements, create a new bonding requirement, and create a new state background check requirement. The proposed rules also change the retention of documents in loan files to meet the updated licensing requirements of mortgage loan originators and data needed by the NMLSR for consumer finance lenders. The new rules also regulate the use of professional designations by mortgage bankers, mortgage brokers, and loan originators.

**Rules Coordinator:** Shelley Greiner  
**Address:** Department of Consumer and Business Services, Finance and Corporate Securities, 350 Winter St. NE, Rm. 410, Salem, OR 97301  
**Telephone:** (503) 947-7484

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**Department of Fish and Wildlife  
Chapter 635**

**Rule Caption:** Recreational Sturgeon, Commercial Shad, and Miscellaneous Fishing Regulations for 2010.

**Date:** 3-12-10  
**Time:** 8 a.m.  
**Location:** Dept. of Fish & Wildlife,  
Commission Rm.  
3406 Cherry Ave. NE  
Salem, OR 97103

**Hearing Officer:** Fish and Wildlife Commission  
**Stat. Auth.:** ORS 496.138, 496.146, 506.109, 506.119 & 506.129  
**Stats. Implemented:** ORS 496.162, 506.129 & 507.030  
**Proposed Adoptions:** Rules in 635-017, 635-023, 635-042  
**Proposed Amendments:** Rules in 635-017, 635-023, 635-042  
**Proposed Repeals:** Rules in 635-017, 635-023, 635-042  
**Last Date for Comment:** 3-12-10

**Summary:** Consider amendments of rules related to: (1) Commercial shad fishing in the Columbia River mainstem; and (2) Recreational sturgeon fishing in the Columbia and Willamette Rivers.

Housekeeping and technical correction to the regulations may occur to ensure rules consistency.

**Rules Coordinator:** Therese Kucera  
**Address:** Department of Fish and Wildlife, 3406 Cherry Ave. NE, Salem, OR 97303  
**Telephone:** (503) 947-6033

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**Rule Caption:** Adopt and Modify Commercial Pacific Sardine, Sport Pacific Halibut, and Sport Sturgeon Fisheries Rules.

**Date:** 3-12-10  
**Time:** 8 a.m.  
**Location:** Dept. of Fish & Wildlife,  
Commission Rm.  
3406 Cherry Ave. NE  
Salem, OR 97103

**Hearing Officer:** Fish and Wildlife Commission  
**Stat. Auth.:** ORS 496.138 & 506.119  
**Stats. Implemented:** ORS 496.162, 506.109 & 506.129  
**Proposed Adoptions:** Rules in 635-004, 635-006, 635-011, 635-039  
**Proposed Amendments:** Rules in 635-004, 635-006, 635-011, 635-039  
**Proposed Repeals:** Rules in 635-004, 635-006, 635-011, 635-039  
**Last Date for Comment:** 3-12-10

**Summary:** These rules are for commercial Pacific sardine harvest specifications for 2010; sport Pacific halibut regulations for 2010; and prohibiting retention of green sturgeon in sport fisheries.

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

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**Rules Coordinator:** Therese Kucera  
**Address:** Department of Fish and Wildlife, 3406 Cherry Ave. NE,  
Salem, OR 97303  
**Telephone:** (503) 947-6033

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**Department of Forestry**  
**Chapter 629**

**Rule Caption:** Forestland Classification.

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
2-16-10	1 p.m.	Coos Forest Protective Assoc. 63612 Fifth Rd. Coos Bay, OR 97420
2-17-10	9 a.m.	Douglas Forest Protective Assoc. 1758 Airport Rd. Roseburg, OR 97470
2-19-10	9 a.m.	Dept. of Forestry Bldg. C 2600 State St. Salem, OR 97310

**Hearing Officer:** Charlie Stone

**Stat. Auth.:** ORS 526.041 & 2009 OL Ch. 69, Sec. 11

**Stats. Implemented:** ORS 477.205, 477.230 & 526.305-526.370

**Proposed Adoptions:** 629-045-0020, 629-045-0025, 629-045-0030, 629-045-0035, 629-045-0040, 629-045-0045, 629-045-0050, 629-045-0055, 629-045-0060, 629-045-0065

**Proposed Repeals:** 629-045-0005, 629-045-0010

**Last Date for Comment:** 2-22-10

**Summary:** The proposed rule reflect change made by the Legislative Assembly through chapter 69, Oregon Laws 2009. These rules include; how lands are to be classified, classification requirements and limitations, the requirements for maps used in the process, when to hold community meetings, requirements for the formal written order and limitations of the protection district and State Forester. The proposed rulemaking also repeals the current rules.

**Rules Coordinator:** Sabrina Perez

**Address:** Department of Forestry, 2600 State St., Salem, OR 97310

**Telephone:** (503) 945-7210

.....  
**Department of Human Services,**  
**Children, Adults and Families Division:**  
**Self-Sufficiency Programs**  
**Chapter 461**

**Rule Caption:** Changing OARs affecting public assistance, medical assistance, or Supplemental Nutrition Assistance Program clients.

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
2-22-10	10 a.m.	500 Summer St. NE, Rm. 225 Salem, OR

**Hearing Officer:** Annette Tesch

**Stat. Auth.:** ORS 409.050, 410.070, 411.060, 411.070, 411.598, 411.700, 411.806 to 411.845, 412.006, 412.009, 412.014, 412.049, 414.033, 414.042, 414.065 & 2009 OL Ch. 595 & 849

**Other Auth.:** The Social Security Act (42 USC 602(a) 1396a, 1396d, 1396p); Sec. 4114 of the Food, Conservation and Energy Act of 2008 (122 Stat. 923); Worker, Homeownership, and Business Assistance Act of 2009 (Pub. Law 111-92); 45 CFR Part 400; 42 CFR 430.10; 42 CFR 433.36; 42 CFR 435.601; Oregon State Plan Under Title XIX of the Social Security Act Sec. 1917; SNAP-10-6/OR waiver approval dated November 4, 2009 available from: The Department of Human Services, Supplemental Nutrition Assistance Program, 500 Summer Street NE, Salem, Oregon 97301; Oregon Health Plan 2 Demonstration Project No. 21-W-00013/ and 11-W-00161/10

**Stats. Implemented:** ORS 93.268, 113.085, 115.125, 409.050, 410.070, 411.060, 411.070, 411.105, 411.111, 411.598, 411.620, 411.630, 411.635, 411.640, 411.660, 411.690, 411.694, 411.700, 411.708, 411.795, 411.806 to 411.845, 411.825, 412.006, 412.009, 412.014, 412.049, 412.084, 414.033, 414.042, 414.065, 414.105, 416.310, 416.340 & 2009 OL Ch. 595 & 849

**Proposed Adoptions:** 461-135-0498, 461-145-0184

**Proposed Amendments:** 461-001-0015, 461-105-0006, 461-115-0230, 461-115-0430, 461-115-0651, 461-115-0690, 461-135-0570, 461-135-0575, 461-135-0730, 461-135-0832, 461-135-0835, 461-135-1195, 461-145-0022, 461-145-0130, 461-145-0150, 461-145-0320, 461-145-0550, 461-150-0060, 461-150-0090, 461-155-0700, 461-165-0100, 461-165-0200, 461-165-0210, 461-170-0010, 461-170-0011, 461-170-0100, 461-170-0101, 461-170-0120, 461-175-0220, 461-175-0270, 461-175-0300, 461-180-0050, 461-180-0097, 461-193-0000, 461-193-0042

**Proposed Repeals:** 461-165-0150

**Last Date for Comment:** 2-24-10, 5 p.m.

**Summary:** OAR 461-001-0015 about the definitions used in the Supplemental Nutrition Assistance Program (SNAP) administrative rules is being amended to include definitions for employee, employer, externship, graduate assistantship, graduate fellowship, and internship.

OAR 461-105-0006 about the Department's business continuity provisions in the event of an emergency event or a work stoppage; OAR 461-115-0430 about how the Department determines when it will periodically redetermine a client's eligibility for benefits in all programs except the Emergency Assistance (EA), Employment Related Day Care (ERDC), Extended Medical Assistance (EXT), Oregon Health Plan (OHP), Refugee Assistance (REF), Refugee Assistance Medical (REFM), Supplemental Nutrition Assistance Program (SNAP), and Temporary Assistance for Domestic Violence Survivors (TA-DVS) programs; OAR 461-115-0651 about when the Department requires verification of a client's SNAP program application information and how long the client has to reply; OAR 461-150-0060 about how and when the Department determines to use prospective or retrospective eligibility and budgeting (the process of calculating the benefit level) in the ERDC, Medical Assistance Assumed (MAA), Medical Assistance to Families (MAF), REF, REFM, SNAP, and Temporary Assistance for Needy Families (TANF) programs; OAR 461-165-0100 about the date benefits are issued in all of the Department's programs except the EA and SNAP programs; OAR 461-170-0011 about the changes in circumstances a client in the Department's programs must report and when the client must report them; OAR 461-170-0100 about which filing groups are subject to the Monthly Reporting System (MRS) requirements; OAR 461-170-0101 about which ERDC and SNAP program clients may participate in the Simplified Reporting System (SRS); OAR 461-170-0120 about when the Department closes a client's benefits due to not receiving or receiving an incomplete Monthly Change Report; OAR 461-175-0220 about the type of notice the Department sends a client in situations involving a client's disqualification from program eligibility; OAR 461-175-0270 about the type of notice the Department sends to a client assigned to the MRS, SRS, or Transitional Benefit Alternative (TBA) reporting systems when the client's benefits or eligibility for one of the Department programs changes; and OAR 461-180-0050 about how the Department determines the effective date for suspending or closing benefits or Job Opportunity and Basic Skills (JOBS) support service payments are being amended and OAR 461-165-0150 about the timely issuance of benefits for TANF program clients assigned to the MRS is being repealed to eliminate references to the Monthly Reporting System (MRS) for the Breast and Cervical Cancer Medical (BCCM), Citizen/Alien-Waived Emergent Medical (CAWEM), Continuous Eligibility for OHP-CHP pregnant women (CEC), Continuous Eligibility for Medicaid (CEM), Extended Medical Assistance (EXT), MAA, MAF, Medical Coverage for Children in Substitute or Adoptive Care (SAC), OHP, REFM, SNAP, and TANF programs as clients will no longer be assigned to the MRS for these programs effective April 1, 2010.

OAR 461-115-0230 about when and how the Department conducts interviews of program clients as part of the eligibility determination process is being amended to state when in the Supplemental Nutrition Assistance Program (SNAP) the interview may be waived, the interview may be postponed for certain households meet-

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ing expedited services criteria, the hardship criteria for use of a telephone interview rather than a face-to-face interview, and when the Department must inform an applicant he or she has missed the first scheduled interview appointment.

OAR 461-115-0690 about the time limits for an applicant to verify information after being determined eligible for expedited services in the Supplemental Nutrition Assistance Program (SNAP) is being amended to state when the verification may be postponed and that notice of the closing of or changes in SNAP program expedited services benefits due to postponed verification is provided in accordance with OAR 461-175-0300.

OAR 461-135-0498 is being adopted to state the specific activation of, eligibility for, and issuance of benefits requirements for the Pandemic-related Supplemental Nutrition Assistance Program (PSNAP). This rule is part of the implementation the PSNAP program to ensure children certified eligible to receive free and reduced price school lunches receive nutritional assistance during pandemic-related school closures.

OAR 461-135-0570 about how the Department determines if a student is eligible or ineligible for Supplemental Nutrition Assistance Program (SNAP) benefits is being amended to state that the definition of employee in OAR 461-001-0015 also applies to this rule. This rule also is being amended to state that a student participating in a state or federally funded work study program must be assigned to and perform work in a work study position in his or her school's current academic term to be eligible for SNAP program benefits. This rule also is being amended to state that work in an externship, graduate assistantship, graduate fellowship, or internship and work for which the student receives in-kind payments rather than wages does not qualify to meet the 20 hours per week working student criteria for SNAP program eligibility.

OAR 461-135-0575 about the specific eligibility requirements for Supplemental Nutrition Assistance Program (SNAP) expedited services is being amended to clarify when a SNAP program applicant is screened for and receives expedited services. This rule also is being amended to state cross-references to rules about eligibility process interviews, application processing timeframes, and verification requirements for SNAP program expedited services.

OAR 461-135-0730 about the specific eligibility requirements for the Department's Qualified Medicare Beneficiaries (QMB) programs is being amended to state that to be eligible for the Qualified Medicare Beneficiaries — Qualified Individuals (QMB-SMF) program a client must be receiving Medicare Part A hospital insurance, including clients who must pay a monthly premium to receive the Medicare coverage.

OAR 461-135-0832 about the definitions used in the Department's Estate Administration rules is being amended to restate the definition of an "estate" when the Department is seeking reimbursement of public assistance payments made to a recipient on or after July 18, 1995 and the recipient died on or after October 1, 2008.

OAR 461-135-0835 about the limitations on claims the Department may make against the estate of a prior recipient of public assistance is being amended to state that in the Breast and Cervical Cancer Medical (BCCM), General Assistance (GA), General Assistance Medical (GAM), Oregon Health Plan (OHP), Oregon Supplemental Income Program (OSIP), Oregon Supplemental Income Program Medical (OSIPM), and Qualified Medicare Beneficiaries (QMB) programs the Department may file a claim against the estate of a recipient's spouse when the recipient's spouse dies before the recipient.

OAR 461-135-1195 about the specific requirements to be eligible for the State Family Pre-SSI/SSDI (SFPSS) program is being amended to state that a client is required to sign an interim assistance agreement allowing the Department to collect the amount of any interim SFPSS program benefits a client received once the client receives an initial Supplemental Security Income payment. This rule also is being amended to make permanent the temporary rule changes effective November 16, 2009.

OAR 461-145-0022 about how the Department treats annuities in the Oregon Supplemental Income Program Medical (OSIPM) program is being amended to revise and ease the requirements for an annuity to be considered actuarially sound.

OAR 461-145-0130 about how the Department treats a client's earned income when making eligibility and benefit determinations is being amended in response to a recent change in federal guidelines to exclude the earned income of temporary census workers from consideration when the Department determines eligibility and benefit level for a client in the Supplemental Nutrition Assistance Program (SNAP). This rule also is being amended to make permanent the temporary rule changes effective January 1, 2010.

OAR 461-145-0150 about the treatment of educational income is being amended to state the Department's policy for the treatment of educational income from an externship, graduate assistantship, graduate fellowship, and internship.

OAR 461-145-0184 is being adopted to state how the Department treats payments received by a veteran or the spouse of a veteran who served in the military of the Government of the Commonwealth of the Philippines during World War II and made under the Filipino Veterans Equity Compensation Fund authorized by the American Recovery and Reinvestment Act of 2009.

OAR 461-145-0320 about how the Department treats the value of life and burial insurance policies when determining a client's eligibility (the decision as to whether an individual qualifies, under financial and nonfinancial requirements, to receive program benefits) and benefit level is being amended to state that benefits paid on a life insurance policy are counted as unearned income in the month paid and as a resource in following months whether the payment resulted from the death of the insured individual or the insured individual received accelerated payments before death. This rule also is being amended to state that a deduction of \$1,500 from a life insurance payment for the cost of the deceased individual's last illness and burial is allowed only when the payment resulted from the insured individual's death.

OAR 461-145-0550 about how the Department treats unemployment compensation benefits when determining a client's income is being amended — in response to recent federal legislation, the Worker, Home Ownership, and Business Assistance Act of 2009 (Pub. Law 111-92) — to state that the \$25 supplemental payment authorized by the American Recovery and Reinvestment Act of 2009 is excluded from income when determining eligibility for all of the Department's programs. This amendment makes permanent the temporary rule changes effective November 24, 2009.

OAR 461-150-0090 about how the Department treats contract and self-employment income for clients in all programs, except the Oregon Health Plan (OHP) and Refugee Assistance Medical (REFM) programs, who are assigned to prospective budgeting is being amended to state how the Department determines countable income when current contract income is not representative of future income. This rule also is being amended to state that in the Employment Related Day Care (ERDC), Food Stamp (FS), Medical Assistance Assumed (MAA), Medical Assistance to Families (MAF), Refugee Assistance (REF), and Temporary Assistance for Needy Families (TANF) programs non-self employment income received during a less than 12-month period but intended as a full year's income is annualized. These rule amendments also make permanent the temporary rule changes effective December 1, 2009.

OAR 461-155-0700 about special needs payments for personal incidentals and room and board allowances to Oregon Supplemental Income Program — Medical (OSIPM) program clients in community-based care facilities is being amended to state when the payment is made and how the Department calculates the amount of the special needs payment for a legally married couple when one spouse is institutionalized and the other is a community spouse (not in a medical institution or nursing facility) and the client does not have sufficient income to divert to the community spouse. This rule also is being amended to remove a reference to the Oregon Supplemental

# NOTICES OF PROPOSED RULEMAKING

tal Income Program (OSIP) as regular payments under the OSIP program were discontinued effective January 1, 2010 in response to HB 3065 (2009 Or. Laws ch. 849).

OAR 461-165-0200 about when and how the Department supplements or restores benefits for a client is being amended in response to federal legislation (Section 4114 of the Food, Conservation and Energy Act of 2008 (122 Stat. 923)) to remove language entitling a Supplemental Nutrition Assistance Program (SNAP) client to restoration of lost benefits when the benefits were deposited in an electronic benefit transfer (EBT) account and subsequently returned because the benefits expired.

OAR 461-165-0210 about how the Department calculates the amount of benefits to be restored or supplemented is being amended in response to federal legislation (Section 4114 of the Food, Conservation and Energy Act of 2008 (122 Stat. 923)) to remove language describing how the Department calculates the amount Supplemental Nutrition Assistance Program (SNAP) benefits being restored when the benefits were deposited in an electronic benefit transfer (EBT) account and subsequently returned because the benefits expired.

OAR 461-170-0010 about a Department client's responsibility to report a change in circumstances to the Department is being amended to indicate that a change is considered reported when reported by a client, authorized representative, or ineligible student in the household.

OAR 461-175-0300 about the requirements for when the Department must provide an additional decision notice (a written notice of a decision by the Department regarding an individual's eligibility for benefits) at the time of changes in a program to a client's benefits when the Department previously has sent the client notice is being amended to revise the situations in which no additional decision notice may be sent as well as the situations in which a decision notice may be sent but not a timely decision notice.

OAR 461-180-0097 about the effective date on which a premium payment for a client in the Oregon Health Plan - Adults (OHP-OPU) program starts or ends is being amended to state the effective date that an OHP-OPU program client is required to start paying the premium is the first of the month following the month the Department makes an eligibility determination.

OAR 461-193-0000 about client rights in the New Arrival Employment Services (NAES) and Refugee Case Services Project (RCSP) programs is being amended to remove language referencing an internal contractor complaint handling procedure.

OAR 461-193-0042 about the requirements for New Arrival Employment Services (NAES) and Refugee Case Services Project (RCSP) program clients to follow an employment plan is being amended to correct a rule reference and replace outdated language with current Department terminology concerning resolution of client disagreements over provisions of their employment plans.

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

Written comments may be submitted until February 24, 2010 at 5 p.m. Written comments may be submitted via e-mail to Annette.Tesch@state.or.us, faxed to 503-373-7032, or mailed to Annette Tesch, Rules Coordinator, DHS — Children, Adults, and Families Division, 500 Summer Street NE, E-48, Salem, Oregon, 97301. The Department provides the same consideration to written comment as it does to any oral or written testimony provided at the public hearing.

**Rules Coordinator:** Annette Tesch

**Address:** Department of Human Services, Children, Adults and Families Division: Self-Sufficiency Programs, 500 Summer St. NE, E-48, Salem, OR 97301

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

## Department of Human Services, Division of Medical Assistance Programs Chapter 410

**Rule Caption:** January 10 Technical Changes to the January 1, 2010–December 31, 2011 health Services Commission's Prioritized List of Health Services; correct line change.

**Stat. Auth.:** ORS 192.527, 192.528, 409.050 & 414.065

**Stats. Implemented:** ORS 192.527, 192.528, 414.010, 414.065 & 414.727

**Proposed Amendments:** 410-141-0520

**Proposed Repeals:** 410-141-0520(T)

**Last Date for Comment:** 2-19-10

**Summary:** The Oregon Health Plan Program administrative rules govern Division of Medical Assistance Programs' (DMAP) payments for services provided to certain clients. DMAP temporarily amended 410-141-0520, referencing the January 1, 2010–December 31, 2011 Oregon Health Services Commission's Prioritized List of Health Services that reflects interim modifications and technical changes made, subject to Centers for Medicare and Medicaid Services (CMS) approval January 1, 2010. The January 1, 2010 interim modifications and technical changes include application of 2009 national code to the HSC lines and HSC guideline refinements.

Retroactively, to January 1, 2010, the 2010–11 Prioritized List includes 678 lines (down from 680), with a funding line that covers all services appearing on line 1-502. The change in the funding line number from 503 to 502 does not result in a reduction in covered services.

**Rules Coordinator:** Darlene Nelson

**Address:** Department of Human Services, Division of Medical Assistance Programs, 500 Summer St. NE, E-35, Salem, OR 97301

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

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

**Rule Caption:** New Disease Reporting Requirements.

Date:	Time:	Location:
2-22-10	1 p.m.	800 NE Oregon St., Rm. 1E Portland, OR 97232

**Hearing Officer:** Staff

**Stat. Auth.:** ORS 409.050, 431.262, 433.004, 433.006, 433.017, 433.360, 433.365, 437.010, 438.450, 616.450, 616.745 & 624.080

**Stats. Implemented:** ORS 409.050, 431.262, 433.004, 433.006, 433.017, 433.040, 433.110, 433.360, 433.365, 437.010, 438.030, 438.310, 616.745, 624.080 & 624.380

**Proposed Adoptions:** 333-018-0013, 333-018-0017, 333-026-0030

**Proposed Amendments:** 333-017-0000, 333-017-0005, 333-018-0000, 333-018-0010, 333-018-0015, 333-018-0018, 333-019-0017, 333-019-0027, 333-019-0036

**Last Date for Comment:** 2-22-10, 5 p.m.

**Summary:** The Department of Human Services, Public Health Division is proposing to amend and adopt rules in OAR chapter 333, divisions 17, 18, 19 and 26 related to disease reporting requirements. These rule changes include updating definitions, e.g., novel influenza, mandating electronic laboratory for high-volume laboratories; updating reportable diseases requiring immediate notification; adding pertinent zoonotic diseases to the list of reportable diseases; specifying that Rabies Vaccination Certificates be completed and signed only by licensed veterinarians. In addition, statutory and other references are being updated; the period for which vaccinated dogs, cats, and ferrets must be quarantined, following exposure to rabies, is being changed; eliminating chlamydial infection as rational for treatment; specifying the primary means of assessing risk for and treatment of neonatal gonococcal infection; limiting persons covered by the rule to health care providers; adding civil penalties for violations of OAR chapter 333, divisions 18 and 19.

# NOTICES OF PROPOSED RULEMAKING

**Rules Coordinator:** Brittany Sande  
**Address:** Department of Human Services, Public Health Division,  
800 NE Oregon St., Suite 930, Portland, OR 97232  
**Telephone:** (971) 673-1291

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**Rule Caption:** Public drinking water system compliance and domestic well testing.

Date:	Time:	Location:
3-10-10	1 p.m.	800 NE Oregon St., Rm. 1C Portland, OR 97232

**Hearing Officer:** Jana Fussell  
**Stat. Auth.:** ORS 197.180, 448.131, 448.150 & 448.271  
**Other Auth.:** 2009 OL Ch. 284

**Stats. Implemented:** ORS 197.180, 431.110, 431.120, 431.123, 431.131, 431.150, 448.115, 448.123, 448.131, 448.135, 448.150, 448.160, 448.175, 448.268, 448.271, 448.273, 448.278, 448.279, 448.280, 448.285, 448.290, 448.295, 448.300, 448.450, 448.455, 448.460, 448.465 & 448.994

**Proposed Adoptions:** 333-061-0324

**Proposed Amendments:** 333-061-0005, 333-061-0010, 333-061-0015, 333-061-0020, 333-061-0030, 333-061-0032, 333-061-0034, 333-061-0036, 333-061-0040, 333-061-0042, 333-061-0043, 333-061-0045, 333-061-0050, 333-061-0055, 333-061-0057, 333-061-0058, 333-061-0060, 333-061-0061, 333-061-0062, 333-061-0063, 333-061-0064, 333-061-0065, 333-061-0070, 333-061-0071, 333-061-0072, 333-061-0073, 333-061-0076, 333-061-0077, 333-061-0090, 333-061-0228, 333-061-0230, 333-061-0235, 333-061-0245, 333-061-0265, 333-061-0290, 333-061-0305, 333-061-0310, 333-061-0325, 333-061-0330, 333-061-0335

**Proposed Repeals:** 333-061-0215, 333-061-0295, 333-061-0315, 333-061-0320

**Last Date for Comment:** 3-19-10, 5 p.m.

**Summary:** The Department of Human Services, Public Health Division is proposing to amend Oregon Administrative Rules 333-061-0010 through 333-061-0325 to comply with changes made to ORS 448.271 with the passage of SB 739 during the 2009 legislative session, to amend accredited laboratory and mandatory reporting criteria, and to amend the scope of the public water system definition in response to activity completed during the 2009 legislative session. Amendments also reflect housekeeping changes related to federal regulations published in the January 4, January 5 and November 8, 2006 Federal Registers. These proposed rule amendments are necessary for state primacy requirements relating to surface water treatment requirements, microbiological monitoring requirements for water systems supplied by groundwater sources, monitoring requirements for disinfection byproducts, variances from treatment techniques, and lead and copper monitoring and public education requirements. Some housekeeping changes are also proposed for reorganization and clarification of the rules division. Four rules are being repealed because they are redundant and duplicate other rules within the division. One rule change will increase fees for a small number of community water system that provide water on a wholesale basis but do not directly serve individual customers. This rule change also adds a late fee if a water system does not pay its sanitary surveys fee in a timely manner.

**Rules Coordinator:** Brittany Sande  
**Address:** Department of Human Services, Public Health Division,  
800 NE Oregon St., Suite 930, Portland, OR 97232  
**Telephone:** (971) 673-1291

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**Rule Caption:** Ambulance Service Licensing.

Date:	Time:	Location:
2-24-10	1:15 p.m.	800 NE Oregon St., Rm. 1E Portland, OR 97232

**Hearing Officer:** Jana Fussell  
**Stat. Auth.:** ORS 682.017  
**Stats. Implemented:** ORS 682.017-682.117 & 682.991

**Proposed Amendments:** 333-250-0010, 333-250-0020, 333-250-0040, 333-250-0041, 333-250-0042, 333-250-0043, 333-250-0044, 333-250-0045, 333-250-0046, 333-250-0047, 333-250-0048, 333-250-0049, 333-250-0060, 333-250-0070

**Last Date for Comment:** 2-26-10, 5 p.m.

**Summary:** The Department of Human Services, Public Health Division is proposing to permanently amend Oregon Administrative Rules chapter 333, division 250, to streamline and clarify rules pertaining to ambulance service licensing.

**Rules Coordinator:** Brittany Sande  
**Address:** Department of Human Services, Public Health Division,  
800 NE Oregon St., Suite 930, Portland, OR 97232  
**Telephone:** (971) 673-1291

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**Rule Caption:** Ambulance Vehicle Licensing.

Date:	Time:	Location:
2-24-10	1:15 p.m.	800 NE Oregon, St., Rm. 1E Portland, OR 97232

**Hearing Officer:** Jana Fussell

**Stat. Auth.:** ORS 682.017

**Stats. Implemented:** ORS 682.017-682.117 & 682.991

**Proposed Amendments:** 333-255-0000, 333-255-0010, 333-255-0030, 333-255-0060, 333-255-0070, 333-255-0071, 333-255-0072, 333-255-0073, 333-255-0081, 333-255-0082, 333-255-0091, 333-255-0092

**Last Date for Comment:** 2-26-10, 5 p.m.

**Summary:** The Department of Human Services, Public Health Division is proposing to permanently amend Oregon Administrative Rules chapter 333, division 255, to streamline and clarify rules pertaining to ambulance vehicle licensing.

**Rules Coordinator:** Brittany Sande  
**Address:** Department of Human Services, Public Health Division,  
800 NE Oregon St., Suite 930, Portland, OR 97232  
**Telephone:** (971) 673-1291

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**Rule Caption:** Update of rules pertaining to certification of Emergency Medical Technicians and First Responders.

Date:	Time:	Location:
2-24-10	1:15 p.m.	800 NE Oregon St., Rm. 1E Portland, OR 97232

**Hearing Officer:** Jana Fussell

**Stat. Auth.:** ORS 682.017, 682.025, 682.028, 682.204, 682.208, 682.212, 682.215, 682.216, 682.220, 682.224 & 682.265

**Stats. Implemented:** ORS 682.017-682.991

**Proposed Adoptions:** 333-265-0015, 333-265-0083, 333-265-0085, 333-265-0087, 333-265-0105

**Proposed Amendments:** 333-265-0000, 333-265-0010, 333-265-0012, 333-265-0014, 333-265-0016, 333-265-0018, 333-265-0020, 333-265-0022, 333-265-0023, 333-265-0025, 333-265-0030, 333-265-0040, 333-265-0050, 333-265-0060, 333-265-0070, 333-265-0080, 333-265-0090, 333-265-0100, 333-265-0110, 333-265-0140, 333-265-0150, 333-265-0160, 333-265-0170

**Proposed Repeals:** 333-265-0180

**Last Date for Comment:** 2-26-10, 5 p.m.

**Summary:** The Department of Human Services, Public Health Division is proposing to make permanent changes in Oregon Administrative Rules chapter 333, division 265, to streamline and clarify rules, address requirements for training, testing and certification of first responders and EMTs, to comply with new legislation passed during the 2009 legislative session (HB 2059 and HB 3097), to prepare for upcoming curriculum changes and certification levels, and propose changes in fees effective on the date these rules go into effect with a gradual increase every two years until 2013.

**Rules Coordinator:** Brittany Sande  
**Address:** Department of Human Services, Public Health Division,  
800 NE Oregon St., Suite 930, Portland, OR 97232  
**Telephone:** (971) 673-1291

# NOTICES OF PROPOSED RULEMAKING

## Department of Justice Chapter 137

**Rule Caption:** Rebuttals to support amounts, paternity only services, time frames for mailing and establishing medical support.

**Stat. Auth.:** ORS 25.080, 25.270–25.290 & 180.345

**Stats. Implemented:** ORS 25.020, 25.080, 25.140, 25.164, 25.270–25.343, 25.381, 107.108 & 183.415

**Proposed Adoptions:** 137-050-0760

**Proposed Amendments:** 137-055-1070, 137-055-2160, 137-055-3340

**Proposed Repeals:** 137-050-0760(T)

**Last Date for Comment:** 2-26-10, 5 p.m.

**Summary:** OAR 137-050-0760 is being adopted to provide factors for rebuttal to the presumed correct child support amount. This rule replaces the temporary rule which was effective January 4, 2010. It is being changed to clarify that the rebuttal factors listed may not include all possible rebuttal factors, and to remove the requirement to use certain rebuttal factors in each area subject to rebuttal.

OAR 137-055-1070 is being amended to provide criteria under which the program may provide services sufficient to establish paternity, without seeking a cash child support or medical support order.

OAR 137-055-2160 is being amended to clarify time frames when service is made by mail.

OAR 137-055-3340 is being amended to clarify how the program will establish medical support and administer contingent medical provisions in orders.

**Rules Coordinator:** Vicki Tungate

**Address:** 494 State Street, Suite 300, Salem, OR 97301

**Telephone:** (503) 986-6086

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## Department of Revenue Chapter 150

**Rule Caption:** Tax amnesty program; 25 percent post-amnesty penalty.

Date:	Time:	Location:
2-22-10	10 a.m.	Fishbowl Conference Rm. 955 Center St. NE Salem, OR

**Hearing Officer:** Staff

**Stat. Auth.:** ORS 305.100 & 305.229

**Stats. Implemented:** ORS 305.100 & 2009 OL Ch. 710

**Proposed Adoptions:** 150-305.100-(C)

**Proposed Repeals:** 150-305.100-(C)(T)

**Last Date for Comment:** 2-22-10, 5 p.m.

**Summary:** The proposed rule defines terms and articulates policy relating to the tax amnesty program, specifically as it relates to:

- (1) Filing dates and deadlines;
- (2) Installment payments;
- (3) Amnesty-related closing agreements;
- (4) When the 25% post amnesty penalty will and will not be imposed, and when the department may waive the penalty.

**Rules Coordinator:** Debra L. Buchanan

**Address:** Department of Revenue, 955 Center St. NE, Salem, OR 97301-2555

**Telephone:** (503) 945-8653

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

**Rule Caption:** Periodic Test of Driver's Eyesight for Driver License Renewal.

**Stat. Auth.:** ORS 184.616, 184.619, 802.010, 807.070, 807.120 & 807.150

**Stats. Implemented:** ORS 807.120, 807.150 & 807.310

**Proposed Amendments:** 735-062-0060

**Last Date for Comment:** 2-22-10

**Summary:** Persons 50 years of age or older must have their eyesight tested when their driver license is renewed. Effective January 1, 2010, some driver licenses are issued for a period that is less than eight years if the person is legally present in the United States on a temporary basis. DMV proposes to amend OAR 735-062-0060 to clarify that an eyesight test will be required whenever a person who is 50 years of age or older renews a driver license, regardless of the length of time it is valid. DMV also proposes to amend OAR 735-062-0060 to clarify that even if the person is under 50 years of age at the time he or she applies for renewal, DMV will conduct an eyesight test if the license to be renewed expires on or after the person's 50th birthday. For example, a person who applies for renewal at age 48 or 49 may be required to pass an eyesight test if he will be 50 years of age or older when his current driver license expires. This must be clarified because effective January 1, 2010, OAR 735-062-0090 allows a person to renew driving privileges up to 14 months prior to expiration. Also, the rule is being amended to clarify that if the driver license expires when the person is 49 years of age, but the person does not apply for renewal until he or she is 50 years of age or older, the person's eyesight will be tested.

Other changes are made for clarity and consistency with other DMV rules.

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

**Rules Coordinator:** Lauri Kunze

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

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

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**Rule Caption:** CDL Medical Programs Particularly Waivers of Physical Disqualification.

**Stat. Auth.:** ORS 184.616, 184.619, 802.010, 807.040 & 809.419

**Other Auth.:** Title 49, CFR Sec. 391.41–391.49

**Stats. Implemented:** ORS 807.040, 807.100, 807.150 & 809.419

**Proposed Amendments:** 735-063-0000, 735-063-0050, 735-063-0060, 735-063-0070, 735-063-0075

**Last Date for Comment:** 2-22-10

**Summary:** OAR 735-063-0070 establishes DMV's program for issuing a Waiver of Physical Disqualification to a driver of a commercial motor vehicle (CMV) who does not meet all physical qualification standards set by the Federal Motor Carrier Safety Administration (FMCSA). The Oregon Waiver of Physical Disqualification Program allows drivers with certain disqualifying conditions to meet the physical qualification requirements for issuance of a commercial driver license (CDL) or commercial driver permit to operate a CMV in intrastate commerce, but only if the driver is able to show that the condition does not impair his or her ability to operate a CMV safely.

The current rule does not specify the physical conditions for which a driver may qualify for a Waiver of Physical Disqualification. The medical guidelines used to determine whether a person qualifies for a Waiver of Physical Disqualification were initially developed in the late 1970's and early 1980's. DMV recently evaluated our program to see if it was consistent with current medical practices and federal guidelines. DMV determined that we would issue a Waiver of Physical Disqualification for five FMCSA physical disqualifications that have clearly defined standards and for which issuance of a waiver is supported by FMCSA medical advisory reports and DMV experience that providing a waiver for these types of conditions has shown no adverse affect on safety. The five disqualifying physical conditions that DMV will consider for a waiver are: loss or impairment of limb; diabetes; seizure disorder; impaired vision; and hearing loss. Therefore, DMV proposes to amend OAR 735-063-0070 to specify the disqualifying conditions for which a waiver may be issued. DMV proposes to further amend OAR 735-063-0070 to specify that those waivers issued prior to August 10, 2009 for a sleep disorder or a cardiac condition may be renewed as long as all other qualification requirements are met.

# NOTICES OF PROPOSED RULEMAKING

The proposed changes to the other rules that are part of this rule-making are for consistency, clarity and to fix typographical errors.

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

**Rules Coordinator:** Lauri Kunze

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

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

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## Department of Transportation, Highway Division Chapter 734

**Rule Caption:** ODOT intends to amend rules regarding tire requirements for triple trailer combinations.

**Stat. Auth.:** ORS 184.616, 184.619 & 818.220

**Stats. Implemented:** ORS 818.200 & 818.220

**Proposed Amendments:** 734-074-0008, 734-074-0020

**Last Date for Comment:** 2-22-10

**Summary:** OAR 734-074-0008 contains definitions for Division 74 rules. OAR 734-078-0020 describes maximum allowable weights for axles and tires for vehicles operating in excess of statutory weight limits. Currently, a triple trailer combination in Oregon is required to use four tires on each single axle of a triple trailer combination. Advancement in tire technology since the current rule was adopted has resulted in development and national usage of a single wide base tire capable of replacing two tires on each side of an axle without compromising performance or safety. The Oregon Trucking Association requested a revision to the current rules to allow use of two new generation wide base single tires in lieu of four tires on converter dollies utilized in triple trailer combinations, citing:

- National Highway Transportation Safety Administration approval of wide base single tires on heavy trucks;
- Environmental Protection Agency, through their SmartWay Program, promotion of wide base single tires because of their lower rolling resistance and resultant fuel savings and reduced emissions;
- Reduced employee injuries resulting from maneuvering equipment at terminals;
- A nine year history of usage of wide base single tires; and
- That Oregon is currently the only state prohibiting use of wide base single tires on triple trailer combinations.

The proposed definition of "new generation wide base single tire" is uniform with the Western Alliance of State Highway Transportation Organization definition. Use of new generation wide base single tires is proposed provided vehicle, axle or tire load rating requirements are not compromised

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

**Rules Coordinator:** Lauri Kunze

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

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

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## Department of Transportation, Motor Carrier Transportation Division Chapter 740

**Rule Caption:** Amendment of Federal safety and hazardous materials transportation regulations affecting motor carriers.

**Stat. Auth.:** ORS 153.022, 184.616, 184.619, 469.470, 823.011, 823.061, 825.137, 825.210, 825.232, 825.252, 825.258 & 825.990

**Stats. Implemented:** ORS 825.210, 825.250, 825.252, 825.258 & 825.260

**Proposed Amendments:** 740-100-0010, 740-100-0060, 740-100-0065, 740-100-0070, 740-100-0080, 740-100-0085, 740-100-0090, 740-110-0010

**Last Date for Comment:** 2-22-10

**Summary:** These rules cover the annual adoption of federal motor carrier safety and hazardous materials transportation regulations. In

addition, these rules cover the adoption of international standards related to driver, vehicle and hazardous materials out-of-service violations. The changes are necessary to ensure Oregon's motor carrier safety; hazardous materials; and driver, vehicle and hazardous materials out-of-service requirements are current with national and international standards. Amendments to the adoption of CFR 49 Part 391 regarding driver qualifications for intrastate motor carriers are necessary to ensure compatibility with federal regulations. Oregon stands to lose approximately \$2.4 million of Motor Carrier Safety Assistance Program (MCSAP) funds if it fails to amend and maintain compatible rules.

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

**Rules Coordinator:** Lauri Kunze

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

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

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## Employment Department, Child Care Division Chapter 414

**Rule Caption:** Amends rules regarding the Criminal History Registry, renames to Central Background Registry, expands definition of subject individual.

**Stat. Auth.:** ORS 657.610

**Stats. Implemented:** ORS 657.610

**Proposed Amendments:** 414-061-0000, 414-061-0010, 414-061-0020, 414-061-0030, 414-061-0040, 414-061-0050, 414-061-0060, 414-061-0070, 414-061-0080, 414-061-0090, 414-061-0100, 414-061-0110, 414-061-0120

**Last Date for Comment:** 6-18-10

**Summary:** Renames the Criminal History Registry to the Central Background Registry for the purposes of Child Care Division rules and expands the definition of subject individual.

**Rules Coordinator:** Janet Orton

**Address:** Employment Department, Child Care Division, 875 Union St. NE, Salem, OR 97311

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

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**Rule Caption:** Amends rules regarding Registered Family Child Care Homes.

**Stat. Auth.:** ORS 657.610

**Stats. Implemented:** ORS 657.610

**Proposed Amendments:** 414-205-0000, 414-205-0010, 414-205-0020, 414-205-0035, 414-205-0040, 414-205-0055, 414-205-0065, 414-205-0075, 414-205-0085, 414-205-0090, 414-205-0100, 414-205-0110, 414-205-0120, 414-205-0130, 414-205-0140, 414-205-0150, 414-205-0160, 414-205-0170

**Last Date for Comment:** 6-18-10

**Summary:** Amends rules to change the reference to the Criminal History Registry to the Central Background Registry, changes the term "special needs child" to child with special needs, specifies the licensing requirements and revises rules regarding imposition of civil penalties on Registered Family Child Care Homes for rule violations. This rules also prohibits providers who have had certain negative actions taken against their license or enrollment in the Central Background Registry from doing certain types of exempt child care.

**Rules Coordinator:** Janet Orton

**Address:** Employment Department, Child Care Division, 875 Union St. NE, Salem, OR 97311

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

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**Rule Caption:** Amends rules regarding Certified Child Care Centers and adopts rules regarding civil penalties for Certified Child Care Centers.

**Stat. Auth.:** ORS 657.610

**Stats. Implemented:** ORS 657.610

**Proposed Amendments:** 414-300-0415

# NOTICES OF PROPOSED RULEMAKING

**Proposed Amendments:** 414-300-0000, 414-300-0005, 414-300-0010, 414-300-0015, 414-300-0020, 414-300-0030, 414-300-0040, 414-300-0050, 414-300-0060, 414-300-0070, 414-300-0080, 414-300-0090, 414-300-0100, 414-300-01120, 414-300-0115, 414-300-0120, 414-300-0130, 414-300-0140, 414-300-0150, 414-300-0160, 414-300-0170, 414-300-0180, 414-300-0190, 414-300-0200, 414-300-0210, 414-300-0215, 414-300-0220, 414-300-0230, 414-300-0240, 414-300-0250, 414-300-0260, 414-300-0270, 414-300-0280, 414-300-0290, 414-300-0295, 414-300-0300, 414-300-0310, 414-300-0320, 414-300-0330, 414-300-0340, 414-300-0350, 414-300-0360, 414-300-0380, 414-300-0390, 414-300-0400, 414-300-0410

**Last Date for Comment:** 6-18-10

**Summary:** Amends rules to change the reference to the Criminal History Registry to the Central Background Registry, changes the term "special needs child" to child with special needs, specifies the licensing requirements and adopts rules regarding imposition of civil penalties on Certified Child Care Centers. This rule also prohibits providers who have had certain negative actions taken against their license or enrollment in the Central Background Registry from doing certain types of exempt child care.

**Rules Coordinator:** Janet Orton

**Address:** Employment Department, Child Care Division, 875 Union St. NE, Salem, OR 97311

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

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**Rule Caption:** Amends rules regarding Certified Family Child Care Centers and adopts rules regarding civil penalties for Certified Family Child Care Centers.

**Stat. Auth.:** ORS 657.610

**Stats. Implemented:** ORS 657.610

**Proposed Adoptions:** 414-350-0405

**Proposed Amendments:** 414-350-0000, 414-350-0010, 414-350-0020, 414-350-0030, 414-350-0040, 414-350-0050, 414-350-0060, 414-350-0070, 414-350-0080, 414-350-0090, 414-350-0100, 414-350-0110, 414-350-0115, 414-350-0120, 414-350-0130, 414-350-0140, 414-350-0150, 414-350-0160, 414-350-0170, 414-350-0180, 414-350-0190, 414-350-0200, 414-350-0210, 414-350-0220, 414-350-0230, 414-350-0235, 414-350-0240, 414-350-0250, 414-350-0375, 414-350-0380, 414-350-0390, 414-350-0400

**Last Date for Comment:** 6-18-10

**Summary:** Amends rules to change the reference to the Criminal History Registry to the Central Background Registry, changes the term "special needs child" to child with special needs, specifies the licensing requirements and adopts rules regarding imposition of civil penalties on Certified Child Care Centers for rule violations. This rule also prohibits providers who have had certain negative actions taken against their license or enrollment in the Central Background Registry from doing certain types of exempt child care.

**Rules Coordinator:** Janet Orton

**Address:** Employment Department, Child Care Division, 875 Union St. NE, Salem, OR 97311

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

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## Land Conservation and Development Department Chapter 660

**Rule Caption:** Uses authorized on land designated urban and rural reserves in the Portland Metro region.

Date:	Time:	Location:
3-18-10	8:30 a.m.	Bend Police Dept. Municipal Court Rm. 555 NE 15th St. Bend, OR 97701

**Hearing Officer:** LCDC

**Stat. Auth.:** ORS 197.040

**Other Auth.:** Statewide planning goals (OAR 600-015), especially goals 3, 5 & 12

**Stats. Implemented:** ORS 195.137–195.145, 197.610–197.626, 215.213(10)(a), 215.283(10)(a), 215.296, 215.298, 215.425 & 2007 OL Ch. 723

**Proposed Amendments:** 660-027-0010, 660-027-0070

**Last Date for Comment:** 3-18-10

**Summary:** The proposed amendments to rules OAR 660-027-0010 and 660-027-0070 would clarify the intent of the Land Conservation and Development Commission with regard to provisions in OAR 660-027-0070 that prohibit counties from amending land use regulations for areas designated as urban or rural reserves to allow uses that were not allowed at the time of their designations as reserves. State statutes and LCDC rules currently allow certain uses to be allowed on farm and forest lands through a plan amendment process. These uses include:

(1) New significant Goal 5 resources; Goal 5, its implementing rules and related statutes require plan amendments and corresponding zone amendments to allow the use of and/or protect newly-inventoried significant Goal 5 resources;

(2) New roads, highways and other transportation facilities and improvements; certain statutory provisions and LCDC rules require plan and zone amendments, and in some cases an exception to statewide goals, in order to authorize certain new roads, highways and other transportation facilities and improvements, as specified in OAR 215.213(10)(a), 215.283(10)(a), and 215.296.

**Rules Coordinator:** Casaria Tuttle

**Address:** Land Conservation and Development Department, 635 Capitol St. NE, Suite 150, Salem, OR 97301

**Telephone:** (503) 373-0050, ext. 322

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## Oregon Business Development Department Chapter 123

**Rule Caption:** Rules define standards and application process for Oregon Cultural Trust Grants.

**Stat. Auth.:** ORS 285A.075

**Stats. Implemented:** ORS 359.400–359.444

**Proposed Adoptions:** 123-500-0010, 123-500-0015, 123-500-0035, 123-500-0045, 123-500-0055, 123-500-0075, 123-500-0080, 123-500-0150, 123-500-0160, 123-500-0170, 123-500-0175

**Proposed Amendments:** 123-500-0000, 123-500-0005

**Proposed Repeals:** 123-500-0070

**Proposed Ren. & Amends:** 123-500-0020 to 123-500-0090, 123-500-0030 to 123-500-0100, 123-500-0040 to 123-500-0110, 123-500-0050 to 123-500-0120, 123-500-0060 to 123-500-0130

**Last Date for Comment:** 2-21-10

**Summary:** The new proposed Oregon Cultural Trust Grants rules help to protect and stabilize Oregon Cultural resources, creating a solid process for administering cultural participation grants. The rules define who is eligible for participation grants and the cultural development grant program as well as core partner agencies. These rules also set out cultural planning expectations for communities who can then access the participation grants.

**Rules Coordinator:** Mindee Sublette

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

**Telephone:** (503) 986-0036

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## Oregon Department of Education Chapter 581

**Rule Caption:** Modifies form for school sports pre-participation examination.

Date:	Time:	Location:
2-24-10	1 p.m.	Rm. 251A & B 255 Capitol St. NE Salem, OR 97310

**Hearing Officer:** Cindy Hunt

**Stat. Auth.:** ORS 326.051

**Stats. Implemented:** ORS 336.479

**Proposed Amendments:** 581-021-0041



# NOTICES OF PROPOSED RULEMAKING

**Last Date for Comment:** 2-24-10, 5 p.m.

**Summary:** The rule amendments modify the form required for school sports pre-participation examinations. The form also sets out the protocol that must be used by health care professionals for conducting the physical examination. The form was last amended in June 2004.

**Rules Coordinator:** Diane Roth

**Address:** 255 Capitol St. NE, Salem, OR 97310

**Telephone:** (503) 947-5791

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**Rule Caption:** Modifies approved transportation costs for purposes of State School Fund distribution.

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
2-24-10	1 p.m.	Rm. 251A & B 255 Capitol St. NE Salem, OR

**Hearing Officer:** Cindy Hunt

**Stat. Auth.:** ORS 327.013 & 820.100–820.120

**Stats. Implemented:** ORS 327.013 & 820.100–820.120

**Proposed Amendments:** 581-023-0040

**Last Date for Comment:** 2-24-10, 5 p.m.

**Summary:** The rule amendments do the following:

(1) Update the non-reimbursable cost rate per mile for 09–10 and 10–11 school years. This is a requirements every two years that the Department of Education update these rates.

(2) Add language to bring the OAR in line with ORS 468A.795 and 468A.801 that were changed in the 2009 legislative session by SB 610.

(3) Add language to clarify that the purchase of land for transportation shall not be included in the Bus and Garage Depreciation Report, since land does not depreciate.

**Rules Coordinator:** Diane Roth

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

**Telephone:** (503) 947-5791

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## **Oregon Health Licensing Agency Chapter 331**

**Rule Caption:** General maintenance, standardize central agency programs, adopt event facility license/temporary practitioner permit.

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
3-1-10	9 a.m.	Rhoades Conference Rm. 700 Summer St. NE, Suite 320 Salem, OR

**Hearing Officer:** Bert Krages

**Stat. Auth.:** ORS 676.605, 676.606, 676.608, 676.612, 676.615, 676.617, 676.618, 676.992, 690.355, 690.360, 690.365, 690.370, 690.380, 690.385, 690.390, 690.405, 690.407 & 690.410

**Stats. Implemented:** ORS 676.605, 676.606, 676.608, 676.612, 676.615, 676.617, 676.618, 676.992, 690.355, 690.360, 690.365, 690.370, 690.380, 690.385, 690.390, 690.405, 690.407 & 690.410

**Proposed Adoptions:** 331-565-0090, 331-565-0095

**Proposed Amendments:** 331-505-0000, 331-505-0010, 331-510-0000, 331-515-0000, 331-515-0010, 331-515-0020, 331-515-0030, 331-520-0000, 331-520-0010, 331-520-0030, 331-520-0040, 331-520-0070, 331-525-0020, 331-525-0035, 331-525-0038, 331-525-0040, 331-525-0055, 331-525-0060, 331-525-0065, 331-530-0000, 331-530-0020, 331-535-0000, 331-535-0010, 331-535-0020, 331-535-0030, 331-535-0040, 331-535-0050, 331-535-0060, 331-535-0070, 331-535-0080, 331-540-0000, 331-540-0010, 331-540-0020, 331-540-0030, 331-545-0000, 331-545-0020, 331-550-0000, 331-555-0010, 331-555-0030, 331-555-0040, 331-560-0000, 331-560-0010, 331-560-0020, 331-560-0030, 331-560-0060, 331-565-0000, 331-565-0020, 331-565-0025, 331-565-0030, 331-565-0040, 331-565-0050, 331-565-0060, 331-565-0075, 331-565-0080, 331-565-0085, 331-570-0000, 331-570-0020, 331-575-0000, 331-575-0010, 331-575-0020, 331-575-0030, 331-575-0050, 331-580-0000, 331-

580-0010, 331-580-0020, 331-580-0030, 331-585-0000, 331-585-0010, 331-585-0020, 331-585-0030, 331-585-0040, 331-590-0000, 331-590-0020

**Proposed Repeals:** 331-520-0060, 331-560-0050

**Last Date for Comment:** 2-28-10

**Summary:** General amendments to Oregon Administrative Rules, chapter 331, divisions 505–590 to align current industry, agency and statewide rulemaking standards and principals.

Amendments made to align with administrative rules for all Oregon Health Licensing Agency program pertaining to application, identification requirements, examination, assumed business name, affidavit of licensure and civil penalty requirements.

Adopt Event Facility License to grant profession the ability to operate large events such as conventions, educational functions, demonstrations and exhibitions while maintaining state health and infection control standards. Allows numerous temporary practitioners and permanently licensed permanent color technicians and tattoo artists the ability to work in designated booths at one event.

Adopt Temporary Practitioner Permit to allow out-of-state individuals the opportunity to perform permanent color and tattoo services on a limited basis in Oregon without first meeting the requirements of a permanently licensed permanent color technician or tattoo artist while ensuring public protection.

**Rules Coordinator:** Samantha Patnode

**Address:** Oregon Health Licensing Agency, 700 Summer St. NE, Salem, OR 97301-1287

**Telephone:** (503) 373-1917

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## **Oregon Liquor Control Commission Chapter 845**

**Rule Caption:** Housekeeping amendments standardizing rule language with other recent rule changes and adding clarifying language.

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
2-25-10	10 a.m.	9079 SE McLoughlin Blvd. Portland, OR 97222

**Hearing Officer:** Jennifer Huntsman

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

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

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

**Last Date for Comment:** 3-11-10

**Summary:** This rule describes the minor postings that the Commission assigns to those licensed premises that allow on-premises consumption. These minor postings define if and under what conditions minors are allowed in areas where alcohol is consumed or there is a drinking environment. Staff proposes the deletion of subsection (4)(b) thereby removing the reference to “happy hours” because of the rulemaking already under way to remove it from the advertising restriction rule (OAR 845-007-0020(2)). Staff also proposes the amendment of subsection (5)(f) regarding the Number V posting for tasting rooms in order to standardize the size of distilled spirits tastings with the recently adopted Distillery tastings rule (OAR 845-006-0452). Two other minor revisions proposed are (1) the amendment of subsection (7)(b), adding language to clarify that licensees can’t later contest a permanent minor posting change if they agreed to the change, and (2) restructuring subsections (10)(b) & (c) so that the language regarding assigning a posting where one is normally not assigned only applies to private clubs and catered events, not temporary licenses. And finally, due to the smoking ban and subsequent growth in sidewalk areas being licensed, staff proposes amending what will now be subsection (10)(c) by adding language creating an exception to the 24 hour application of minor postings for public right-of-ways.

**Rules Coordinator:** Jennifer Huntsman

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

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

# NOTICES OF PROPOSED RULEMAKING

## Oregon Public Employees Retirement System Chapter 459

**Rule Caption:** Creates new rule and modifies existing rules within division 45 — Domestic relations Orders.

**Stat. Auth.:** ORS 238.465, 238.580, 238.630, 238.650 & 238A.450

**Stats. Implemented:** ORS 238.450, 243.465 & 2007 OL Ch. 53

**Proposed Adoptions:** 459-045-0012, 459-045-0014, 459-045-0032, 459-045-0034

**Proposed Amendments:** 459-045-0001, 459-045-0010, 459-045-0020, 459-045-0030, 459-045-0040, 459-045-0050, 459-045-0060, 459-045-0080, 459-045-0090

**Proposed Repeals:** 459-045-0000

**Last Date for Comment:** 2-24-10

**Summary:** Create new rules to address domestic relations orders for alternate payees of members of the Chapter 238A OPSRP Pension Program and Individual Account Program (IAP). Modify existing rules to reference Chapter 238A and to streamline processes. Repeal redundant rule.

Copies of the proposed rules are available to any person upon request. The rules are also available at [http://www.oregon.gov/PERS/about\\_us.shtml](http://www.oregon.gov/PERS/about_us.shtml). Public comment may be mailed to the above address or sent via email to Daniel.Rivas@state.or.us

**Rules Coordinator:** Daniel Rivas

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

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

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## Oregon State Marine Board Chapter 250

**Rule Caption:** Rule procedures for the aquatic invasive species prevention program.

**Stat. Auth.:** ORS 830

**Other Auth.:** HB 2220

**Stats. Implemented:** ORS 830.110

**Proposed Amendments:** 250-010-0650

**Last Date for Comment:** 2-22-10, Close of Business

**Summary:** The 2009 Oregon Legislature passed HB 2220 directing the Marine Board to create an aquatic invasive prevention fund by charging a small fee on all registered powerboats and manually powered boats 10 feet or longer. This rule was effective January 1, 2010. This rulemaking will clarify three aspects of the rule: age requirement, purchase compliance and reciprocity. Housekeeping and technical corrections to the regulation may occur to ensure rule consistency.

**Rules Coordinator:** June LeTarte

**Address:** 435 Commercial St., #400, PO Box 14145, Salem, OR 97309-5065

**Telephone:** (503) 378-2617

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**Rule Caption:** Rule prohibits motorboats and floatplanes on Waldo Lake.

**Stat. Auth.:** ORS 830.110 & 830.175

**Stats. Implemented:** ORS 830.110 & 830.175

**Proposed Amendments:** 250-030-0030

**Last Date for Comment:** 2-22-10, Close of Business

**Summary:** The agency is authorized to carry out the provisions of the Federal Wild and Scenic Rivers Act and the State Scenic Waterways Act. This rule will be amended to adopt language that parallels OAR 250-020-0221 prohibiting the use of internal combustion motors in boats and floatplanes operation on Waldo Lake.

**Rules Coordinator:** June LeTarte

**Address:** 435 Commercial St. NE, #400, PO Box 14145, Salem, OR 97309-5065

**Telephone:** (503) 378-2617

## Oregon University System Chapter 580

**Rule Caption:** To establish Tuition and Fees for the 2009–2010 Academic Year, including room and board rates.

**Stat. Auth.:** ORS 351

**Stats. Implemented:** ORS 351

**Proposed Amendments:** 580-040-0040

**Last Date for Comment:** 2-22-10

**Summary:** To establish Tuition and Fees for the 2009–10 Academic Year, including Room and Board rates. Due to the Legislative schedule, the Board approved the 2009–2010 Academic Year Fee Book as a temporary rule on July 10, 2009. On September 25, 2009, the Board also approved the following three amendments to the Fee Book: adopt a Nonresident Veteran Fee Remission policy, a housing rate change at Eastern Oregon University, and a program fee change at the University of Oregon. No other material changes have been made to the 2009–2010 Academic Year Fee Book approved by the Board on July 10, 2009. Scheduled public hearings on the proposed 2009–2010 Academic Year Fee Book were held Thursday, November 5, 2009 and Thursday, November 12, 2009, in Room 235 of Kerr Administration Building, on the Oregon State University campus. Prior to hearings, campus reminders of the hearings were sent via email to our customary distribution list including but not limited to: student body presidents, budget directors, housing directors, registrars, vice presidents for student affairs, student advocates, and the Oregon Student association. No students attended the hearings and no oral or written testimony was received.

**Rules Coordinator:** Marcia M. Stuart

**Address:** Oregon University System, PO Box 3175, Eugene, OR 97403-0175

**Telephone:** (541) 346-5749

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## Parks and Recreation Department Chapter 736

**Rule Caption:** Oregon Administrative Rules governing rates being amended for minor housekeeping corrections.

**Stat. Auth.:** ORS 390.050, 390.111 & 390.124

**Stats. Implemented:** ORS 390.050, 390.111 & 390.124

**Proposed Amendments:** 736-015-0006, 736-015-0015, 736-015-0030, 736-015-0035

**Last Date for Comment:** 2-22-10, 5 p.m.

**Summary:** OPRD will implement a new central reservation system in spring of 2010. Division 15 rule pertaining to definitions, the reservation window, cancellation policies, refunds and waivers will be amended to align with the new reservation system requirements as the system is implemented.

Ecola State Park is being returned of the list of Day Use Fee parks after it was unintentionally omitted from the list in a past rulemaking process.

**Rules Coordinator:** Joyce Merritt

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

**Telephone:** (503) 986-0756

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## Public Utility Commission Chapter 860

**Rule Caption:** Amendments to subsection (2)(p) and paragraphs (2)(s)(B) and (5)(a)(B) of OAR 860-022-0041.

**Date:**  
3-3-10

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

**Location:**  
Public Utility Commission  
Main Hearing Rm.  
550 capitol St. NE, 1st Flr.  
Salem, OR

**Hearing Officer:** Sarah K. Wallace

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

**Stats. Implemented:** ORS 756.040, 756.060, 757.267 & 757.268

**Proposed Amendments:** 860-022-0041

# NOTICES OF PROPOSED RULEMAKING

**Last Date for Comment:** 3-3-10, Close of hearing

**Summary:** The proposed rule changes create consistency in the way interest is calculated; clarify whether amended returns that are paid, filed, or received are consistent with the timing of when a utility will book a provision for an amended filing; and include into the calculation of revenues and taxes collected the seasonality of energy sold and used by customers. The proposed changes address specifically how interest should be calculated using the actual annual average weighted cost of debt multiplied by the rate base. Also, the proposed changes clarify the treatment of amended tax returns when calculating "taxes paid" under ORS 757.268. Lastly, including the weighted number of months into the calculation of revenues and taxes collected considers the seasonality of energy sold. Adopting these proposed rule changes will create consistency in the methods employed by a utility company when it files its SB 408 tax report ensuring that the intent of ORS 757.268 is upheld. These proposed rule changes will create more consistent outcomes for ratepayers of the different utilities that are subject to ORS 757.268.

The Commission encourages participants to file written comments as early as practicable in the proceeding so that other participants have the opportunity to consider and respond to the comments before the deadline. Please reference Docket No. AR 541 on comments and file them by e-mail to the Commission's Filing Center at PUC.FilingCenter@state.or.us and also send a signed hard copy to the Filing Center at PO Box 2148, Salem, Oregon 97308-2418. For more information about the Commission's Filing Center, please see <http://apps.puc.state.or.us/edockets/center.htm>. Interested persons may review all filings online at <http://apps.puc.state.or.us/edockets/docket.asp?DocketID=15999>

Participants wishing to monitor the hearing by telephone (listen only) must contact Diane Davis at [diane.davis@state.or.us](mailto:diane.davis@state.or.us) or (503) 378-4372 by close of business February 26, 2010, to request a dial-in number. To present oral comment at the hearing, participants must attend in person.

**Rules Coordinator:** Diane Davis

**Address:** Public Utility Commission, PO Box 2148, Salem, OR 97308

**Telephone:** (503) 378-4372

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**Real Estate Agency**  
**Chapter 863**

**Rule Caption:** Legislation requires rule for continuing education provider certification and licensee education and examination requirements.

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
3-15-10	10 a.m.	Real Estate Agency 1177 Center St. NE Salem, OR 97301

**Hearing Officer:** Staff

**Stat. Auth.:** ORS 696.385 & 2009 OL Ch. 502

**Stats. Implemented:** ORS 696.022, 696.026, 696.200, 696.241, 696.255, 696.511, 696.527, 696.530, 696.578 & 2009 OL Ch. 502

**Proposed Adoptions:** Rules in 863-020, 863-022

**Proposed Amendments:** 863-014-0020, 863-014-0035, 863-014-0040, 863-014-0050, 863-014-0065, 863-024-0045, 863-024-0050, 863-024-0065

**Proposed Repeals:** 863-014-0005, 863-014-0055, 863-024-0005, 863-024-0055

**Last Date for Comment:** 3-15-10, 5 p.m.

**Summary:** These new rules and amendments are in response to Senate Bill 640 (Chapter 502, Oregon Laws 2009) that becomes effective January 1, 2011. The legislation allows the Real Estate Agency and the Real Estate Board to take any action before the operative date of the bill that is necessary to carry out the duties and functions required. The Agency anticipates filing permanent rules in this matter that will become effective on July 1, 2010. The rules implement legislation which created a structure for certifying continuing education course providers; changing the continuing education require-

ments for renewal of real estate broker, principal broker and property managers; establishing eligible continuing education course topics and learning objectives; requiring all license applicants to have a high school diploma or equivalent; and requiring principal broker applicants to pass an examination. Although the effective date of SB 640 is January 1, 2011, the rules will be effective July 1, 2010 in order to allow continuing education providers to apply for certification and establish eligible continuing education courses. Licensees renewing after January 1, 2011 must comply with the new continuing education requirements.

New Division 20 will contain all the continuing education requirements for licensees and course provider rules. New division 22 will contain the requirements for Agency and Board approval of specific pre-license and post-license education courses including advanced practices, broker administration and sales supervision, three-hour law and rule update and all pre-license courses. The Agency will post draft proposed rules to its website. [www.rea.state.or.us](http://www.rea.state.or.us), as soon as they are available. The Agency anticipates posting these rules no later than February 20, 2010.

**Rules Coordinator:** Laurie Skillman

**Address:** Real Estate Agency, 1177 Center St. NE, Salem, OR 97301

**Telephone:** (503) 378-4630

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**Secretary of State,**  
**Audits Division**  
**Chapter 162**

**Rule Caption:** Minimum Standards for Reviews of Oregon Municipal Corporations.

**Stat. Auth.:** ORS 297

**Stats. Implemented:** ORS 297.465

**Proposed Adoptions:** 162-040-0001, 162-040-0136

**Proposed Amendments:** 162-040-0020, 162-040-0060, 162-040-0065, 162-040-0110, 162-040-0115, 162-040-0130, 162-040-0135, 162-040-0148, 162-040-0160

**Proposed Renumberings:** 162-040-0000 to 162-040-0002

**Last Date for Comment:** 2-21-10

**Summary:** The amendments propose the following changes:

OAR 162, division 40

(1) The majority of amendments are minor edits and clarifying language to existing rules.

(2) Adopt OAR 162-040-0001 — Adds an introduction (preface) to the rules.

(3) Adopt OAR 162-040-0136 — Addresses compliance requirements applicable to Public Charter Schools.

(4) OAR 162-040-0020 — Updates the hierarchy of generally accepted accounting principals with most recent audit standards.

(5) OAR 162-040-0115 — Modifies compliance requirements for amendments to ORS Chapter 295 regarding deposits of public funds.

(6) OAR 162-040-0135 — Addresses reference to public contracting laws that were amended into three chapters of law.

(7) OAR 162-040-0160 — Clarifies responsibility to request an extension of time to file late reports.

**Rules Coordinator:** Julie A. Sparks

**Address:** Secretary of State, Audits Division, 255 Capitol St. NE, Suite 500, Salem, OR 97310

**Telephone:** (503) 986-2255

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**Secretary of State,**  
**Corporation Division**  
**Chapter 160**

**Rule Caption:** Disposition of notarial records upon termination of notarial commission.

**Stat. Auth.:** ORS 194.154

**Stats. Implemented:** ORS 194.154

**Proposed Adoptions:** 160-100-0301

**Last Date for Comment:** 2-21-10

## NOTICES OF PROPOSED RULEMAKING

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**Summary:** This rule addresses the responsibilities a notary public has regarding their notarial records upon commission termination or expiration.

**Rules Coordinator:** Karen Hutchinson

**Address:** Secretary of State, Corporation Division, 255 Capitol St. NE, Suite 151, Salem, OR 97310

**Telephone:** (503) 986-2364

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**Secretary of State,  
Elections Division  
Chapter 165**

**Rule Caption:** Adoption of Online Electronic Voter Registration System.

**Stat. Auth.:** ORS 246.150 & 247.019

**Stats. Implemented:** ORS 247.019

**Proposed Adoptions:** 165-005-0160

**Last Date for Comment:** 2-24-10

**Summary:** The 2009 Legislative Assembly directed the Secretary of State to develop and implement an electronic voter registration system to be used by qualified persons to complete and deliver a registration card electronically. This proposed rule defines who may use the online electronic voter registration system, and sets requirements for processing registrations received electronically.

**Rules Coordinator:** Brenda Bayes

**Address:** Secretary of State, Elections Division, 255 Capitol St. NE, Suite 501, Salem, OR 97310

**Telephone:** (503) 986-1518

# ADMINISTRATIVE RULES

## Board of Chiropractic Examiners Chapter 811

**Rule Caption:** Proposed administrative rules for informed consent for examinations, open book Ethics & Jurisprudence Examination; Increases board member per diem.

**Adm. Order No.:** BCE 2-2009

**Filed with Sec. of State:** 12-22-2009

**Certified to be Effective:** 12-22-09

**Notice Publication Date:** 9-1-2009

**Rules Amended:** 811-010-0071, 811-035-0005, 811-035-0015

**Subject:** 811-035-0005 — Amends subsection (2). The current rule on informed consent is ambiguous regarding informed consent for examination procedures. The Board of Chiropractic Examiners wants to clarify these informed consent requirements to make the rule requirement for informed consent more explicit.

811-035-0015 — Amends subsection (18). This section needs to be amended to allow an open book examination for the revised Ethics and Jurisprudence state examination.

811-010-0071 — Creates a new subsection (2). HB 2058 passed the 2009 Legislature which allows health regulatory boards to determine board member per diem by administrative rule. HB 5054 passed approving an increase in funding for OBCE board member per diem. The proposed level of \$139 per day recognizes the major time commitment required of board members.

**Rules Coordinator:** Kelly Beringer—(503) 378-5816

### 811-010-0071

#### Board Members

(1) Members of the State Board of Examiners during their terms as such shall maintain a position of strict neutrality.

(2) Board members shall receive a per diem of \$155 a day for board meetings, conference attendance and presentations.

Stat. Auth.: ORS 684

Stats. Implemented: ORS 684.150

Hist.: 2CE 9, f. 10-16-70; 2CE 1-1978, f. 6-16-78, ef. 7-1-78; BCE 1-1998, f. & cert. ef. 2-5-98; BCE 2-2009, f. & cert. ef. 12-22-09

### 811-035-0005

#### Duties and Obligations of Chiropractic Physicians to Their Patients

(1) The health and welfare of the patient shall always be the first priority of Chiropractic physicians and expectation of remuneration shall not affect the quality of service to the patient.

(2) The patient has the right to informed consent regarding examination, therapy and treatment procedures, risks and alternatives, and answers to questions with respect to the examination, therapy and treatment procedures, in terms that they can be reasonably expected to understand.

(a) Chiropractic physicians shall inform the patient of the diagnosis, plan of management, and prognosis in order to obtain a fully informed consent of the patient during the early course of treatment.

(b) In order to obtain the informed consent of a patient, the chiropractic physician shall explain the following:

(A) In general terms, the examination procedure or treatment to be undertaken;

(B) That there may be alternative examination procedures or methods of treatment, if any; and

(C) That there are risks, if any, to the examination procedure or treatment

(3) Chiropractic physicians have the right to select their cases and patients. The patient has the right to continuity of care once the doctor has agreed to treat the patient. The chiropractor may terminate the patient-doctor relationship only when the patient has been given reasonable notice. It is permissible for the doctor to terminate the patient-doctor relationship when the patient fails to cooperate.

Stat. Auth.: ORS 684

Stats. Implemented: ORS 684.150

Hist.: 2CE 1-1979, f. 1-17-79, ef. 2-1-79; 2CE 4-1983, f. 9-28-83, ef. 10-15-83; 2CE 1-1984, f. 7-16-84, ef. 8-1-84; CE 2-1995, f. & cert. ef. 10-30-95; BCE 2-2003, f. & cert. ef. 12-11-03; BCE 2-2009, f. & cert. ef. 12-22-09

### 811-035-0015

#### Unprofessional Conduct in the Chiropractic Profession

Unprofessional conduct means any unethical, deceptive, or deleterious conduct or practice harmful to the public; any departure from, or failure to conform to, the minimal standards of acceptable chiropractic practice; or a willful or careless disregard for the health, welfare or safety of patients, in any of which cases proof of actual injury need not be established. Unprofessional conduct shall include, but not be limited to, the following acts of a Chiropractic physician:

(1)(a) Engaging in any conduct or verbal behavior with or towards a patient that may reasonably be interpreted as sexual, seductive, sexually demeaning or romantic (also see ORS 684.100).

(b) A licensee shall not engage in sexual relations or have a romantic relationship with a current patient unless a consensual sexual relationship or a romantic relationship existed between them before the commencement of the doctor-patient relationship.

(c) "Sexual relations" means:

(A) Sexual intercourse; or

(B) Any touching of sexual or other intimate parts of a person or causing such person to touch the sexual or other intimate parts of the licensee for the purpose of arousing or gratifying the sexual desire of either licensee or patient.

(d) In determining whether a patient is a current patient, the Board may consider the length of time of the doctor-patient contact, evidence of termination of the doctor-patient relationship, the nature of the doctor-patient relationship, and any other relevant information.

(e) A patient's consent to, initiation of or participation in sexual behavior or involvement with a licensee does not change the nature of the conduct nor lift the prohibition.

(2) Charging fees for unnecessary services;

(3) Failing to teach and/or directly supervise persons to whom chiropractic services have been delegated;

(4) Practicing outside the scope of the practice of chiropractic in Oregon;

(5) Charging a patient for services not rendered;

(6) Intentionally causing physical or emotional injury to a patient;

(7) Directly or indirectly engaging in threatening, dishonest, or misleading fee collection techniques;

(8) Soliciting or borrowing money from patients;

(9) Possessing, obtaining, attempting to obtain, furnishing, or prescribing controlled drugs to any person, including self, except as directed by a person authorized by law to prescribe drugs; illegally using or dispensing controlled drugs;

(10) Aiding, abetting, or assisting an individual to violate any law, rule or regulation intended to guide the conduct of Chiropractic physicians or other health care providers; or

(11) Violating the rights of privacy or confidentiality of the patient unless required by law to disclose such information;

(12) Perpetrating fraud upon patients or third party payors, relating to the practice of chiropractic;

(13) Using any controlled or illegal substance or intoxicating liquor to the extent that such use impacts the ability to safely conduct the practice of chiropractic;

(14) Practicing chiropractic without a current Oregon license;

(15) Allowing another person to use one's chiropractic license for any purpose;

(16) Resorting to fraud, misrepresentation, or deceit in applying for or taking the licensure exam or obtaining a license or renewal thereof;

(17) Impersonating any applicant or acting as a proxy for the applicant in any chiropractic licensure examination;

(18) Disclosing the contents of the licensure examination or soliciting, accepting, distributing, or compiling information regarding the contents of the examination before, during, or after its administration; Notwithstanding this section, the Ethics and Jurisprudence Examination is open book and there is no restriction on applicants discussing answers to individual questions between themselves or with others.

(19) Failing to provide the Board with any documents requested by the Board;

(20) Failing to fully cooperate with the Board during the course of an investigation, including but not limited to, waiver of confidentiality privileges, except attorney-client privilege;

(21) Failing to comply with State and Federal laws regarding child and elderly abuse, and communicable diseases;

(22) Claiming any academic degree not actually conferred or awarded;

(23) Disobeying a final order of the Board; and

(24) Splitting fees or giving or receiving a commission in the referral of patients for services.

Stat. Auth.: ORS 684

Stats. Implemented: ORS 684.155

Hist.: CE 6-1995, f. & cert. ef. 12-19-95; CE 2-1996(Temp), f. & cert. ef. 5-31-96; CE 3-1996, f. & cert. ef. 9-26-96; BCE 1-1999, f. & cert. ef. 4-7-99; BCE 2-2000, f. & cert. ef. 5-4-00; BCE 2-2003, f. & cert. ef. 12-11-03; BCE 2-2009, f. & cert. ef. 12-22-09

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## Board of Licensed Professional Counselors and Therapists Chapter 833

**Rule Caption:** Add rules to implement legislative changes; rearrange, streamline, and renumber existing rules.

**Adm. Order No.:** BLPCT 1-2010

**Filed with Sec. of State:** 1-5-2010

**Certified to be Effective:** 1-5-10

# ADMINISTRATIVE RULES

**Notice Publication Date:** 12-1-2009

**Rules Adopted:** 833-020-0011, 833-020-0021, 833-020-0031, 833-020-0041, 833-020-0051, 833-020-0061, 833-020-0071, 833-020-0081, 833-020-0091, 833-020-0101, 833-020-0112, 833-030-0011, 833-030-0021, 833-030-0031, 833-030-0041, 833-030-0051, 833-040-0011, 833-040-0021, 833-040-0031, 833-040-0041, 833-040-0051, 833-050-0011, 833-050-0021, 833-050-0031, 833-050-0041, 833-050-0051, 833-050-0061, 833-050-0071, 833-050-0081, 833-050-0091, 833-050-0111, 833-050-0121, 833-050-0131, 833-050-0141, 833-050-0151, 833-050-0161, 833-060-0012, 833-060-0022, 833-060-0032, 833-060-0042, 833-060-0052, 833-070-0011, 833-070-0021, 833-070-0031, 833-080-0011, 833-080-0021, 833-080-0031, 833-080-0041, 833-080-0051, 833-080-0061, 833-090-0010, 833-090-0020, 833-090-0030, 833-090-0040, 833-100-0011, 833-100-0021, 833-100-0031, 833-100-0041, 833-100-0051, 833-100-0061, 833-100-0071, 833-110-0011, 833-110-0021, 833-120-0011, 833-120-0021, 833-120-0031, 833-120-0041

**Rules Amended:** 833-001-0000, 833-001-0005, 833-001-0010, 833-001-0015, 833-001-0020, 833-010-0001

**Rules Repealed:** 833-020-0001, 833-020-0010, 833-020-0015, 833-020-0020, 833-020-0022, 833-020-0030, 833-020-0040, 833-020-0050, 833-020-0060, 833-020-0080, 833-020-0090, 833-020-0100, 833-020-0111, 833-020-0120, 833-020-0140, 833-020-0150, 833-020-0155, 833-020-0160, 833-020-0164, 833-020-0165, 833-025-0001, 833-025-0005, 833-025-0006, 833-025-0050, 833-025-0060, 833-030-0001, 833-030-0005, 833-030-0010, 833-030-0015, 833-030-0020, 833-040-0001, 833-040-0010, 833-040-0020, 833-050-0001, 833-050-0010, 833-050-0020, 833-050-0025, 833-050-0030, 833-050-0040, 833-060-0011, 833-060-0021, 833-060-0031, 833-060-0041, 833-060-0051, 833-060-0061, 833-060-0071

**Subject:** Re-organizes all of the administrative rules, adopting new, repealing old, amending, and renumbering them to simplify language and make it easier to find rules on specific topics.

**Current Divisions:**

- 001 — Procedures — amends.
- 010 — Definitions — amends.
- 020 — Repeals this division — application.
- 025 — Repeals this division — graduate degree standards and continuing education.
- 030 — Repeals this division — license issuance and intern registration.
- 040 — Repeals this division — fees.
- 050 — Repeals this division — practice.
- 055 — No changes — impaired professional program.
- 060 — Repeals this division — code of ethics.

**New Divisions:**

- 020 — Adopts new division and rules — Applications/License Issuance.
- 030 — Adopts new division and rules — LPC qualification requirements.
- 040 — Adopts new division and rules — LMFT qualification requirements.
- 050 — Adopts new division and rules — Registered Interns
- 055 — No changes — impaired professional program.
- 060 — Adopts new division and rules — Graduate degree standards.
- 070 — Adopts new division and rules — Fees.
- 080 — Adopts new division and rules — Continuing education.
- 090 — Adopts new division and rules — Distance counseling.
- 100 — Adopts new division and rules — Code of Ethics.
- 110 — Adopts new division and rules — Compliance.
- 120 — Adopts new division and rules — Criminal background checks.

**Rules Coordinator:** Becky Eklund—(503) 378-5499, ext. 26

**833-001-0000**

**Notice of Proposed Rulemaking**

Prior to the adoption, amendment, or repeal of any rule, the Board of Licensed Professional Counselors and Therapists must:

(1) Publish notice of the adoption, amendment, or repeal in the Secretary of State's Bulletin referred to in ORS 183.360 at least 21 days prior to the effective date.

(2) Mail such notice to persons on the Board of Licensed Professional Counselors and Therapists mailing list established pursuant to ORS 183.335(1)(c) and to the legislators specified in 183.335(1)(d) at least 49 days before the effective date of the rule.

(3) Mail or deliver such notice to the following:

- (a) United Press International and Associated Press;
- (b) Oregon Counseling Association;
- (c) Oregon Chapter of the American Association of Marriage and Family Therapists;
- (d) Oregon Mental Health Counselors Association; and
- (e) Oregon college and university departments offering graduate degrees in counseling and marriage and family therapy.

Stat. Auth.: ORS 675.785

Stats. Implemented: ORS 183.341

Hist.: LPCT 1-1990(Temp), f. & cert. ef. 3-6-90; LPCT 2-1990, f. 8-31-90, cert. ef. 9-1-90; LPCT 2-1992, f. 11-30-92, cert. ef. 12-1-92; LPCT 1-1994, f. 12-30-94, cert. ef. 1-1-95; LPCT 1-1998, f. 1-2-98, cert. ef. 1-5-98; BLPCT 2-2001, f. 9-19-01, cert. ef. 10-1-01; LPCT 1-1998, f. 1-2-98, cert. ef. 1-5-98; BLPCT 1-2010, f. & cert. ef. 1-5-10

**833-001-0005**

**Model Rules of Procedure**

The most current Model Rules of Procedure as promulgated by the Attorney General of the State of Oregon under the Administrative Procedures Act, are by this reference adopted as the rules of procedure of the Board of Licensed Professional Counselors and Therapists and must be controlling except as otherwise required by statute or rule.

Stat. Auth.: ORS 675.785

Stats. Implemented: ORS 183.341

Hist.: LPCT 1-1990(Temp), f. & cert. ef. 3-6-90; LPCT 2-1990, f. 8-31-90, cert. ef. 9-1-90; LPCT 2-1992, f. 11-30-92, cert. ef. 12-1-92; LPCT 1-1994, f. 12-30-94, cert. ef. 1-1-95; LPCT 1-1998, f. 1-2-98, cert. ef. 1-5-98; BLPCT 2-2001, f. 9-19-01, cert. ef. 10-1-01; BLPCT 1-2010, f. & cert. ef. 1-5-10

**833-001-0010**

**Requiring an Answer to Charges as Part of Notices to Parties in Contested Cases**

In addition to the requirements stated in OAR 137-003-0000 of the Attorney General's Model Rules of Procedure adopted by 833-001-0005, the notice to parties in contested cases may include a statement that an answer to the assertions or charges will be required, and if so, the consequence of failure to answer. A statement of the consequences of failure to answer may be satisfied by enclosing a copy of 833-001-0015 with the notice.

Stat. Auth.: ORS 675

Stats. Implemented: ORS 183

Hist.: LPCT 1-1990(Temp), f. & cert. ef. 3-6-90; LPCT 2-1990, f. 8-31-90, cert. ef. 9-1-90; BLPCT 1-2010, f. & cert. ef. 1-5-10

**833-001-0015**

**Hearing Request and Answers; Consequences of Failure to Answer**

(1) A hearing request must be made in writing to the Board by the party or the party's attorney within 21 calendar days after the date the notice was issued.

(2) If an answer is required, it must be made in writing to the Board by the party or the party's attorney within 21 calendar days after the date the notice was issued and must include the following:

- (a) An admission or denial of each factual matter alleged in the notice;
- (b) A short and plain statement of each relevant affirmative defense the party may have.

(3) Except for good cause:

- (a) Factual matters alleged in the notice and not denied in the answer will be presumed admitted;
- (b) Failure to raise a particular defense in the answer will be considered a waiver of such defense;
- (c) New matters alleged in the answer (affirmative defenses) will be presumed to be denied by the agency; and
- (d) Evidence will not be taken on any issue not raised in the notice and the answer.

Stat. Auth.: ORS 675

Stats. Implemented: ORS 183.413

Hist.: LPCT 1-1990(Temp), f. & cert. ef. 3-6-90; LPCT 2-1990, f. 8-31-90, cert. ef. 9-1-90; BLPCT 1-2010, f. & cert. ef. 1-5-10

**833-001-0020**

**Obtaining Information**

(1) The Board will provide the following information in response to in-person or telephone inquiries regarding applicants, registered interns, and licensees: name, license/registration number, date licensed/registered, if license/registration is active or expired, business address and telephone number, summary of education and experience, and if there are or have been any disciplinary actions proposed by the Board plus the status, disposition, or resolution of the proposed disciplinary actions.

(2) Requests for any information other than that listed in section (1) of this rule may be required to be in writing, and may require payment for copies of documents.

# ADMINISTRATIVE RULES

(3) Pursuant to ORS 676.175, information regarding complaints against or information obtained through investigations into the conduct of licensees, non-licensed individuals, or applicants for licensure will not be disclosed.

Stat. Auth.: ORS 675.785

Stats. Implemented: ORS 192

Hist.: LPCT 1-1990(Temp), f. & cert. ef. 3-6-90; LPCT 2-1990, f. 8-31-90, cert. ef. 9-1-90; LPCT 2-1992, f. 11-30-92, cert. ef. 12-1-92; LPCT 1-1998, f. 1-2-98, cert. ef. 1-5-98; BLPCT 2-2001, f. 9-19-01, cert. ef. 10-1-01; BLPCT 1-2010, f. & cert. ef. 1-5-10

## 833-010-0001

### Definitions

The definitions of terms used in ORS 675.705 to 675.835 and these administrative rules of the Board are:

(1) "Accredited college or university" means the college or university is a fully accredited member of one of the regional institutional accreditation bodies.

(2) "Accredited program" means the graduate program is fully accredited by COAMFTE, CACREP, or CORE.

(3) "Board approved program" means a graduate program that the Board has found to be comparable to an accredited program.

(4) "CACREP" means the Council for Accreditation of Counseling and Related Educational Programs.

(5) "COAMFTE" means the Commission on Accreditation of Marriage and Family Therapy Education.

(6) "CORE" means the Council on Rehabilitation Education.

(7) Direct client contact hours" means only those treatment hours that are therapeutic or a combination of assessment and subsequent therapeutic interactions.

(8) "Distance learning" means coursework, or training that does not involve attending a presentation or program in the presence of the instructor or facilitator and other courses through electronic communication.

(9) "Distance Services" means any use of technology that replaces face to face delivery of counseling or therapy service. Such technologies include, but are not limited to, use of computer hardware and software, telephones, the internet, online assessment instruments and other communication devices.

(10) "Electronic communication" means communication through use of videoconference, telephone, teleconference, internet, electronic mail, chat-based, or video-based.

(11) "Equivalent" means comparable in content and quality, but not identical.

(12) "Intern registration plan" means a written description of post-graduate supervised work experience activities an applicant must complete to qualify for a license as a professional counselor or marriage and family therapist.

(13) "Official transcript" means a document certified by an accredited college or university indicating degree earned, hours and types of coursework, examinations and scores, completed by the student; and submitted by the school to the Board.

(14) "Practicing" means engaging in any of the activities listed in the definitions of marriage and family therapy and professional counseling set forth in ORS 675.705, including but not limited to providing clinical supervision to another mental health professional who is providing counseling or therapeutic services to clients.

(15) "Receipt" means the date received by the Board office as shown by US Postal Service postmark, or date received stamp if document was not mailed or without postmark.

(16) "Registered intern" means an applicant for licensure who has met the educational requirement for licensure, and is in the process of obtaining the required supervised work experience under a registration plan approved by the Board.

(17) "Hour Equivalents" means that when requirements for licensure are given in quarter hours, the following formula will be used to determine equivalent hours:

- (a) Two semester hours is equal to three quarter hours;
- (b) One semester is equal to 1.5 quarters;
- (c) One quarter credit hour equals 10 clock hours;
- (d) One semester credit hour equals 15 clock hours.

(18) "Supervision" means a professional relationship between a qualified supervisor and an intern, counselor, or therapist during which the supervisor provides guidance and professional skill development and oversight to the intern, counselor or therapist.

Stat. Auth.: ORS 675.715 & 675.785

Stats. Implemented: ORS 675.785

Hist.: LPCT 1-1990(Temp), f. & cert. ef. 3-6-90; LPCT 2-1990, f. 8-31-90, cert. ef. 9-1-90; LPCT 2-1992, f. 11-30-92, cert. ef. 12-1-92; LPCT 1-1993, f. 12-30-93, cert. ef. 1-1-94; LPCT 1-1998, f. 1-2-98, cert. ef. 1-5-98; BLPCT 1-2010, f. & cert. ef. 1-5-10

## 833-020-0011

### Applications

(1) Application for licensure as a professional counselor and marriage and family therapist must be submitted to the Board and be on forms provided by the Board.

(2) Application for licensure must include gender, date of birth, social security number, practice and residence addresses; similar licenses held in

other states, and history of professional discipline, litigation, and criminal involvement and be accompanied by:

(a) The non-refundable application fee;

(b) Official transcript sent to the Board from the college or university and supporting documentation as necessary showing education requirements have been met;

(c) Documentation to prove experience requirements have been met or request for registration as an intern with a proposed plan to obtain required experience;

(d) Verification that approved examination has been passed, or state examination is being requested;

(e) Proposed professional disclosure statement for review and approval; and

(f) Criminal history information as specified in OAR 833-120-0021.

(3) Applicants, will be allowed one year from Board receipt of an application to file a complete application which documents that the applicant meets the educational and experience qualifications for licensure.

(4) Failure to withdraw the application or complete the process within the allowed time will result in closure of the file. An incomplete application includes but is not limited to an application in which

(a) Required information or original signatures are not provided;

(b) Required forms are not submitted;

(c) No or an insufficient fee is received.

(5) The Board retains the right to extend the one year period to complete application.

(6) Applicants who submit complete documentation but are not approved for registration, examination, or licensure will be notified in writing that the application is being denied and state the reason(s) for denial.

(7) To be reconsidered for licensure, applicants who failed to become licensed, who were refused licensure, who withdrew from consideration, or interns who have allowed their registration to expire will be required to file a new application, fee, and resubmit all documentation necessary to meet the standards for licensure in effect at the time of reapplication. Applicants reapplying must fulfill any deficiencies that are the result of changes to requirements that may have been implemented between former and current application.

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

Stats. Implemented: ORS 675.785 - 675.835

Hist.: BLPCT 1-2010, f. & cert. ef. 1-5-10

## 833-020-0021

### Methods of Application

(1) Applications for licensure must indicate one of the following methods for compliance with the supervised work requirements for licensure:

(a) Intern registration;

(b) Direct;

(c) Reciprocity;

(d) Re-licensure; or

(e) Reapplication.

(2) Applicants may request permission to change their method of application or license requested without re-application if they do so within the year allowed to complete application.

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

Stats. Implemented: ORS 675.785 - 675.835

Hist.: BLPCT 1-2010, f. & cert. ef. 1-5-10

## 833-020-0031

### Intern Registration Method

(1) The intern registration method is required for applicants who seek acceptance of post-degree supervised work experience completed in Oregon after June 30, 2002. The intern registration method requires applicant to obtain Board approval of a proposed plan for completing required hours of supervised work experience. No less than 1,000 hours of supervised work experience must be completed under an approved plan.

(2) Applicants approved for registration as an intern who maintain registration status and meet the conditions for annual renewal will be allowed five years to complete the experience requirements, as specified in OAR 833 division 50, to be approved for licensure or for examination. Failure to meet the experience requirements for licensure within five years will result in expiration of registration and closure of the application file.

(3) The intern may petition the Board to allow renewal for up to one year of registration beyond the maximum five years if he/she can show good cause for such extension.

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

## 833-020-0041

### Direct Method

(1) The direct method is required for applicants who seek acceptance of supervised work experience completed in another jurisdiction or in Oregon before June 30, 2002.

(2) The direct method requires the applicant to document no less than the total minimum number of supervised work experience hours required for

# ADMINISTRATIVE RULES

licensure, all of which must have been completed prior to the date of application for licensure.

(3) Supervised work hours must include no less than 480 post-degree client contact hours completed within 60 months immediately prior to the application for licensure.

(4) Applicants seeking licensure as a professional counselor must meet the requirements specified in OAR 833, division 30.

(5) Applicants seeking licensure as a marriage and family therapist must meet the requirements specified in OAR 833, division 40.

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

## 833-020-0051

### Reciprocity Method

(1) The reciprocity method is required for applicants who seek acceptance of supervised work experience previously used to obtain a comparable license in another jurisdiction. The reciprocity method requires the applicant to document that the experience requirements under which the applicant obtained a comparable license held in another state are equivalent to the standards required for Oregon licensure as a professional counselor or as a marriage and family therapist.

(2) The Board will review each application designating the reciprocity method to determine if licensing is appropriate. The Board will compare the minimum standards in effect in the other jurisdiction when it granted a license with the current education, experience, and examination standards required for Oregon licensure.

(3) Application for licensure must be submitted to the Board office and be on forms provided by the Board.

(4) Application for licensure must be accompanied by:

(a) The non-refundable application fee;

(b) Official transcript of graduate degree that qualified the individual for licensure in the other state;

(c) Verification of licensure from the other state and information on the education, experience and examination requirements for licensure in that state at the time licensure was granted; and

(d) Professional disclosure statement.

(5) To qualify for licensure via reciprocity:

(a) The applicant must document holding:

(A) A graduate degree in counseling, or marriage and family therapy or a related degree from a college or university that was regionally accredited at time of graduation that meets the requirements under OAR 833 division 60 Majority Standards for Graduate Degrees; and

(B) A current, active license in another state comparable to the Oregon license requested either that of professional counselor or marriage and family therapist. Temporary, probationary, expired, revoked, or suspended licenses will not be considered.

(b) The jurisdiction of licensure must verify that the applicant has not been disciplined for misconduct or incompetence.

(c) The license held must have:

(A) Required at least a graduate degree in counseling (for LPC) or graduate degree in marriage and family therapy or related degree with systemic coursework (for LMFT);

(B) Been issued to an applicant whose qualifying degree meets Majority Standards for Graduate Degrees in 833 division 60.

(C) Required documentation of supervised work experience performing direct client counseling or marriage and family therapy, which must have included no less than:

(i) 1,000 post-degree direct service hours in two years or the equivalent for licensed professional counselor;

(ii) 2,000 post-degree direct service hours earned in 3 calendar years for licensed marriage and family therapist.

(D) Required passage of a competency examination as a condition for licensure; and

(E) Been obtained by a method of application that involved state review of documentation of education and experience under adopted standards, and not obtained through reciprocity; act of portability; mutual recognition; recognition of non-governmental, professional certification or membership; waiver of any of the education, experience, or examination requirements; or "grandparenting".

(d) The applicant must pass the Oregon law and rules examination.

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

## 833-020-0061

### Re-Licensure Method

(1) The re-licensure method is required for applicants who have previously been licensed by the Board. The re-licensure method requires the applicant, as a previous Board licensee, to request a new license with a new license number, but without documenting further supervised work experience.

(2) To be considered for re-licensure, licensees whose licenses have been expired for less than two years from last date of renewal must file:

(a) An application for re-licensure, using forms provided by the Board that must include a sworn statement that there is no reason for denial, including that applicant;

(A) Has not been subject to any disciplinary action by a professional mental health licensing or certification agency; and

(B) Has not been convicted of a crime related to practice within the mental health field.

(b) Payment of the current application fee plus one current annual renewal fee;

(c) Updated professional disclosure statement, statement that the applicant is not currently practicing professional counseling or marriage and family therapy, or request for waiver of the professional disclosure statement; and

(d) Report listing 20 hours of continuing education meeting the standards set forth in OAR 833-080-0011, completed within one year prior to the date the Board will receive the new application or within the year allowed for application to be completed.

(3) To be considered for re-licensure, licensees whose licenses have been expired for two or more years from last date of renewal must file:

(a) A new application, using forms provided by the Board, to show compliance with the standards in effect at the time the Board will receive this new application;

(b) The application fee;

(c) Proposed professional disclosure statement, statement that applicant is not currently practicing professional counseling or marriage and family therapy, or request for waiver of the professional disclosure statement; and

(d) Request for examination or proof of passage of a competency examination acceptable to the Board which was passed within 10 years of date of new application.

(4) All applicants for re-licensure must successfully pass the current law and rules section of the state examination.

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

## 833-020-0071

### Reapplication

Former applicants who reapply for licensure may transfer previously filed documents to the new application file if the documents have not been destroyed under state records retention schedules and are still in the possession of 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

## 833-020-0081

### Examination

(1) Applicants approved for examination must maintain examination status by sitting for the competency portion of the examination once per year. Failure to document passage of an acceptable examination or registering and attempting to pass the competency portion of the state examination at least once per year will result in denial of licensure.

(2) Applicants are allowed 30 days to complete and return the law and rules portion of the state examination. Failure to complete and return the examination to the Board office will result in closure of the application.

Stat. Auth.: ORS 675.785 - 675.835 & 676.160 - 676.180  
Stats. Implemented: ORS 675.785 - 675.835  
Hist.: BLPCT 1-2010, f. & cert. ef. 1-5-10

## 833-020-0091

### Effective and Expiration Dates of Licenses

(1) Initial licenses will be issued for no more than one year, expiring on the last day of licensee's birth month.

(2) Date of issue will be the date all qualifications for licensure are met.

(3) Licenses will not be issued without payment of the required initial license or renewal fees.

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

## 833-020-0101

### License Renewal/Late Renewal

(1) License may be renewed by paying the renewal fee no more than 45 days before, or during the renewal month accompanied by:

(a) The completed renewal form provided by the Board which will include a sworn statement that there is no reason for denial of renewal;

(b) Continuing education information detailing compliance with the requirements, if applicable;

(c) An updated, professional disclosure statement, if renewal information indicates that the one on file with the Board contain false, incomplete, outdated or misleading information.

(2) A licensee may renew a license in the month following the renewal month by submitting to the Board:

(a) The renewal fee;

(b) A late fee;



# ADMINISTRATIVE RULES

(c) The completed renewal form provided by the Board which must include a sworn statement that there is no reason for denial of renewal;

(d) Continuing education information detailing compliance with the requirements, if applicable; and

(e) An updated, professional disclosure statement, if renewal information indicates that the one on file with the Board may contain false, incomplete, outdated or misleading information.

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

## 833-020-0112

### Duplicate Licenses

(1) Duplicate licenses or certificates may be obtained by:

(a) Certifying, by signed statement, that the current license or certificate has been lost or destroyed; or

(b) Requesting a duplicate for additional place(s) of business;

(c) In either case, payment of the required fee.

(2) Reproduction of a license or certificate by anyone other than Board staff for use as a license document or for display is prohibited.

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

## 833-030-0011

### Educational Requirements for Licensure as a Professional Counselor

To qualify for licensure as a professional counselor under ORS 675.715(2), an applicant must hold one of the following:

(1) A graduate degree in counseling received from a program approved by the Council for Accreditation of Counseling and Related Educational Programs (CACREP);

(2) A graduate degree in counseling received from a program approved by the Council on Rehabilitation Education (CORE);

(3) A graduate degree determined by the Board to be comparable in both content and quality by meeting the academic and training program standards for graduate degrees set out in OAR 833 division 60; or

(4) A graduate degree determined by the Board to meet a majority of the graduate degree standards defined in OAR 833 division 60 and the degree coursework standards set forth in OAR 833, division 60, including additional graduate training as set forth in OAR 833, division 60 that together meet the graduate degree standards of graduate academic coursework related to a degree in counseling.

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

## 833-030-0021

### Experience Requirements for Licensure as a Professional Counselor

(1) To qualify for licensure as a professional counselor under ORS 675.715(3) and 675.720, an applicant must have completed the equivalent of three years of full-time supervised counseling experience that consisted of no less than 2,400 supervised direct client contact hours of counseling. The supervised counseling experience must be:

(a) Completed in Oregon prior to June 30, 2002;

(b) Completed in another state or country prior to application;

(c) Completed while a registered intern with the Board;

(d) Up to 400 supervised direct client contact completed during the clinical portion of the qualifying graduate degree program; or

(e) Any combination of hours completed as indicated in (a), (b), (c) and (d).

(2) Direct client contact hours for applicants seeking the professional counselor license, may be comprised of pre-degree hours plus post-degree hours.

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

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

## 833-030-0031

### Supervision of Direct Client Contact Hours

(1) For those applying for licensure through the direct or reciprocity methods, supervision must satisfy the following requirements:

(a) Taken place within the same calendar month as the completed direct client contact hours;

(b) Been provided by someone other than a spouse or relative by blood or marriage or a person with whom the applicant has or had a personal relationship;

(c) Been the result of a professional relationship between a qualified supervisor and a counselor. Such relationship involves discussions based on case notes, charts, records, and available audio or visual tapes. The supervisee presents assessments and treatment plans for the clients being seen. The supervisor focuses on the appropriateness of the plans and the supervisee's therapeutic skill. In contrast to consultation, the supervisor has the authority

to direct treatment plans. In contrast to therapy, the supervisor will identify counter-transference issues and develop a plan for the supervisee to work through those issues independently;

(d) Total no less than two (2) hours of supervision for months where 45 or less direct client contact hours are completed; or total no less than three (3) hours of supervision for months where 46 or more direct client contact hours are completed; and

(e) Been conducted in a professional setting, face to face, one to one, except:

(A) Up to 75 percent of the individual supervision hours may have been by electronic communication; and

(B) Up to 50 percent of the supervision may have been received in a group setting, which:

(i) Included no more than ten (10) supervisees for supervision taking place before July 1, 1998 or six (6) supervisees for supervision on or after July 1, 1998;

(ii) Where the leadership did not shift from one supervisor to another; and

(iii) Was not a staff or team meeting, intensive training seminar, discussion group, consultation session, or quality assurance or review group.

(2) The supervisor, at the time of supervision must have:

(a) Three years of post-graduate clinical experience as a licensed mental health professional; and

(b) 30 clock hours of training in supervision theory and practice through post-master's workshops or post-master's graduate level academic coursework for any supervision hours provided after June 30, 1992.

(3) The supervisor at the time of supervision also must have:

(a) Been a National Certified Counselor (NCC), Certified Clinical Mental Health Counselor (CCMHC), Certified Rehabilitation Counselor (CRC), or Certified Career Counselor (CCC); or

(b) Held a license as a professional counselor in the State of Oregon or held an Oregon or other state certification or licensure judged comparable by the Board, such as Oregon standard school counselors or Oregon psychologist associates or those state licensed as clinical psychologists, clinical social workers, and marriage and family therapists.

(4) In lieu of sections (2) and (3) the supervisor at the time of supervision may have been an approved supervisor through American Association for Marriage and Family Therapy, the Center for Credentialing and Education, or the American Pastoral Counselors Association.

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

## 833-030-0041

### Examination Requirement for Licensure as a Professional Counselor

(1) All applicants for licensure as a professional counselor must pass an examination consisting of two separate sections: a competency section and an Oregon law and rules section.

(2) To qualify for licensure as a professional counselor under ORS 675.715(5), an applicant must pass one of the following competency examinations within 10 years from the date of application for licensure:

(a) National Counselor Examination;

(b) Certified Clinical Mental Health Counselor Examination;

(c) Certified Rehabilitation Counselor Examination; or

(d) Other exams as approved by the Board.

(3) The Board uses the National Counselor Examination as the state examination.

(4) To qualify to sit for the competency examination, a LPC applicant must:

(a) Submit an application; and

(b) Meet the graduate program and coursework requirements in OAR 833 division 60.

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

(6) Passing scores will be:

(a) Established by the National Board of Certified Counselors for applicants who plan to take the exam after applying for Oregon licensure.

(b) Established by the agency verifying passage of its examination for applicants who took a state competency exam before applying for Oregon licensure.

(7) The Board will notify examinees, in writing only, of the results of their examination.

(8) Following passage of the approved competency examination, the Board requires passage of an Oregon state law and rules examination with a passing score 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

## 833-030-0051

### Documentation of Requirements for Licensure as a Professional Counselor

Applicants for licensure as a professional counselor must document meeting the requirements for licensure as follows:

# ADMINISTRATIVE RULES

(1) Educational requirements by official transcript, and by a completed graduate degree standards form with required attachments if supporting documentation is necessary;

(2) Experience requirements by submission of attestations from employers or supervisors regarding the setting, hours of experience and supervision received, and background and training of supervisor; and

(3) Examination requirement by submission of verification an approved examination was taken and passed by the approved testing, licensing, or certification organization, or passage of the state examination.

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

## 833-040-0011

### Educational Requirements for Licensure as a Marriage and Family Therapist

To qualify for licensure as a marriage and family therapist under ORS 675.715(2), an applicant must hold one of the following:

(1) A graduate degree in marriage and family therapy received from a program approved by the Commission on Accreditation for Marriage and Family Therapy Education (COAMFTE) or a marital and family therapy program fully accredited by the Council for Accreditation of Counseling and Related Educational Programs (CACREP); or

(2) A graduate degree determined by the Board to be comparable in both content and quality by meeting the academic and training program standards for graduate degrees set out in OAR 833 division 60; or

(3) A graduate degree determined by the Board to meet a majority of the graduate degree standards defined in OAR 833 division 60 and the degree coursework standards set forth in 833 division 60, including additional graduate training as set forth in 833 division 60 that together meet the graduate degree standards of graduate academic coursework related to a degree in marriage and family 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

## 833-040-0021

### Experience Requirements for Licensure as a Marriage and Family Therapist

(1) To qualify for licensure as a marriage and family therapist under ORS 675.715(4) and 675.720, an applicant must have the equivalent of three calendar years of full-time supervised clinical work experience that consisted of:

(a) No less than 2,000 supervised client contact hours of therapy;

(b) No less than 1,000 hours working with couples and families.

(2) Direct client contact hours must have been:

(a) Obtained after receipt of the qualifying graduate degree;

(b) Obtained in three or more different calendar years; and

(c) Face to face with a client or clients including through electronic communication.

Stat. Auth.: ORS 675.785 - 675.835 & 676.160 - 676.180  
Stats. Implemented: ORS 675.785 - 675.835  
Hist.: BLPCT 1-2010, f. & cert. ef. 1-5-10

## 833-040-0031

### Supervision of Direct Client Contact Hours

(1) For those applying for licensure through the direct or reciprocity methods, supervision must:

(a) Take place within the same calendar month as the completed direct client contact hours;

(b) Be provided by someone other than a spouse or relative by blood or marriage or a person with whom the applicant has or had a personal relationship;

(c) Be the result of a professional relationship between a qualified supervisor and a counselor. Such relationship involves discussions based on case notes, charts, records, and available audio or visual tapes. The supervisee presents assessments and treatment plans for the clients being seen. The supervisor focuses on the appropriateness of the plans and the supervisee's therapeutic skill. In contrast to consultation, the supervisor has the authority to direct treatment plans. In contrast to therapy, the supervisor will identify counter-transference issues and develop a plan for the supervisee to work through those issues independently; and

(d) Total no less than two (2) hours of supervision for months where 45 or less direct client contact hours are completed; or total no less than three (3) hours of supervision for months where 46 or more direct client contact hours are completed; and

(e) Be conducted in a professional setting, face to face, one to one, except:

(A) Up to 75 percent of the individual supervision hours may be by electronic communication; and

(B) Up to 50 percent of the supervision may have been received in a group setting, which:

(i) Included no more than ten (10) supervisees for supervision taking place before July 1, 1998 or six (6) supervisees for supervision on or after July 1, 1998;

(ii) Where the leadership does not shift from one supervisor to another; and

(iii) Is not a staff or team meeting, intensive training seminar, discussion group, consultation session, or quality assurance or review group.

(2) The supervisor, at the time of supervision must have:

(a) A supervisor approved by the American Association for Marriage and Family Therapy or a diplomate in the American Association of Pastoral Counselors; or

(b) Licensed by the State of Oregon as a marriage and family therapist or hold an equivalent Oregon certification or license as determined by the Board, such as that required for clinical psychologists, clinical social workers and professional counselors; and

(A) Been trained specifically in the systemic approach to couples and family therapy;

(B) Completed a minimum of five (5) years of clinical experience; and

(C) For any supervision hours after June 30, 1992, completed thirty (30) clock hours of training in supervision theory and practice in post-master's academic coursework or equivalent training, 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

## 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 an examination consisting of two separate examination sections: a competency section and an Oregon law and rules section.

(2) To qualify for licensure as a marriage and family therapist under ORS 675.715(5), an applicant must pass a competency examination prescribed by the Board or have passed other approved alternative exams, within 10 years from the date of application for licensure.

(3) The Board prescribes as the competency section the computerized marital and family therapy examination of the Association of Marital and Family Therapy Regulatory Boards (AMFTRB) in association with the Professional Examination Service.

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

(a) Submit an application;

(b) Meet the graduate program and coursework requirements prescribed in OAR 833 division 60; and

(c) Meet the supervised work experience requirements prescribed in OAR 833-040-0031.

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

(6) 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.

(7) The Board will notify examinees, in writing only, of the results of their examination.

(8) 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

## 833-040-0051

### Documentation of Requirements for Licensure as a Marriage and Family Therapist

Applicants for licensure as a marriage and family therapist must document meeting the requirements for licensure as follows:

(1) Educational requirements by official transcript, and by a completed graduate degree standards form with required attachments if supporting documentation is necessary;

(2) Experience requirements by submission of attestations from employers or supervisors regarding the setting, hours of experience and supervision received, and background and training of supervisor; and

(3) Examination requirement by submission of verification that an examination was taken and passed by the approved testing, licensing, or certification organization, passage of the state examination.

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

## 833-050-0011

### Intern Registration Method

The intern registration method is required for applicants who seek acceptance of post-degree supervised direct client contact completed in Oregon after June 30, 2002. The intern registration method requires applicant to obtain Board approval of an internship plan for completing required supervised direct client contact.

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

# ADMINISTRATIVE RULES

Stats. Implemented: ORS 675.785 - 675.835  
Hist.: BLPCT 1-2010, f. & cert. ef. 1-5-10

## 833-050-0021

### Application for Registration as Intern

- (1) An applicant for registration must:
  - (a) Meet all registration requirements in effect at the time the application is submitted;
  - (b) Request registration on Board approved forms;
  - (c) Submit a professional disclosure statement for board approval as part of his or her application;
  - (d) Submit an application fee as specified in OAR 833-070-0011;
  - (e) Meet the graduate degree standards for licensure according to OAR 833, division 60;
  - (f) Agree to complete supervised direct client contact hours to meet the total number of hours required for licensure; and
  - (g) Abide by the Board's laws and rules.
- (2) Applicants for professional counselor and marriage and family therapist must pay a fee for each license.
- (3) Applicants approved for registration as an intern will have five years to complete the supervised direct client contact hours necessary for licensure or for examination. The intern may petition the Board to allow extension of registration for up to one year beyond the maximum five years if he/she can show good cause for such extension.

(4) Registered interns may indicate registration or use the title "registered intern", "LPC intern", "LMFT intern" or any permutation in connection with a practice that is covered by an approved plan.

(5) Former applicants who re-apply may transfer direct client contact hours accrued under a board-approved plan to their new plan.

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

## 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;
  - (d) Formal education and training, title of highest relevant degree, the school that granted the degree, and major coursework;
  - (e) Supervision requirements;
  - (f) Fee schedules;
  - (g) The bill of rights of clients listed in OAR 833-100-0021 the Code of Ethics; and
  - (h) The name, address, telephone number, and website address of the Oregon Board of Licensed Professional Counselors and Therapists.
- (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

## 833-050-0041

### Intern Professional Disclosure Statement Waiver

The Board may grant exemptions from requirements of professional disclosure statements. Requests for exemption must be in writing to the Board and have received written approval from the Board. The Board may grant exemptions from providing a professional disclosure statement if:

- (1) Registered intern can satisfy the Board that there is good cause to be exempt from specific requirements, including but not limited to: name, practice address and telephone number; fee schedules; or other specific board required information;
- (2) The intern is providing crisis response counseling or therapy; or
- (3) The intern is practicing outside Oregon and is not required (by his or her employing agency) to provide disclosure statements to clients; however, the intern must inform clients that he or she is working toward licensure in the state of Oregon, the name of his or her clinical supervisor, and provide the address and telephone number of the Oregon Board upon request.

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

## 833-050-0051

### Intern Registration Plan

(1) Applicants for intern registration must submit an intern plan in the form and manner required by the Board.

(2) The intern plan must include information to show how supervised direct client contact hours will be accrued and that the activities will meet Board requirements for professional counselor and/or marriage and family therapist. The intern plan will include:

- (a) Name, addresses, telephone numbers, and email addresses of the parties: intern, supervisor(s), and intern's employer if applicable;
- (b) Description of direct client contact: where counseling/therapy will be performed, where supervision will be provided, activities or services performed by intern, content of supervision;
- (c) How the intern will meet licensure requirements;
- (d) Responsibilities of all parties;
- (e) Agreement of the supervisor, administrator of agency or employer of the intern, and the intern; and
- (f) Signatures of all parties.

(3) An approved intern plan may cover up to three separate practices, such as private practice and employment by two different, autonomous programs.

(4) To maintain registration, the intern must meet the conditions in the approved plan.

(5) The intern must carry out the registration plan as approved. Changes to the plan must be approved 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

## 833-050-0061

### Effective Dates of Intern Registration

Initial registration as an intern will be effective when applicant completes the registration process that includes approval of completed request and internship plan.

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

## 833-050-0071

### Direct Client Contact

(1) Applicants for LPC must accrue 2,400 hours of supervised direct client contact to qualify for licensure.

(2) LPC interns must complete at least 1,000 of the required 2,400 hours direct client contact while in a Board-approved intern work plan.

(3) LPC Interns may count direct client contact hours acquired outside a registered intern plan as follows:

- (a) Up to 400 direct client contact hours accrued as part of a graduate degree internship;
- (b) Post-degree supervised direct client contact hours completed in Oregon prior to June 30, 2002; and
- (c) Post-degree supervised direct client contact hours completed outside of Oregon that meet Oregon requirements at the time of application for licensure.

(4) Applicants for LMFT must accrue 2,000 hours of supervised direct client contact with at least 1,000 of those hours working with couples and families to qualify for licensure.

(5) Applications for dual licensure as professional counselor and marriage and family therapist must meet the requirements for both licenses.

(6) Direct client contact must be face to face with a client or clients and/or contact via electronic communication consistent with OAR 833 division 90.

(7) Registered interns must receive and document supervision for and report all direct client contact hours at places of practice listed as part of their Board-approved plan.

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

## 833-050-0081

### Supervision

(1) Supervision of direct client contact must take place within the same calendar month as the completed direct client contact hours.

(2) Supervision meetings must take place at least twice per month, and in different weeks.

(3) Supervision meetings must be no less than one hour, defined as no less than 50 minutes.

(4) Supervision must total at least:

- (a) Two (2) hours for months in which 45 or fewer hours of direct client contact are completed; or
- (b) Three (3) hours for months in which 46 or more hours of direct client contact are completed.

(5) At least 25% of supervision hours must be conducted in a professional setting, face to face. Up to 75% of supervision hours may be conducted through electronic communication.

# ADMINISTRATIVE RULES

(6) At least 50% of the required number of monthly supervision hours must be individual supervision 1-to-1.

(7) Group supervision must meet the following requirements at each meeting.

- (a) Include no more than six (6) supervisees;
- (b) Have leadership that does not shift from one supervisor to another; and

(c) Not be a staff or team meeting, intensive training seminar, discussion group, consultation session, or quality assurance or review group.

(8) If in any month an intern does not receive the minimum supervision hours required, no client contact hours will be credited for that month.

(9) Interns must take steps to ensure consistency in supervision throughout the internship. The intern must request approval from the Board to change supervisors more than three times during the internship and provide steps taken to ensure consistency when changing supervisors.

(10) An approved plan for a single practice, such as private practice or employment by one agency offering services at one or more sites, may have no more than two supervisors at any given time.

(11) The supervisor must have the authority to:

- (a) Review all case records, billings, appointment books, and client population;
- (b) Review and determine appropriateness of individual charts and case records;
- (c) Direct the intern to refer clients to other therapists when client needs are outside the intern's scope of practice; and
- (d) Determine appropriate client caseload to be served by the intern.

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

## 833-050-0091

### Supervisor Reporting

(1) The supervisor must 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 concerns about a supervisee being licensed, the supervisor must notify the Board and provide the following information:

- (a) Specific concerns;
- (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.

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

## 833-050-0111

### Intern Reporting

(1) The intern must submit to the Board reports that include the hours of direct client contact accrued by month for the six-month period.

(2) Reports of direct client contact hours and supervisor evaluation are due in the month following each six-month reporting period.

(3) If the Board receives the report after the due date, all hours submitted in the report will be denied.

(4) The Board may consider exceptions to this rule with documentation of extraordinary circumstances.

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

## 833-050-0121

### Changes to Intern Registration Plan

(1) The intern must report any interruptions or proposed termination of supervision.

(2) The intern must submit a written request on a board approved form to the Board in order to change the intern plan. Approval of the following changes to the plan are required:

- (a) Supervision;
- (b) Employment;
- (c) Practice locations; and
- (d) Supervisor(s).

(3) A registered intern who files a request to change the internship plan must meet Board requirements in place at the time of the change request.

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

## 833-050-0131

### Intern Registration Renewal

(1) Intern must renew registration annually within 30 days of the intern's annual renewal date. Annual renewal date is the first day of the month of initial registration.

(2) Registration renewal requires the intern to provide to the Board a renewal fee as established in OAR 833-070-0011, renewal forms, and updated Professional Disclosure Statement.

(3) If the intern does not provide the required fee and documents within 30 days of renewal, the internship will be expired.

(4) Renewal may be denied if any of the conditions of the plan are not being met.

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

## 833-050-0141

### Placing Internship on Hold

(1) Intern may request to place internship on hold for up to 90 days by submitting a written request to the board with explanation of need for being on hold.

(2) Intern must notify the Board within 10 days, in writing, of a plan to return to practice.

(3) If after 90 days, the intern does not submit a plan to return to practice, the internship will expire.

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

## 833-050-0151

### Termination of Intern Registration Plan

A registered intern may voluntarily resign registration. A resigned registration will constitute withdrawal of application for 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

## 833-050-0161

### Current Information to Board

(1) All registered interns must provide current contact information to the Board, including:

- (a) Residence address of location and post office box, if applicable;
- (b) Electronic mail address;
- (c) Telephone number; and
- (d) An updated, current Professional Disclosure Statement being provided to clients as required above.

(2) Intern must inform the Board office in writing of any changes to information within 30 days of the change.

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

## 833-060-0012

### Comparable Full Standards

A graduate degree shall be determined by the Board as comparable in content and quality to degrees from CACREP, COAMFTE, or CORE approved programs, if issued by a degree-granting program that meets the following standards. The degree was from an institution that:

- (1) Was a fully accredited member of one of the regional institutional accreditation bodies at the time the degree was granted;
- (2) Offered a minimum of a master's degree;
- (3) Was of at least two years' duration and is at least:

(a) 48 semester credit hours or 72 quarter hours for graduate degrees granted before October 1, 2014; or

(b) 60 semester credit hours or 90 quarter credit hours for graduate degrees granted on or after October 1, 2014.

(4) Included all coursework requirements set forth in OAR 833-060-0021.

(5) Included a required supervised clinical experience for all students of no less than:

- (a) 600 total clock hours to include 240 direct client contact hours, for graduate degrees granted before October 1, 2014; or
- (b) 700 total clock hours to include 280 direct client contact hours, for graduate degrees granted on or after October 1, 2014; and
- (6) Facilitated a practicum and/or internship experience that:

- (a) Had supervisory staff with a minimum of a master's degree in the program emphasis and with pertinent professional experience;
- (b) Made provision for faculty monitoring of operations;
- (c) Kept records of student-client contact hours including summary of student progress by the supervisor;
- (d) Had a written agreement with the program and student specifying learning objectives;

# ADMINISTRATIVE RULES

- (e) Had a mechanism for program evaluation; and
- (f) Maintained adherence to the Oregon Board Code of Ethics OAR 833 division 100.

Stat. Auth.: ORS 675.785 - 675.835 & 676.160 - 676.180  
Stats. Implemented: ORS 675.785 - 675.835  
Hist.: BLPCT 1-2010, f. & cert. ef. 1-5-10

## 833-060-0022

### Majority Standards for Graduate Degrees

Pursuant to ORS 675.715(1)(d), a graduate degree will meet a majority of the Board's standards if issued by a degree granting program that:

- (1) Was from a regionally accredited institution that provided training in counseling or marriage and family therapy;
- (2) Offered a minimum of a master's degree;
- (3) Was at least two years in duration;
- (4) Included coursework requirements for the degree as set forth in OAR 833-060-0041 and 833-060-0051; and
- (5) Included a degree-required practicum/clinical experience with on-site supervisors having competence in counseling or marriage and family therapy and field supervision.

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

## 833-060-0032

### Additional Graduate Training to Supplement Degree Program

(1) Training used to supplement a degree program pursuant to OAR 833-060-0021 must be taken and successfully completed for graduate credit at an accredited college or university.

(2) To fulfill the requirements for the clinical/applied experience, the applicant must complete a supervised clinical experience of no less than 700 clock hours.

(3) The requirement for a graduate program clinical experience may be waived if:

- (a) the applicant has at least five years of full-time post-degree experience; and
- (b) for marriage and family therapy degrees, the majority of clinical experience consisted of work in relationship issues.

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

## 833-060-0042

### Standards for LPC Coursework

(1) For counseling degrees leading to a professional counselor license, based on a minimum of 72 quarter or 48 semester hours:

- (a) Counseling Theory, three quarter hours/two semester hours;
- (b) Human Growth and Development, three quarter hours/two semester hours;
- (c) Social and Cultural Foundations, three quarter hours/two semester hours;
- (d) The Helping Relationship, three quarter hours/two semester hours;
- (e) Group Dynamics Processing and Counseling, three quarter hours/two semester hours;
- (f) Lifestyle and Career Development, three quarter hours/two semester hours;
- (g) Diagnosis and Appraisal of Individuals, three quarter hours/two semester hours;
- (h) Research and Evaluation, three quarter hours/two semester hours;
- (i) Professional Orientation, three quarter hours/two semester hours;
- (j) Clinical/Applied Experience of at least 600 clock hours; and
- (k) Supporting Coursework for Specialty Areas, 24–33 quarter hours/16–22 semester hours.

(2) The curriculum standards for counseling degrees leading to a professional counselor license, based on a *minimum* of 90 quarter or 60 semester hours:

- (a) Counseling Theory, three quarter hours/two semester hours;
- (b) Human Growth and Development, three quarter hours/two semester hours;
- (c) Social and Cultural Diversity Studies, three quarter hours/two semester hours;
- (d) The Helping Relationship, three quarter hours/two semester hours;
- (e) Group Dynamics Processing and Counseling, three quarter hours/two semester hours;
- (f) Lifestyle and Career Development, three quarter hours/two semester hours;
- (g) Diagnosis and Assessment of Individuals, three quarter hours/two semester hours;
- (h) Research and Evaluation, three quarter hours/two semester hours;
- (i) Professional Orientation and Ethical Practice studies including roles and responsibilities within the profession and in the community, three quarter hours/two semester hours;
- (j) Clinical/Applied Experience, of at least:

(A) 600 total clock hours to include 240 direct client contact hours, for graduate degrees granted before October 1, 2014; or

(B) 700 total clock hours to include 280 direct client contact hours, for graduate degrees granted on or after October 1, 2014; and

(k) Supporting Coursework for Specialty Areas, 24 quarter hours/16 semester hours.

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

## 833-060-0052

### Standards for LMFT Coursework

(1) An applicant with a qualifying graduate degree granted before October 1, 2014, must have completed at least 48 semester or 72 quarter hours.

(2) An applicant with a qualifying graduate degree granted on or after October 1, 2014, must have completed at least 60 semester or 90 quarter hours.

(3) For marriage and family therapy degrees leading to a marriage and family therapist license, based on 72 quarter or 48 semester hours:

- (a) Human Development, six quarter hours/four semester hours;
- (b) Marital and Family Theoretical Foundation Studies, three quarter hours/two semester hours;
- (c) Marital and Family Therapy Diagnosis and Assessment, Treatment, Principles and Techniques Studies, 12 quarter hours/8 semester hours;
- (d) Professional Studies, three quarter hours/two semester hours;
- (e) Research Methods or Statistics, three quarter hours/two semester hours;

(f) Clinical/Applied Experience of at least 600 clock hours; and

(g) Supporting Coursework Focusing on the Systems Paradigm for Specialty Areas, 24–33 quarter hours/16–22 semester hours.

(4) The curriculum standards for degrees meeting requirements for a marriage and family therapist license, based on 90 quarter or 60 semester hours:

- (a) Individual and Family Development — 6 quarter hours/4 semester hours;
- (b) Couple and Family Theoretical Foundation Studies — 9 quarter hours/6 semester hours;
- (c) Couple and Family Therapy, Treatment, and Techniques Studies — 9 quarter hours/6 semester hours;
- (d) Diagnosis of mental disorders — 3 quarter/2 semester hours;
- (e) Diversity studies that include issues related to diversity, power and privilege — 3 quarter/2 semester credit hours
- (f) Ethical and Professional Studies — 3 quarter hours/2 semester hours;

(g) Research Methods or Statistics — 3 quarter hours/2 semester hours;

(h) Clinical/applied experience, including practicum, of at least 700 clock hours with 280 hours of direct client contact; and

(j) Supporting coursework focusing on counseling and/or systems approaches — 54 quarter/36 semester hours.

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

## 833-070-0011

### Fees

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

- (1) Application for licensure — \$125.
- (2) Initial license — \$100.
- (3) Annual renewal of license in accordance with OAR 833-120-0011.
  - (a) Without criminal background check — \$125; or
  - (b) With criminal background check — \$172.25.
- (4) Restoration fee — \$50.
- (5) Examination:
  - (a) For professional counselor license — Candidates will pay exam and exam administration fees to the prescribed examination providers.
  - (b) For marriage and family therapist license — 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.

- (a) Without criminal background check — \$80; or
- (b) With criminal background check — \$127.25.

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

## 833-070-0021

### Fee Refunds

Overpayment of fees or fees submitted as part of application before required will be refunded.

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

# ADMINISTRATIVE RULES

## 833-070-0031

### Availability of Public Records

(1) Members of the public may review all Board documents that are public records other than those records that need not be disclosed under law. These documents are on file in the Board's office during regular working hours. Copies of public records are available to the public upon request. Charges for records will be payable in advance or when the materials are received.

(2) Copies of documents: \$.25 per page.

(3) Documents and other materials will be provided at a fee reasonably calculated to reimburse the Board for actual costs incurred in making records available to 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

## 833-080-0011

### Continuing Education

Licenseses must complete approved continuing education and report the hours to the Board on even numbered years as a condition of license renewal.

(1) Licensees who receive their initial license less than 12 months before the continuing education reporting date will not be required to report continuing education.

(2) Licensees who receive their initial licenses between 12 and 23 months before the continuing education reporting date must report 20 hours of continuing education.

(3) Licensees who receive their initial licenses 24 or more months before the continuing education reporting date must report 40 hours of continuing education.

(4) A "clock hour" for continuing education means one hour spent in a program meeting the requirements for continuing education. Clock hours exclude refreshment breaks, receptions and other social gatherings, and meals that do not include an approved.

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

## 833-080-0021

### Continuing Education Waiver

(1) Licensees may request a waiver for meeting the continuing education requirements by submitting a written request on forms provided by the Board.

(2) The Board may approve requests for waivers from licensees who cannot attend the required hours of training because of a medical condition. The licensee must include the following information as part of the request.

(a) The rationale for a waiver;

(b) The nature of the illness or disability;

(c) The time period the waiver would cover;

(d) A statement as to how the condition prevents participation in continuing education;

(e) Signature by the licensee or legal representative; and

(f) Signed statement from a recognized medical practitioner.

(3) The Board may approve requests for waivers from licensees who do not plan to practice for an extended period of time. The licensee must include the following information as part of the request.

(a) The rationale for a waiver;

(b) The time period the waiver would cover; and

(c) Signature by the licensee or legal representative.

(3) The Board will notify the licensee requesting a waiver whether the request is approved.

(4) Following a contractual agreement with the Board that the licensee will not be practicing counseling or marriage and family therapy for an extended period of time because the licensee is retired; on maternity leave; or voluntarily not working; and that the licensee will not resume practice without a Board-approved plan for participating in 20 clock hours of continuing education or clinical supervision.

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

## 833-080-0031

### Continuing Education Content

(1) Continuing education content must focus on increasing knowledge and/or skills in the following areas relevant to the field:

(a) Counseling or marriage and family therapy theory & techniques;

(b) Human development and family studies;

(c) Social and cultural foundations in counseling or marriage and family therapy;

(d) The helping relationship;

(e) Group dynamics;

(f) Life style and career development;

(g) DSM diagnosis assessment;

(h) Research and evaluation;

(i) Professional orientation and ethics;

(j) Professional supervision training;

(k) Disability and life transitions;

(l) Substance abuse;

(m) Psychopharmacology;

(n) Diagnosis and treatment of mental health disorders.

(2) Six clock hours of continuing education in ethics is required each reporting period.

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

## 833-080-0041

### Methods of Obtaining Hours

(1) Approvable continuing education credits may be obtained in the following ways:

(a) Continuing education activities with no limits on continuing education units:

(A) Attending college or university courses — 15 clock hours per semester credit and 10 clock hours per quarter credit.

(B) Seminars, workshops, conferences and/or trainings may be "live" or offered through distance learning technology. Distance learning trainings must be offered or approved by a provider acceptable to the Board e.g., NBCC.

(C) Home study from approved providers must be offered or approved by a provider acceptable to the Board e.g., NBCC.

(b) Continuing education activities for which you can obtain a maximum of 20 continuing education units within a two year period:

(A) Publication activities include:

(i) Five credits per article or review in a refereed journal that is directly related to counseling;

(ii) Five credits per chapter in edited books, 20 credits for authorship of an entire book;

(iii) Five credits per 30 minutes of initial video production directly related to counseling;

(iv) Five credits for reviewing a book proposal; and

(v) Five credits for each year of service on an editorial board of a professional counseling journal.

(B) Professional presentations. Credit is given for the initial research and development of a professional presentation. The number of credits given is twice the number of hours spent making the presentation;

(C) Leadership in the profession — 10 credits a year for the following:

(i) Serving as an officer of a state or national counseling organization;

(ii) Serving as a member of a state counseling/therapy licensing board or national certification board; or

(iii) Chairing a national counseling conference or convention.

(2) Receiving supervision. One credit/one clock hour for supervision received from a supervisor who meets the Board's standards on supervision, for a maximum of 10 continuing education activities within a two year period.

(3) An approvable continuing education program is one designed and offered by an agency or institution that is recognized as an approved provider of continuing education units e.g., NBCC-approved programs include:

(a) Academic courses offered in accredited degree counseling or marriage and family therapy programs;

(b) Presentations sponsored by counseling related departments of accredited educational institutions; national, regional, state, or local professional organizations or associations; public or private human services agencies or organizations; or individuals that meet all of the following approved provider guidelines:

(A) Program is presented by competent individuals as documented by appropriate academic training, professional licensure or certification, or professionally recognized experience. Presenters should have an identifiable involvement with human services;

(B) Program meets the professional needs of the licensee's intended clientele;

(C) Program has a minimum duration of one clock hour;

(D) Except for non-classroom distance learning, program is offered in a place which is accessible to persons with disabilities;

(E) Distance learning program includes mechanism for evaluation, measurement, or confirmation of exchange of information; and

(F) Programs approved by organizations such as: National Association of Social Workers, National Board for Certified Counselors, Oregon Psychological Association, Commission on Rehabilitation Counselor Certification, Art Therapy Credentials Board, American Art Therapy Association, American Association for Marriage and Family Therapy, Commission of Rehabilitation Counselor Certification, and American Counseling Association.

(c) Content of programs are consistent with OAR 833-080-0031.

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

# ADMINISTRATIVE RULES

## 833-080-0051

### Documentation and Submission of Continuing Education

(1) Licensees must certify to the Board, at the time of annual renewal on even-numbered years, that the continuing education requirements were met by providing a summary list of continuing education activities/courses as described in OAR 833-080-0041.

(2) Licensees must maintain documentation as proof that the licensee has satisfied the continuing professional education requirements and, if requested by the Board, will make them available for inspection. Documentation must include proof of actual attendance, participation, certification, or completion as well as content, duration, and if relevant, provider such as:

- (a) Academic transcripts;
- (b) Dated certificates (originals or copies) of completion of training;
- (c) Program/activity descriptions, including (but not limited to) written verification of professional services, copies of published works or other proof of publication, letter from president/director of organization in which professional activity was conducted; and
- (d) Signed statement of professional supervision by the individual providing the supervision.

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

## 833-080-0061

### Continuing Education Audit and Penalties

(1) The Board will conduct an audit of the records of randomly selected licensees to verify actual participation, completion, and compliance with standards for content and providers of approved continuing professional education. Failure to maintain or document actual completion of continuing professional education activities claimed, failure to make such records available to the Board for inspection, or falsification of reports may result in disciplinary action by the Board.

(2) Licensees participating in the continuing education audit that are unable to satisfactorily document that they completed training meeting the standards set forth in OAR 833-080-0041 will be assessed a civil penalty as follows:

- (a) Persons successfully documenting 31-39 hours — \$250;
  - (b) Persons successfully documenting 21-30 hours — \$500;
  - (c) Persons successfully documenting 11-20 hours — \$750;
  - (d) Persons successfully documenting 10 or fewer hours — \$1,000.
- (3) The civil penalty may not be paid in lieu of training.

(4) Failure to document required hours, or certifying programs or supervision not meeting approval requirements will result in non-renewal or, in the case of discovery after renewal, possible suspension of license.

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

## 833-090-0010

### Technology-Assisted Services

(1) When providing technology-assisted distance counseling services, licensees must:

- (a) Use secure web sites and e-mail communications to help ensure confidentiality;
- (b) Determine that technology-assisted services are appropriate, available, and meets the needs of the particular client; and
- (c) Have a working knowledge of the particular technology used to meet the needs of clients.

(d) Conduct due diligence in confirming the identity of potential clients.

(2) When the use of encryption is not possible, limit electronic transmissions to general communications that are not client specific.

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

## 833-090-0020

### Inappropriate Services

When technology-assisted distance counseling services are deemed inappropriate for any reason by the counselor or client, counselors must ensure that a professional and clinically sound referral is made to counseling resources in the client's geographic area.

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

## 833-090-0030

### Laws and Statutes

Licensees providing Distance Services must ensure that the use of technology is consistent with the Board's laws and rules.

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

## 833-090-0040

### Technology and Informed Consent

(1) Licensees must give all potential clients access to the licensee's Professional Disclosure Statement (PDS) prior to service delivery with a means of confirming receipt and acknowledgement of the PDS.

(2) Licensees must inform clients of the benefits and limitations of distance service delivery, including:

(a) Issues related to the difficulty of maintaining the confidentiality of electronically transmitted communications;

(b) Names of colleagues, supervisors, and employees, such as Informational Technology (IT) administrators, who may have authorized or unauthorized access to electronic transmissions;

(c) The risks of all authorized or unauthorized people who have access to any technology clients may use in the counseling process. This includes family members, friends, acquaintances, and fellow employees;

(d) Limitations governing the practice of the LPC or LMFT profession in the State of Oregon, including that the laws and statutes regarding the practice of professional counseling and marriage and family therapy differ from state-to-state;

(e) Contact information and alternate methods of contact in case of technology failure; and

(f) Emergency procedures for situations when the counselor is not available.

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

## 833-100-0011

### General Purpose and Scope

(1) This 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.

(2) If ethical responsibilities appear to conflict with law, regulations, or other governing legal authority, licensees are to make known their commitment to their ethical responsibilities and take steps to resolve the apparent conflict. If demands of an organization with which a licensee is affiliated conflicts with any aspect of the code of ethics, the licensee must clarify the nature of the conflict, make known their commitment to this code and resolve the conflict in a way that permits adherence to this code of ethics.

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

## 833-100-0021

### Responsibility

(1) A licensee's primary professional responsibility is to the client. A licensee makes every reasonable effort to advance the welfare and best interests of all clients for whom the licensee provides professional services. A licensee respects the rights of those persons seeking assistance and makes reasonable efforts to ensure that the licensee's services are used appropriately:

(2) A licensee recognizes that there are other professional, technical, and administrative resources available to clients. The licensee makes a reasonable effort to provide referrals to those resources when it is in the best interest of clients to be provided with alternative or complementary services or when the client requests a referral.

(3) Licensees do not give or receive commissions, rebates or any other form of remuneration when referring clients for professional services.

(4) A licensee seeks appropriate professional assistance for the licensee's own personal problems or conflicts that are likely to impair the licensee's work performance or clinical judgment.

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

(6) A licensee does not practice under the influence of alcohol or any controlled substance not prescribed by a physician, or if incapacitated by habitual or excessive use of intoxicants, drugs or controlled substances.

(7) A licensee does not practice when adversely influenced by either physical or emotional impairment that would interfere with their ability to provide professional services.

(8) A licensee abides by all applicable statutes and administrative rules regulating the practice of counseling or therapy or any other applicable laws,

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including, but not limited to, the reporting of abuse of children or vulnerable adults.

(9) A licensee does not condone or engage in discrimination on the basis of age, color, culture, disability, ethnicity, national origin, gender, race, religion, sexual orientation, marital status, or socioeconomic status.

(10) A licensee does not provide services to a client when the licensee's objectivity or effectiveness is impaired. If a licensee's objectivity or effectiveness becomes impaired during a professional relationship with a client, the licensee notifies the client that the licensee can no longer serve the client professionally and makes a reasonable effort to assist the client in obtaining other professional services.

(11) A licensee respects the right of a client to make decisions and helps the client understand the consequences of these decisions. A licensee advises a client that all decisions are the responsibility of the client.

(12) A licensee displays in a prominent place, available to clients, a Board issued license.

(13) A licensee obtains written informed consent from the client or legal representative of the client for rendering professional services. Informed consent constitutes informing the client as early in the therapeutic relationship as possible of the nature and anticipated course of therapy, services and approaches to be used, potential risks or experimental methods proposed, alternatives for treatment, fees, involvement of third parties, limits of confidentiality, and the client's right to accept or refuse any and all therapeutic treatment.

(14) A licensee makes available as part of the disclosure statement a bill of rights of clients, including a statement that consumers of counseling or therapy services offered by Oregon licensees have the right:

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

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

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

(d) To report complaints to the Board;

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

(f) To be assured of privacy and confidentiality while receiving services as defined by rule or law, including the following exceptions:

(A) Reporting suspected child abuse;

(B) Reporting imminent danger to the client or others;

(C) Reporting information required in court proceedings or by client's insurance company or other relevant agencies;

(D) Providing information concerning licensee case consultation or supervision; and

(E) Defending claims brought by the client against licensee;

(g) To be free from being the object of discrimination on any basis listed in subsection (9) of this rule while receiving services.

(15) A licensee terminates a client relationship when it is reasonably clear that the treatment no longer serves the client's needs or interests. Whenever possible prior to termination, a licensee provides pre-termination counseling and recommendations and alternatives for the client.

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

Stats. Implemented: ORS 675.785 - 675.835

Hist.: BLPCT 1-2010, f. & cert. ef. 1-5-10

## 833-100-0031

### Client Welfare

(1) Licensees strive to benefit those with whom they work and take care to do no harm. In their professional actions, licensees seek to safeguard the welfare and rights of those with whom they interact professionally and other affected persons and shall hold the welfare and interests of clients as primary.

(2) Licensees take reasonable steps to avoid harming their client, students, supervisees, research participants, organizational clients and others with whom they work, and to minimize harm where it is foreseeable and unavoidable.

(3) The primary obligation of licensees is to respect the integrity and promote the welfare of their clients, including treating the client at all times in a caring, fair, courteous and respectful manner. This is particularly true for vulnerable populations such as children, seniors or clients with disabilities.

(4) Licensees actively attempt to understand the diverse cultural backgrounds of the clients with whom they work. This includes, but is not limited to, learning how the licensee's own background and identity impacts the licensee's values and beliefs about the counseling process.

(5) Licensees do not engage in physical contact with clients when there is a possibility of physical or psychological harm from the contact.

(6) Licensees avoid actions or words that clients could reasonably interpret as demeaning or derogatory, including, but not limited to, coarse or harsh language directed at the client.

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

Stats. Implemented: ORS 675.785 - 675.835

Hist.: BLPCT 1-2010, f. & cert. ef. 1-5-10

## 833-100-0041

### Integrity

(1) A licensee acts in accordance with the highest standards of professional integrity and competence. A licensee is honest in dealing with clients, students, trainees, colleagues, related third parties, and the public.

(2) Licensees are aware of their influential positions with respect to students, employees, supervisees, and clients, and they avoid exploiting the trust and dependency of such persons. Licensees make every effort to avoid conditions and multiple relationships with clients that could impair professional judgment or increase the risk of exploitation. Such relationships include, but are not limited to, business or personal relationships, sexual relationship, relatives, students, employees, or supervisees.

(3) A licensee does not enter into an employer, supervisor, or other relationship where there is potential for exercising undue influence on any client. This includes the sale of services or goods that will exploit the client for financial gain or personal gratification of the licensee or a third party.

(4) A licensee shall not engage in or solicit sexual acts or a sexual relationship with a supervisee.

(5) A licensee does not engage in or solicit sexual acts or a sexual relationship with a client or with individuals the licensee knows to be immediate relatives, guardians, supervisees, or significant others of current clients, or with a former client within three years since the rendering of professional services.

(6) A licensee does not engage in or solicit sexual acts or a sexual relationship with a former client after three years from the termination of services if such act or solicitation could exploit the client. Exploitation may be indicated by such factors as the time elapsed between the termination of the professional relationship and the beginning of the sexual relationship, nature and duration of therapy, circumstances of termination of professional relationship, client personal history, client's current mental status, likelihood of adverse impact on client, any statements or actions made by the licensee during the course of therapy suggesting or inviting the possibility of a post-termination sexual or romantic relationship, and whether the licensee attempted to protect the client by referral or consultation. Licensees do not accept as clients those with whom they have engaged in sexual intimacies.

(7) A licensee does not enter into an employment, business, supervisory, or personal relationship, or one that involves the exchange of goods and services, with a former client if exploitation can be demonstrated by review of such factors as amount of time that has passed, nature and duration of therapy, circumstances of termination of professional relationship, client's personal history, client's current mental status, likelihood of adverse impact on client, and whether client encouraged a post-treatment relationship during the professional relationship.

(8) A licensee does not allow an individual or agency that is paying for the professional services of a client to exert undue influence over the licensee's evaluation or treatment of the client. Regardless of the source of payment, the licensee's first obligation is to the client.

(9) A licensee does not engage in sexual or other harassment of a client, former client, or supervisee. A licensee does not engage in any form of communication or physical behavior that is sexually suggestive, seductive, or demeaning to the client or former client.

(10) A licensee does not use the counseling relationship to further personal, religious, political, sexual, or financial interests.

(11) A licensee informs a client of a divergence of interests, values, attitudes, or biases between a client and the licensee that is sufficient to impair their professional relationship. Either the client or the licensee may terminate the relationship.

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

## 833-100-0051

### Confidentiality

(1) A licensee holds in confidence all information obtained in the course of professional services, as within the limits of the setting, such as a public agency. A licensee safeguards client confidences as permitted by rule or law.

(2) A licensee does not use any confidence of a client to the client's disadvantage.

(3) A licensee, including employees and professional associates of the licensee, does not disclose any confidential information that the licensee, employee, or associate may have acquired in rendering services except as provided by rule or law. All other confidential information is disclosed only with the written informed consent of the client.

(4) A licensee is responsible for being aware of the state and federal regulations concerning confidentiality and for informing clients of the limits of confidentiality as a part of informed consent for services in the context of couple, family, or group treatment. A licensee does not reveal any individual's confidences to others in the client unit without the prior written permission of that individual.

(5) Whenever a licensee provides services to groups of clients such as couples, families or therapy groups, special care must be taken related to issues of confidentiality. In group therapy, confidentiality issues are to be discussed in the beginning of the group. The parameters of confidentiality with-



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in marriage and family therapy are to be discussed early in the counseling process and a clear understanding achieved with all involved.

(6) Whenever a licensee's services are requested or paid for by one client for another, the licensee informs both clients of the licensee's responsibility to treat any information gained in the course of rendering the services as confidential information.

(7) A licensee limits access to client records and informs every individual associated with the agency or facility of the licensee, such as a staff member, student, or volunteer, that access to client records must be limited to only the licensee with whom the client has a professional relationship, an individual associated with the agency or facility whose duties require access, and an individual authorized to have access by the written informed consent of the client. Client records are defined as the records of the counseling or therapeutic relationship, including interview notes, assessments, diagnosis, appraisals, correspondence, or recordings.

(8) A licensee maintains the records of a client after the professional relationship between the licensee and the client has ceased and informs clients as to how long records are retained. The licensee stores and disposes of records in ways that maintain confidentiality. The licensee makes advance provision for the confidential disposition of records in the event the licensee is unable to do so for reasons such as illness or death.

(9) A licensee discloses to the Board and its agents any client records that the Board and its agents consider germane to a disciplinary proceeding. The general requirement that licensees keep information confidential does not apply when:

(a) Disclosure is required to prevent clear and imminent danger to the client or others; or

(b) Legal requirements demand that confidential information must be revealed.

(10) A licensee must obtain written informed consent from each client before electronically recording sessions with that client or before permitting third party observations of their sessions.

(11) A licensee adequately disguises the identity of a client when using material derived from a counseling relationship for purposes of training, research, professional meetings, or publications.

(12) A licensee provides clients reasonable access to records concerning them and should take due care to protect the confidences of others contained in those records, or when information from others about the client could result in harm to that person or persons upon disclosure to the client. Following guidelines set forth in ORS 192.518(2) and 675.765(1), unless otherwise ordered by the court, parents shall have access to the client records of juveniles who are receiving professional services from the licensee.

(13) When a licensee is unclear on professional issues or standards of practice, consultation is to be obtained while protecting any confidentiality issue that may be involved.

(14) Licensees proceed cautiously when asked to provide services to a client currently seeing another professional. Consideration is given to the client's welfare and the situation. Care is given to minimize the risk of confusion and conflict; and when appropriate, the other service provider is consulted. It is not ethical to provide the same therapeutic service that is simultaneously being provided by another professional without collaboration regarding the best interests of the client.

Stat. Auth.: ORS 675.785 - 675.835 & 676.160 - 676.180  
Stats. Implemented: ORS 675.785 - 675.835  
Hist.: BLPCT 1-2010, f. & cert. ef. 1-5-10

## 833-100-0061

### Conduct and Competence

(1) A licensee accepts 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. A licensee will respect the traditions of the profession, and refrain from any conduct that would bring discredit to the profession.

(2) Licensees correct, wherever possible, false, misleading, or inaccurate information and representations made by others concerning the licensee's qualifications, services, or products. A licensee does not advertise in a way that is 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. A licensee does not engage in any conduct likely to deceive or defraud the public or the Board. A licensee does not participate in, condone, or become associated with dishonesty, fraud, deceit, or misrepresentation.

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

(4) A licensee convicted of a misdemeanor or felony or who is arrested for a felony reports that information to the Board within 10 days after the conviction or arrest.

(5) A licensee files a complaint with the Board when the licensee has reason to believe that another licensee is or has been engaged in conduct that violates law or rules adopted by the Board. This requirement to file a com-

plaint 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's requirement to report the other therapist. However, this does not relieve a licensee from the duty to file any reports required by law concerning abuse of children or vulnerable adults. Licensees do 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.

(6) A licensee who believes that a licensee of another health professional licensing agency has engaged in prohibited or unprofessional conduct will report the conduct to the other licensee's board within 10 days of learning of the conduct.

(7) A licensee does not engage in sexual or other harassment or exploitation of clients, students, trainees, employees, colleagues, research subjects, or actual or potential witnesses or complainants in disciplinary proceedings. A licensee cooperates with the Board, or any committee or representative of the Board, in any investigation it may pursue relating to licensee misconduct or violation of the law or rules of the Board. Failure to cooperate is an ethics violation.

(8) A licensee understands the areas of competence of related professions and acts with due regard for the needs, special competencies, and obligations of colleagues in other allied professions, and does not disparage the qualifications of any colleague.

(9) A licensee recognizes the importance of a clear understanding of financial matters with clients. Arrangements for fees and payments are made at the beginning of the counseling or therapeutic relationship. When a client presents financial hardship, the licensee will make reasonable effort to direct the client to possible affordable options. Licensees do not withhold records under their control that are requested by the client solely because payment has not been received for services. Licensees who work in an organizational setting do not divert clients to the licensee's own private practice unless it is in the best interests of the client in the opinion of the client and the organization.

(10) A licensee makes certain that the qualifications of persons in a licensee's employ are represented in a manner that is not false or misleading.

(11) A licensee does not perform, nor pretend to be able to perform, professional services beyond the licensee's field or fields of competence based on their education, training, supervision, consultation, study or professional experience. Licensees are responsible for keeping current in areas of competence. When working in emerging areas of the profession, the licensee ensures competence through relevant education, training, supervised experience, consultation, or study.

(12) A licensee does not misrepresent professional qualifications, education, experience, or affiliations.

(13) A licensee does not provide what is, or may be reasonably considered, inappropriate, unnecessary, or inadequate treatment or counseling/therapeutic services. A licensee practices within accepted professional standards based on recognized knowledge through research and theoretical best practices.

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

## 833-100-0071

### Assessment, Measurement, Research and Consulting

(1) Licensees who conduct professional services related to counseling do so with regard to high ethical standards.

(2) Licensees conduct proper assessments of clients within their level of competence and base findings on reliable information and techniques sufficient to substantiate their conclusions. Licensees administer, adapt, score, interpret or use assessment techniques, such as tests and measurement instruments, only with training and consistency with therapeutic objectives.

(3) Licensees who conduct research do so with the welfare of participants of primary importance. Ethical research includes informed consent from participants, institutional approval, when appropriate, including measures to protect research participants, and debriefing participants as soon as possible regarding the nature, results and conclusions of the research. The results of research are reported accurately without fabrication or unreported errors.

(4) Licensees who consult or provide services where the client is an organization do so with a high degree of self-awareness of their own values, knowledge, skills, limitations and goals and match these factors with the needs and goals of the organization. It is the licensee's responsibility to ensure agreement on the issues, goals and predicted consequences of consulting interventions.

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

## 833-110-0011

### Response to Complaints

(1) Charges or information, filed by any person, group of persons, or the Board on its own action that a counselor or therapist, licensee, or applicant

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for licensure is incompetent or has committed an act or acts in violation of ORS 675.745, 675.755, or 675.765, the licensing law or rules adopted by the Board including the Code of Ethics will be considered a complaint of professional misconduct.

(2) Charges or information, filed by any person, group of persons, or the Board on its own action that a person who does not hold a valid license issued under ORS 675.715 is or has indicated state licensure as a professional counselor or marriage and family therapist will be considered a complaint of title violation.

(3) The Board will make forms available to the public and encourage complainants to use the Board's form. However, the complaint may be filed in any format, written or oral as long as it:

- (a) Is filed at the Board office;
- (b) Includes a first and last name of the counselor or therapist who is the subject of the complaint; and
- (c) Indicates incompetence, or action that may be considered misconduct or violation of the law or rules administered by the Board.

(4) Upon receipt of a complaint, a complaint file will be opened. The complaint will be immediately assigned to a delegated representative who will conduct a preliminary investigation or review and determine if additional investigation and the assignment of additional investigators is necessary or file a report with the Board recommending the complaint be dismissed without further action.

(5) Additional investigators will be assigned by a delegated representative of the Board and the subject of the complaint will be notified that he/she is under investigation and provided with general information regarding the nature of his/her conduct that is being investigated. Notification may request a written response. Licensees and applicants must cooperate with Board representatives during investigations.

(6) At the conclusion of the investigation, a report will be filed with the Board ORS 676.175-676-180. The report will:

- (a) Describe evidence, summarize witness interviews, and present any disciplinary history with the Board; and
- (b) Be submitted within 120 days from the date the complaint was filed, unless a 30-day extension or subsequent 30-day extensions were granted by a delegate of the Board for just cause, which may include but not be limited to complexity of case, location of evidence or witnesses, unavailability of witnesses, number of other pending actions involving licensee/applicant that affect ability to obtain evidence, ability of investigator to accomplish task due to workload, health, work schedule, or previous personal commitments, end of appointment, termination of employment or contract, or legal actions.

(7) Following review of the investigation report, the Board may dismiss the complaint, issue a warning, propose disciplinary action, propose non-disciplinary action, negotiate a stipulated agreement in lieu of hearing, default, or disciplinary action. Board discussions will be in executive session, closed to the public. Decisions as to action will be voted upon during a public meeting, but case numbers will be used. Decisions to propose disciplinary action, suspension, revocation, or denial of license, will be made known to the public if adopted by a majority vote of the Board. A notice of intent to propose disciplinary action with opportunity for hearing will be issued by the Board Administrator and served upon the applicant or licensee, and may be provided to the complainant.

(8) The Board will maintain written procedures for handling complaints, which will be available through the Board office.

(9) Complaint and information gathered by investigation into licensee or applicant competency or conduct will be kept confidential in accordance with ORS 676.175-676.180. The Board must not reveal when a complaint has been filed nor identify the identity of the person or persons filing the complaint. Only information included in the notice to take disciplinary action voted by a majority of the Board and the final order or stipulated agreement will be available to 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

## 833-110-0021

### Disciplinary Action

(1) The Board will initiate disciplinary actions for failure to meet professional conduct and practice standards, or violation of the licensing law or rules when it determines probable cause of:

- (a) Failure to meet the standards requirements for continuation of licensure that are unlikely to harm clients or the public;
  - (b) Professional misconduct or incompetence capable of causing or resulting in harm to a client or the public; and
  - (c) Title violation.
- (2) Proposed disciplinary actions include, but are not limited to:
- (a) Suspension or revocation of licensure;
  - (b) Refusal to issue or renew a license;
  - (c) Civil penalty of up to \$2,500 per occurrence for violation; and
  - (d) Reprimand, probation, probation with specific conditions.

(3) Negotiated disciplinary actions include, but are not limited to, letter of reprimand, limited suspension, probation, limited practice, education, enrollment in an impaired professional program, rehabilitation, supervision,

therapy, payment of disciplinary costs or civil penalties, or any combination thereof.

(4) Non-disciplinary actions include, but are not limited to, letter of concern; voluntary diversion or enrollment in an impaired professionals program.

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

## 833-120-0011

### Purpose and Scope

(1) The purpose of these rules, OAR 833-120-0011 to 833-120-0041, is to provide for the screening under ORS 181.534 of licensees, registered interns, and applicants for licensure with the Oregon Board of Licensed Professional Counselors and Therapists to determine if they have a history of criminal behavior such that they would be unable to, or should not be allowed to, perform the services of a Licensed Professional Counselor or Licensed Marriage and Family Therapist.

(2) The following persons must take the steps necessary to complete a state or nationwide criminal history check under ORS 181.534:

- (a) A person who, on or after January 1, 2010, submits an application for licensure to the Board in accordance with OAR 833 division 20;
- (b) A licensee or registered intern who, on or after January 1, 2010, submits an application for renewal of their license or status; and
- (c) A licensee or registered intern who is the subject of inquiry or investigation by the board.

(d) Exceptions. In lieu of completing a new state or nationwide criminal history check, a licensee in good standing with the Board may submit verification of a fingerprint-based criminal history check conducted within one year of the license renewal date by a Board approved agency.

(3) A criminal history check of each licensee and registered intern will be conducted at least once every five years as part of the license or internship renewal process.

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

## 833-120-0021

### Requirements

(1) To complete a criminal history check, the Board will require each person to:

- (a) Provide fingerprints on a standard FBI fingerprint card (additional fingerprints may be required if the initial fingerprint card is rejected by OSP or the FBI);
  - (A) Fingerprints must have been taken not more than 60 days prior to submission to the Board.
  - (B) Licensees must submit fingerprints by their license renewal date.
- (b) Provide personal information necessary to obtain the criminal history check; and
- (c) Pay the actual cost to the board of conducting the criminal history check as part of a licensing or application fee, including fees imposed by OSP and for certified court records or documents.

(2) The Board may also request, and the applicant, licensee, or registered intern will provide the following information.

- (a) Responses to a criminal history questionnaire; and
- (b) Written response to questions by the Board regarding the person's criminal history.

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

## 833-120-0031

### Information Considered

(1) In reviewing the information obtained from a criminal history check, the Board will consider the following circumstances related to any criminal conviction, indictment, or pending indictment, arrest, and related information.

- (a) The nature of the crime of which the person has been convicted, indicted, or arrested;
- (b) The facts that support the conviction, indictment, or arrest;
- (c) The relevancy to the specific requirements of the person's position as a licensee or applicant;
- (d) The passage of time since the commission of the crime;
- (e) The age of the person at the time of the crime;
- (f) The likelihood of a repetition of an offense or of the commission of another crime;
- (g) Whether the person accepts responsibility for past actions;
- (h) The commission of other relevant crimes;
- (i) Whether the conviction was set aside and the legal effect of setting aside the conviction;
- (j) A recommendation from an employer who employed the person after the conviction;
- (k) Charges, arrests, and other behavior involving contact with law enforcement;
- (l) Periods of incarceration;

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(m) Compliance with parole, post-prison supervision, or probation;  
(n) Drug or alcohol issues related to criminal activity including history of use, manufacturing, delivery, treatment, rehabilitation, and relapse;  
(o) Other treatment or rehabilitation related to criminal activity includes assessments, evaluations, and risk assessments conducted before, after, or during treatment or rehabilitation;

(p) Protective services investigations or abuse and neglect reports;  
(q) Local or national healthcare practitioner databases; and  
(r) Previous complaints and investigations on file with the Board or any other licensing or professional oversight authority.

(2) False statements are grounds for denial of an application for licensure or disciplinary action authorized under ORS 675.785.

(3) A refusal to submit or consent to a criminal records check including fingerprint identification will result in disciplinary action as mandated by ORS 181.534. In the case of such a refusal by an applicant, the Board will consider the application incomplete and the application will be denied.

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

## 833-120-0041

### Record Keeping and Confidentiality

(1) Information obtained by the board in carrying out its responsibilities under this rule is considered part of an investigation and is confidential under ORS 676.175.

(2) Information obtained from the Law Enforcement Data System is confidential and will be maintained by the Board in accordance with applicable OSP requirements. Copies of LEDS reports will not be shared.

(3) The results of a fingerprint-based national criminal history check provided by the FBI or through OSP are confidential and may not be disseminated by the Board, with the following exceptions:

(a) The subject of a fingerprint-based criminal history check will be provided a copy of the results, if requested; and

(b) The results may be used as exhibits during a contested case hearing.

(4) Challenges to the accuracy or completeness of criminal background information must be made to the reporting agency and not to the Board.

(5) A person against whom disciplinary action is taken by the board on the basis of information obtained as the result of a criminal records check conducted pursuant to this rule is entitled to notice and hearing in accordance with the provisions for contested cases in ORS Chapter 183.

(6) All completed criminal history request forms, other criminal history information and other records collected or developed during the criminal history check process will be kept confidential and only disseminated as allowed by law.

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

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**Rules Adopted:** 833-020-0201

**Rules Amended:** 833-070-0011

**Subject:** 833-070-0011 — Implement the approved fee increase for license applications to cover the cost of criminal background checks. The rule language was omitted recent rule amendments.

833-020-0201 — Amend professional disclosure statement content requirements erroneously omitted from previous rule revisions.

**Rules Coordinator:** Becky Eklund—(503) 378-5499, ext. 26

## 833-020-0201

### Licensee Professional Disclosure Statement

(1) To be approved by the Board, the professional disclosure statement shall include the information set forth in and required by ORS 675.755 and:

(a) The name of the business as part of the business address;

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

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

(d) The bill of rights of clients listed in OAR 833, division 100, Code of Ethics;

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

(f) Oregon licensure requirements for continuing education 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 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.

(2) Professional disclosure statement must be printed on forms no less than 8-1/2 inches wide by 11 inches long, with clear type no smaller than 10 point so as to be easily read by the average person, or be made accessible to people with disabilities.

(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) Exemptions to the professional disclosure statement requirements set forth in ORS 675.755 include:

(a) Applicants for licensure not practicing professional counseling or marriage and family therapy in Oregon, except those seeking registration as an intern, are exempt from filing a professional disclosure statement for board approval.

(b) Licensees not practicing professional counseling or marriage and family therapy in Oregon are exempt from filing and maintaining an approved professional disclosure statement with the board and from distributing a copy to clients.

(c) Licensees providing crisis response are exempt from distributing professional disclosure statements to clients prior to the performance of professional counseling or marriage and family therapy.

(d) Licensees who have submitted a written request and can satisfy the Board that there is good cause to be exempt from specific requirements, including but not limited to: name, practice address and telephone number; fee schedules; or other specific board required information, and have received written exemption from the Board.

Stat. Auth.: ORS 675.785  
Stats. Implemented: ORS 675.755 & 675.785  
Hist.: BLPCT 2-2010(Temp), f. 1-8-10, cert. ef. 1-11-10 thru 7-9-10

## 833-070-0011

### Fees

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

(1) Application for licensure:

(a) Without criminal background check — \$125; or

(b) With criminal background check — \$172.25.

(2) Initial license — \$100.

(3) Annual renewal of license in accordance with OAR 833-120-0011.

(a) Without criminal background check — \$125; or

(b) With criminal background check — \$172.25.

(4) Restoration fee — \$50.

(5) Examination:

(a) For professional counselor license — Candidates will pay exam and exam administration fees to the prescribed examination providers.

(b) For marriage and family therapist license — 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

(a) Without criminal background check — \$80; or

(b) With criminal background check — \$127.25.

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

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## Board of Licensed Social Workers Chapter 877

**Rule Caption:** Adopts and amends rules to change Board name, streamline licensure and mandatory reporting requirements.

**Adm. Order No.:** BLSW 1-2010

**Filed with Sec. of State:** 1-15-2010

**Certified to be Effective:** 1-15-10

**Notice Publication Date:** 12-1-2009

**Rules Adopted:** 877-020-0057, 877-040-0016

**Rules Amended:** 877-010-0000, 877-010-0045, 877-020-0009, 877-020-0030, 877-025-0016, 877-025-0021, 877-030-0040, 877-040-0003

**Subject:** Implements certain Senate Bill 177 (2009) provisions that become law on January 1, 2010, including renaming the Board to "Board of Licensed Social Workers" and defining "practice of social work" in ORS 675.540 as "practice of clinical social work." Streamlines licensing renewal by limiting the requirement to submit continuing education reports and eliminating the requirement for LCSWs to attest to active practice of clinical social work. Specifies Board recognition of accrediting bodies and foreign degree equivalence determination. Specifies application process and requirements

# ADMINISTRATIVE RULES

for former license holders. Conforms Board mandatory reporting requirements to House Bill 2059 (2009).

**Rules Coordinator:** Martin Pittioni—(503) 373-1163

## 877-010-0000

### Board Meetings

The State Board of Licensed Social Workers shall meet at least six times a year to accomplish its work. The Board shall meet at a time and place specified by the Board and at such other times and places as specified on call of the Chair, or a majority of Board members, or by the Governor. Notice of time and place of regularly scheduled, special, and emergency meetings shall be given by notification to the Associated Press, United Press International and other parties who have expressed an interest in the Board's activities.

Stat. Auth.: ORS 675.510 - 675.600

Stats. Implemented: ORS 675.590

Hist.: BCSW 1-1982, f. & ef. 1-29-82; BCSW 1-1986, f. & ef. 7-7-86; BCSW 2-1991, f. & cert. ef. 5-30-91; BCSW 1-2001, f. & cert. ef. 5-4-01; BLSW 1-2010, f. & cert. ef. 1-15-10

## 877-010-0045

### Charges for Materials and Services

(1) All requests for copies of public records pertaining to the State Board of Licensed Social Workers available at the Board office shall be submitted in writing.

(2) Charges for copies, documents, and services shall be as follows:

(a) For machine copies requested by other state agencies and by the general public, the accepted government agency rate per copy.

(b) For documents developed by the Board, an amount fixed by the Board Administrator not exceeding the actual preparation and materials cost per copy.

(c) For both machine copies and documents, an additional amount set at the discretion of the Board Administrator for staff time required for search, handling, and copying.

(3) Charges for the general public may be payable in forms acceptable to the Board. Charges to state agencies may be payable in cash unless billing to such agencies is authorized by the Board Administrator.

Stat. Auth.: ORS 675.510 - 675.600 & 675.900

Stats. Implemented: ORS 675.590

Hist.: BCSW 2-1993, f. & cert. ef. 10-13-93; BCSW 1-2001, f. & cert. ef. 5-4-01; BLSW 1-2010, f. & cert. ef. 1-15-10

## 877-020-0009

### Requirements for Certificate of Clinical Social Work Associate

To be eligible for an initial certificate of clinical social work associate, a person must:

(1) Submit a complete and accurate application on a form provided by the board.

(2) Hold a master's degree in social work from a college or university accredited by a credentialing body recognized by the board. The Council on Social Work Education and the Canadian Association for Social Work Education are recognized by the Board. The Board accepts determinations of equivalency of foreign degrees by the Council on Social Work Education's International Social Work Degree Recognition and Evaluation Service. Submission of proof of foreign degree equivalency and cost of the foreign degree equivalency determination are the responsibility of the applicant.

(3) Submit to the board for approval and, following approval, satisfactorily work toward completing an approved plan of practice and supervision that:

(a) Shows that the person will meet the requirements in OAR 877-020-0010(3) while working in an agency that:

(A) Provides the associate with sufficient support to progress toward licensure;

(B) Screens patients who are served by the agency and by the associate; and

(C) Either:

(i) Is licensed by the Oregon Department of Human Services; or

(ii) If not required to be licensed by the Oregon Department of Human Services, is in compliance with the requirements to conduct business in Oregon.

(b) Requires a minimum of 3,500 practice hours of which at least 2,000 hours must involve direct contact with a client of the agency.

(c) Provides for supervision of the associate that meets the requirements of OAR 877-020-0012.

(d) Provides that the associate meet with the plan supervisor for a minimum of one hour not fewer than two times a month. This requirement of the supervision is not met through a training or administrative activity. The associate may meet alone with the supervisor (individual supervision) or may meet with the supervisor and as many as four other mental health professionals (group supervision).

Stat. Auth.: ORS 675.510 - 675.600 & 675.900

Stats. Implemented: ORS 675.537

Hist.: BCSW 2-1990, f. & cert. ef. 7-13-90; BCSW 2-1991, f. & cert. ef. 5-30-91; BCSW 1-1992, f. & cert. ef. 6-30-92; BCSW 2-1993, f. & cert. ef. 10-13-93; BCSW 1-1999, f. & cert. ef. 4-9-99; BCSW 2-2005, f. & cert. ef. 12-22-05; BCSW 1-2008, f. 6-27-08, cert. ef. 7-1-08; BLSW 1-2010, f. & cert. ef. 1-15-10

## 877-020-0030

### Renewals of Certificates and Licenses

(1) The holder of a certificate or license may renew it by timely submitting the following to the board:

(a) A completed application for renewal.

(b) The fee required by OAR 877-020-0020.

(2) The board will act on an application only if, not later than 30 days after the person's birth month, the complete application and required fee are received by the board.

(3) The board will issue a certificate upon renewal only if the last report required by OAR 877-020-0012(2)(e)(A) has been received by the board and demonstrates that satisfactory progress is being made toward completion of the associate's current board-approved plan of practice and supervision.

(4) The application for renewal of a license must show that the licensee:

(a) Is unaware of any reason for denial of the renewal; and

(b) Has met the requirement for continuing education in division 25 of this chapter of rules.

(5) If the application for renewal of a certificate or license fails to meet the requirements of this rule, the application is incomplete and will not be acted upon by the board.

Stat. Auth.: ORS 675.510 - 675.600, 675.990

Stats. Implemented: ORS 675.560

Hist.: BCSW 1-1982, f. & ef. 1-29-82; BCSW 1-1986, f. & ef. 7-7-86; BCSW 1-1987, f. & ef. 12-29-87; BCSW 2-1991, f. & cert. ef. 5-30-91; BCSW 2-1993, f. & cert. ef. 10-13-93; BCSW 1-1997, f. & cert. ef. 3-25-97; BCSW 1-2001, f. & cert. ef. 5-4-01; BCSW 1-2005(Temp), f. 9-15-05, cert. ef. 10-1-05 thru 3-30-06; BCSW 2-2005, f. & cert. ef. 12-22-05; BCSW 1-2008, f. 6-27-08, cert. ef. 7-1-08; BLSW 1-2010, f. & cert. ef. 1-15-10

## 877-020-0057

### Re-licensing of Former License Holder

(1) A person whose license lapsed (applicant) may apply to the board to receive a new license.

(2) To be eligible for a license, an applicant:

(a) Must meet the degree requirements in OAR 877-020-0009(2).

(b) Must meet the fitness requirements in OAR 877-020-0008(2) and is subject to the provisions of OAR 877-022-0005 as an applicant for a license.

(c) Must not be the subject of a pending investigation or disciplinary action by a regulatory board.

(d) Must have passed the national examination described in OAR 877-020-0008(5) and (6).

(e) May be subject to requirements of the board, determined on an individual basis, to work under a plan of practice and supervision designed to take into account the experience of the applicant, recency of practice, and other factors that pertain to the applicant.

(f) May be subject to requirements of the board, determined on an individual basis, to complete continuing education in specified topics.

(g) Must pass the examination on Oregon statutes and rules described in OAR 877-020-0008(6).

Stat. Auth.: ORS 675.510 - 675.600

Stats. Implemented: ORS 675.510 - 675.600

Hist.: BLSW 1-2010, f. & cert. ef. 1-15-10

## 877-025-0016

### Limitations on Types of Continuing Education

The number of hours creditable in a two-year reporting period is subject to the following provisions:

(1) A licensee must report a total of six or more hours of continuing education in ethics:

(a) In the first biennial report required by OAR 877-025-0021 for a two-year period that ends after January 1, 2009; and

(b) In each alternate biennial report due thereafter.

(2) No more than 10 hours of continuing education described in OAR 877-025-0006(2)(b) may be credited in a report.

(3) No more than 20 hours of continuing education described in OAR 877-025-0006(5) may be credited in a report.

(4) A licensee who reports more than 40 hours for a two-year reporting period or 20 for a one-year reporting period may carry over the excess hours to the next required report. No more than 10 hours may be carried over to the next reporting period.

(5) If the first reporting period is one year rather than two, the limits in sections (2) and (3) of this rule are pro-rated.

Stat. Auth.: ORS 675.510(3), 675.530(1)(3), 675.535(1), 675.537(1)(3), 675.560(2), 675.571(4), 675.595(3), 675.600(1)(a)

Stats. Implemented: ORS 675.510 - 675.600

Hist.: BCSW 1-2008, f. 6-27-08, cert. ef. 7-1-08; BLSW 1-2010, f. & cert. ef. 1-15-10

## 877-025-0021

### Reporting Requirements

(1) Licensees must report the completion of continuing education every two years in a manner prescribed by the board. The report must be made at the time the licensee submits an application to renew a license as follows:

(a) A licensee whose license number ends with an odd number must submit the report with an application for renewal effective in an odd-numbered year.

# ADMINISTRATIVE RULES

(b) A licensee whose license number ends with an even number must submit the report with an application for renewal effective in an even-numbered year.

(2) The report is part of the renewal application and must contain information sufficient to demonstrate that the licensee has met the requirements in this division of rules. A licensee who fails to meet the requirements is subject to a denial of the application for renewal unless the failure was due to circumstances beyond the reasonable control of the licensee and the licensee agrees to a plan to compensate for the deficiency.

(3) The board conducts routine, random audits of compliance with continuing education requirements. Licensees must retain completion certificates, program information, and other documents needed to demonstrate that the licensee met the requirements of this division of rules for a minimum of 24 months after reporting completion of continuing education requirements to the board and must provide them to the board upon request.

Stat. Auth.: ORS 675.510(3), 675.530(1)(3), 675.535(1), 675.537(1)(3), 675.560 (2), 675.571(4), 675.595(3), 675.600(1)(a)  
Stats. Implemented: ORS 675.510 - 675.600  
Hist.: BCSW 1-2008, f. 6-27-08, cert. ef. 7-1-08; BLSW 1-2010, f. & cert. ef. 1-15-10

## 877-030-0040

### Conduct and Reporting Requirements of Regulated Social Workers

(1) Conduct: The following minimum standards of professional conduct apply to regulated social workers:

(a) Private conduct of regulated social workers is a personal matter to the same extent as with any other person, except when that conduct compromises the fulfillment of professional responsibilities.

(b) Regulated social workers may not participate in, condone, or be associated with dishonesty, fraud, deceit, or misrepresentation.

(c) Regulated social workers may not misrepresent their professional qualifications, education, experience, or affiliations.

#### (2) Reporting Requirements:

(a) Regulated social workers must report the following to the Board as soon as practicable, but not later than 10 days after:

(A) Being convicted of a misdemeanor or felony;

(B) Being arrested for a felony crime;

(C) Receiving notice of a civil lawsuit that names the regulated social worker as a defendant and makes allegations related to the regulated social worker's practice of clinical social work or the regulated social worker's license or certificate;

(D) Becoming an in-patient in a psychiatric hospital or psychiatric day treatment facility; or

(E) Receiving notice of a regulatory action related to the regulated social worker's license or certificate.

(b) Regulated social workers must report child and elderly abuse as required by ORS 419B.005 to 419B.050 and 124.050 to 124.095. .

Stat. Auth.: ORS 675.510 - 675.600 & 675.900  
Stats. Implemented: ORS 675.595

Hist.: BCSW 2-1993, f. & cert. ef. 10-13-93; BCSW 1-2001, f. & cert. ef. 5-4-01; BCSW 2-2005, f. & cert. ef. 12-22-05; BCSW 1-2008, f. 6-27-08, cert. ef. 7-1-08; BLSW 1-2010, f. & cert. ef. 1-15-10

## 877-040-0003

### Definitions

The following definitions apply in this division of rules:

(1) "Complainant" — A person or group of persons who files a complaint.

(2) "Complaint" — A mandatory report or an allegation that a person regulated by the board has committed an act that would subject the person to discipline under ORS 675.540. A complaint should specifically describe the conduct complained of to the best of the ability of the complainant

(3) "Consumer Protection Committee" — A committee of one or more board members assigned by the board to fulfill specified functions related to complaints.

(4) "Respondent" — A person regulated by the board against whom a complaint is filed.

(5) "Social work" in ORS 675.540(1)(c) and (1)(d) means "clinical social work" as defined in ORS 675.510(2).

Stat. Auth.: ORS 675.510 - 675.600, 675.900 & 675.990  
Stats. Implemented: ORS 675.595

Hist.: BCSW 1-1986, f. & ef. 7-7-86; BCSW 2-1991, f. & cert. ef. 5-30-91; BCSW 1-1997, f. & cert. ef. 3-25-97; BCSW 1-2001, f. & cert. ef. 5-4-01; BCSW 1-2009, f. 6-15-09, cert. ef. 7-1-09; BLSW 1-2010, f. & cert. ef. 1-15-10

## 877-040-0016

### Reporting Possible Prohibited Conduct to Law Enforcement Agency

(1) If, during the investigation of a complaint, a member of the Consumer Protection Committee or any board member believes a respondent has engaged in prohibited conduct, the committee or member must refer the case as soon as practicable to the board for its review. The board will review the case not later than the next regularly scheduled board meeting and will determine whether it has reasonable cause to believe that the respondent has engaged in prohibited conduct.

(2) If the board concludes there is reasonable cause to believe that the respondent has engaged in prohibited conduct, the board will present the facts to an appropriate law enforcement agency within 10 working days.

(3) In this rule, the term "prohibited conduct" has the same meaning given to it in section 1 (1)(c), chapter 536, Oregon Laws 2009. "Prohibited conduct" means conduct by a licensee that: (a) Constitutes a criminal act against a patient or client; or (b) Constitutes a criminal act that creates a risk of harm to a patient or client." The term "licensee" in the definition includes all regulated social workers.

Stat. Auth.: ORS 675.510 - 675.600  
Stats. Implemented: ORS 675.510 - 675.600  
Hist.: BLSW 1-2010, f. & cert. ef. 1-15-10

## Board of Nursing Chapter 851

**Rule Caption:** Oregon State Board of Nursing to Eliminate Fees for Issuance of a Duplicate Wallet-Sized Card.

**Adm. Order No.:** BN 6-2009

**Filed with Sec. of State:** 12-17-2009

**Certified to be Effective:** 1-1-10

**Notice Publication Date:** 10-1-2009

**Rules Amended:** 851-002-0010, 851-002-0040

**Subject:** These rules cover the agency fees. These rule amendments will eliminate the fee for the Oregon State Board of Nursing to issue duplicate licensure or certificate card.

**Rules Coordinator:** KC Cotton—(971) 673-0638

## 851-002-0010

### RN/LPN Schedule of Fees

(1) License Renewal — \$105;

(2) Delinquent Renewal — \$12;

(3) License by Endorsement — \$155;

(4) Licensure by Examination — \$120;

(5) Written Verification of License — \$12;

(6) Limited Licenses:

(a) License Memorandum — \$25;

(b) Reentry — \$95;

(c) Extension of Reentry — \$25;

(7) Limited Licenses for Educational Experience:

(a) International Graduate Nursing Students — \$65;

(b) Extension of International Graduate Nursing Students — \$25;

(c) International RN in Short-Term Educational Experience — \$35;

(d) International Exchange Students — \$25;

(e) U.S. RNs in Distance Learning — \$15;

(f) Extension of Distance Learning — \$15;

(g) Reexamination for Licensure — \$25;

(9) Reactivation — \$120;

(10) Reinstatement — \$120;

(11) Retired Nurse Status — \$20.

Stat. Auth.: ORS 678.150 & 678.410

Stats. Implemented: ORS 678.410

Hist.: NER 26(Temp), f. & ef. 12-11-75; NER 32, f. & ef. 5-4-76; NER 5-1981, f. & ef. 11-24-81; NER 2-1982, f. & ef. 8-25-82; NER 5-1983, f. 12-9-83, ef. 1-1-84; NER 5-1985, f. 7-30-85, ef. 10-1-85; NER 6-1986, f. & ef. 12-3-86; NB 5-1987, f. & ef. 7-1-87; NB 7-1987, f. & ef. 10-5-87; NB 1-1988, f. & cert. ef. 4-18-88; NB 2-1989, f. 6-22-89, cert. ef. 7-1-89; NB 2-1991, f. 6-14-91, cert. ef. 7-1-91; NB 3-1991, f. & cert. ef. 9-25-91; NB 5-1993, f. 6-15-93, cert. ef. 7-1-93; NB 7-1993, f. & cert. ef. 7-1-93; NB 13-1993, f. & cert. ef. 12-20-93; NB 5-1994, f. & cert. ef. 9-15-94; Renumbered from 851-020-0295; NB 8-1994, f. & cert. ef. 12-7-94; NB 7-1995(Temp), f. & cert. ef. 6-23-95; NB 2-1996, f. & cert. ef. 3-12-96; NB 9-1997, f. 7-22-97, cert. ef. 9-1-97; BN 6-1998(Temp), f. & cert. ef. 7-15-98 thru 12-31-98; Administrative correction 8-5-98; BN 10-1998, f. & cert. ef. 8-7-98; BN 11-1998, f. & cert. ef. 9-22-98; BN 4-1999, f. 5-21-99, cert. ef. 7-1-99, Renumbered from 851-031-0200; BN 11-1999, f. & cert. ef. 12-1-99; BN 6-2000, f. & cert. ef. 4-24-00; BN 17-2002, f. & cert. ef. 10-18-02; BN 6-2003, f. & cert. ef. 7-7-03; BN 5-2007, f. 5-4-07, cert. ef. 7-1-07; BN 5-2009, f. & cert. ef. 10-7-09; BN 6-2009, f. 12-17-09, cert. ef. 1-1-10

## 851-002-0040

### Nursing Assistant Schedule of Fees

(1) Certification by Examination — \$106.

(2) Certification by Endorsement — \$60.

(3) Reexamination — Manual Skills — \$45.

(4) Reexamination — Written — \$25.

(5) Oral Administration of Written Examination — \$35.

(6) Written Verification of Certification — \$10.

(7) CNA Certificate Renewal — \$50.

(8) CNA Reactivation Fee — \$5.

(9) CNA Certification for RN or LPN — \$60.

(10) CNA Certification for Student Nurses. — \$60.

(11) Initial Approval CNA Training Program. — \$100.

(12) Approval of Revised CNA Training Program. — \$75.

(13) Reapproval of CNA Training Program — \$50

(14) CNA Primary Instructor Approval — \$10.

(15) Initial Approval of CNA Program Director — \$25.

(16) CNA 2 Registration (each category) — \$5.

Stat. Auth.: ORS 678.150 & 678.410

Stats. Implemented: ORS 678.410

# ADMINISTRATIVE RULES

Hist.: NB 9-1989(Temp), f. & cert. ef. 11-24-89; NB 5-1990, f. & cert. ef. 5-7-90; NB 7-1990(Temp), f. & cert. ef. 7-11-90; NB 9-1990, f. & cert. ef. 10-9-90; NB 5-1991(Temp), f. & cert. ef. 10-15-91; NB 3-1992, f. & cert. ef. 2-13-92; NB 12-1992, f. 12-15-92, cert. ef. 1-1-93; NB 2-1993, f. 2-8-93, cert. ef. 2-16-93; NB 15-1993, f. 12-27-93, cert. ef. 6-1-94; NB 9-1997, f. 7-22-97, cert. ef. 9-1-97; NB 4-1999, f. 5-21-99, cert. ef. 7-1-99, Renumbered from 851-060-0300; BN 7-1999, f. 8-10-99, cert. ef. 11-1-99; BN 10-1999, f. & cert. ef. 12-1-99; BN 6-2003, f. & cert. ef. 7-7-03; BN 7-2004, f. & cert. ef. 2-26-04; BN 14-2004, f. & cert. ef. 10-26-04; BN 7-2007, f. 6-29-07, cert. ef. 1-1-08; NB 5-2009, f. & cert. ef. 10-7-09; BN 6-2009, f. 12-17-09, cert. ef. 1-1-10

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**Rule Caption:** Oregon State Board of Nursing Fees to Support Prescription Monitoring Fund.

**Adm. Order No.:** BN 7-2009

**Filed with Sec. of State:** 12-17-2009

**Certified to be Effective:** 1-1-10

**Notice Publication Date:** 10-1-2009

**Rules Amended:** 851-002-0020, 851-002-0035

**Subject:** These rules cover the agency fees. These rule amendments will allow a collection of a \$50 biennial fee for those with prescriptive authority, of which 90 percent will be transmitted to the Prescription Monitoring Fund quarterly.

**Rules Coordinator:** KC Cotton—(971) 673-0638

## 851-002-0020

### Nurse Practitioner Schedule of Fees

- (1) Initial Nurse Practitioner Certification — \$150.
- (2) First Category Renewal (combined with Prescriptive Privilege renewal) — \$105.
- (3) Prescription Monitoring Fund (Biennial) — \$50.
- (4) Additional Category Renewal — \$50.
- (5) Delinquent Renewal — \$12.
- (6) Nurse Practitioner Prescriptive Authority Initial Application — \$75.
- (7) Limited License for Reentry or Clinical Practicum — \$95.

Stat. Auth.: ORS 678.150 & 678.410

Stats. Implemented: ORS 678.410

Hist.: NER 26(Temp), f. & ef. 12-11-75; NER 32, f. & ef. 5-4-76; NER 5-1981, f. & ef. 11-24-81; NER 2-1982, f. & ef. 8-25-82; NER 5-1983, f. 12-9-83, ef. 1-1-84; NER 5-1985, f. 7-30-85, ef. 10-1-85; NER 6-1986, f. & ef. 12-3-86; NB 5-1987, f. & ef. 7-1-87; NB 7-1987, f. & ef. 10-5-87; NB 1-1988, f. & cert. ef. 4-18-88; NB 2-1989, f. 6-22-89, cert. ef. 7-1-89; NB 2-1991, f. 6-14-91, cert. ef. 7-1-91; NB 3-1991, f. & cert. ef. 9-25-91; NB 5-1993, f. 6-15-93, cert. ef. 7-1-93; NB 7-1993, f. & cert. ef. 7-1-93; NB 13-1993, f. & cert. ef. 12-20-93; NB 5-1994, f. & cert. ef. 9-15-94; Renumbered from 851-020-0295; NB 8-1994, f. & cert. ef. 12-7-94; NB 7-1995(Temp), f. & cert. ef. 6-23-95; NB 2-1996, f. & cert. ef. 3-12-96; NB 9-1997, f. 7-22-97, cert. ef. 9-1-97; BN 6-1998(Temp), f. & cert. ef. 7-15-98 thru 12-31-98; Administrative correction 8-5-98; BN 10-1998, f. & cert. ef. 8-7-98; BN 11-1998, f. & cert. ef. 9-22-98; BN 4-1999, f. 5-21-99, cert. ef. 7-1-99, Renumbered from 851-031-0200; BN 16-2006, f. & cert. ef. 11-29-06; BN 7-2009, f. 12-17-09, cert. ef. 1-1-10

## 851-002-0035

### Clinical Nurse Specialist Schedule of Fees

- (1) Initial Clinical Nurse Specialist Certification — \$150.
- (2) Renewal of Certification without Prescriptive Authority — \$75.
- (3) Prescription Monitoring Fund (Biennial) — \$50.
- (4) Renewal of Certification with Prescriptive Authority — \$105.
- (5) Clinical Nurse Specialist Prescriptive Authority Initial Application — \$75.
- (6) Delinquent Renewal — \$12.
- (7) Limited License for Reentry or Clinical Practicum — \$95.
- (8) Extension of Limited License — \$95.

Stat. Auth.: ORS 678.150 & 678.410

Stats. Implemented: ORS 678.410

Hist.: BN 4-2001, f. & cert. ef. 2-21-01; BN 16-2006, f. & cert. ef. 11-29-06; BN 7-2009, f. 12-17-09, cert. ef. 1-1-10

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**Rule Caption:** Rules for Approval of Oregon Nurse Practitioner Programs, Requirements for National Certification, and Continuing Education.

**Adm. Order No.:** BN 8-2009

**Filed with Sec. of State:** 12-17-2009

**Certified to be Effective:** 7-1-10

**Notice Publication Date:** 10-1-2009

**Rules Amended:** 851-050-0002, 851-050-0006

**Subject:** These rules cover approval of Oregon nurse practitioner programs, requirements for national certification, and criteria for continuing education for nurse practitioner certification renewal.

**Rules Coordinator:** KC Cotton—(971) 673-0638

## 851-050-0002

### Application for Initial Certification as a Nurse Practitioner

- (1) An applicant for initial certification in Oregon as a nurse practitioner shall:
  - (a) Hold a current unencumbered registered nurse license in the State of Oregon, and

(b) Meet the following educational requirements:

(A) A Master's Degree in Nursing or a Doctorate in Nursing from a CCNE (Commission on Collegiate Nursing Education) or NLNAC (National League for Nursing Accreditation Commission) accredited graduate nursing program or a credentials evaluation from a Board approved credentials service for graduate nursing degrees obtained outside the U.S. which demonstrates educational equivalency to an accredited U.S. graduate nursing degree; and

(B) Satisfactory completion of a Nurse Practitioner Program that meets OAR 851-050-0001 requirements and is specific to the role and role population focus for which application is made.

(C) Nurse practitioner programs completed after January 1, 2005 shall be formally affiliated within a CCNE, ACME (Accreditation Commission for Midwifery Education), or NLNAC accredited graduate level program at the Masters or post-masters graduate level; or an equivalent non-U.S. graduate program as specified in OAR 851-050-0001(11); and

(c) Meet the practice requirement in OAR 851-050-0004; and

(d) As of January 1, 2011 provide verification of current accredited national board certification from a Nurse Practitioner national certification examination which meets criteria in OAR 851-050-0008, congruent with a Board recognized nurse practitioner role and population focus.

(2) An applicant for initial certification in Oregon who has been certified in another state as an advanced practice nurse, and who meets all other requirements for certification, may be certified in Oregon if their program meets the standards of OAR 851-050-0001 and was completed within the following time frames:

(a) Prior to January 1, 1981, completion of a nursing educational program leading to licensure as a registered nurse and subsequent completion of a nurse practitioner program.

(b) As of January 1, 1981, a nurse obtaining Oregon certification shall have a minimum of a baccalaureate degree with a major in nursing and, in addition, satisfactory completion of an educational program in the nurse practitioner specialty area. Specialty preparation obtained within a baccalaureate nursing program does not meet this requirement.

(c) As of January 1, 1986, the minimum educational requirement for Oregon shall be a Masters degree in Nursing with satisfactory completion of an educational program in the nurse practitioner specialty area.

(d) Graduates of schools of nursing outside of the U.S. must submit a credentials evaluation through a Board approved credentials service demonstrating educational equivalency to a U.S. accredited graduate level Masters or Doctoral Degree in Nursing.

(3) The graduate degree requirement may be met prior to, concurrent with, or after completion of the nurse practitioner program.

(4) The following documents shall be submitted as part of the initial application process:

(a) An official transcript of the graduate program, showing degree granted and received directly from the registrar of the university or college.

(b) An official transcript, or other evidence of satisfactory completion of the nurse practitioner program showing all courses, grades, quality points, grade point average, degree granted, date of graduation, and appropriate registrar's signature received by the Board directly from the program or registrar.

(c) Evidence that the nurse practitioner program meets the Board's standards as described in OAR 851-050-0001, including documentation of credentials evaluation as indicated for graduates of programs outside of the U.S.

(5) An applicant for initial certification in Oregon as a nurse practitioner shall meet all requirements for prescriptive authority described in Division 56 and obtain prescribing authority under the provisions of Division 56 of the Oregon Nurse Practice Act.

(6) Revocation, suspension, or any other encumbrance of a registered nurse license held in another state, territory of the United States, or any foreign jurisdiction may be grounds for denial of certification in Oregon.

(7) The applicant shall submit all fees required by the Board with the application. The fees are not refundable. An application for initial certification, which remains incomplete after one calendar year, shall be considered void.

Stat. Auth.: ORS 678.375, 678.380 & 678.390

Stats. Implemented: ORS 678.380 & 390

Hist.: NER 34, f. & ef. 10-1-76; NER 8-1985, f. & ef. 12-9-85; NB 3-1990, f. & cert. ef. 4-2-90; Renumbered from 851-020-0300; NB 12-1990, f. & cert. ef. 12-28-90; NB 3-1993(Temp), f. & cert. ef. 2-26-93; NB 8-1993, f. & cert. ef. 8-23-93; NB 7-1996, f. & cert. ef. 10-29-96; Administrative correction 3-23-98; BN 10-2003, f. & cert. ef. 10-2-03; BN 1-2005, f. & cert. ef. 2-17-05; BN 1-2007, f. & cert. ef. 3-13-07; BN 8-2009, f. 12-17-09, cert. ef. 7-1-10

## 851-050-0006

### Re-Entry Requirements

(1) If the practice requirement in OAR 851-050-0004 has not been met, applicants shall:

(a) Obtain a limited license as a registered nurse in the State of Oregon; or hold a current, unencumbered Oregon registered nurse license.

(b) Submit an application for a limited license, which meets educational requirements of OAR 851-050-0002(1), or an application for delinquent renewal of previous certification as a nurse practitioner in Oregon. An appli-

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cation, which is not completed, becomes void after one year from date of receipt.

(c) Submit a plan of study for approval, which specifies:

(A) Clinical sites, patient population, objectives, competency evaluation, and supervisory relationship of preceptor;

(B) Number of practice hours required and how their completion shall be met,

(C) Eligibility of reentry plan to meet requirements for national board certification from a Nurse Practitioner national certification examination which meets criteria in OAR 851-050-0008, congruent with a Board recognized nurse practitioner role and population focus.

(d) Submit names and qualifications for approval of preceptors which are Oregon certified nurse practitioners and/or Oregon licensed MD/DO physicians in the same specialty area as the nurse practitioner certification specialty.

(e) Determine practice hours in consultation with the Board to ensure one of the following options have been met:

(A) 300 hours of supervised practice if the applicant has practiced less than 960 hours in the last five years, or has completed a nurse practitioner program within the last two years and has not worked a minimum of 192 hours. Advanced practice hours completed during these time frames may be applied to reduce the total number of supervised clinical practice hours required, except that in no case shall the precepted practice be less than 150 hours.

(B) 600 hours of supervised practice if the applicant has not practiced 960 hours in the last five years, but has practiced at least 960 hours in the last six years. Advanced practice hours completed during the six year time frame may be applied to reduce the total number of supervised clinical practice hours required except that in no case shall the precepted practice be less than 300 hours.

(C) 1000 hours of supervised practice if the applicant has not practiced at least 960 hours in the last ten years. Advanced practice hours completed during the ten year time frame may be applied to reduce the total number of supervised clinical practice hours required except that in no case shall the precepted practice be less than 500 hours.

(D) If the applicant has not practiced at least 960 hours within the last ten years, the re-entry requirement shall be met through successful completion of a nurse practitioner post masters certificate program which meets the requirements of OAR 851-050-0001, or of a comprehensive series of nurse practitioner courses within a CCNE or NLNAC accredited nurse practitioner program in the specialty sought. The plan of study shall be submitted in advance for Board approval before enrollment. The plan of study shall cover the entire scope of the advanced specialty area under which the applicant was previously certified/licensed, and must include both clinical and didactic hours. The program of study shall include advanced pharmacology which meets the requirements of OAR 851-056-0008, pathophysiology, physical assessment, differential diagnosis, and clinical management. The institution shall provide documentation, which demonstrates previous credits, courses, or competency testing applied to meet final completion. Proof of completion of this plan of study shall be provided to the Board in the form of official transcripts documenting completion of all required coursework.

(2) In addition to meeting the re-entry practice requirement, all participants will submit evidence of 100 hours of continuing education which meet the standards in OAR 851-050-0138 completed within the last two years by the completion of their re-entry precepted practice. The continuing education hours must include an advanced pharmacology course meeting the criteria in OAR 851-056-0008, physical assessment, treatment modalities, client management and laboratory/diagnostic studies with content related to the NP scope of practice being sought. The continuing education may be obtained in the following ways, provided that no less than 50% is comprised of CME or CE accredited courses at the advanced practice specialty level:

(a) Independent learning activities, e.g. reading professional journals;

(b) Unstructured learning activities, e.g. professional meetings and clinical rounds;

(c) Structured learning activities, e.g. seminars and workshops.

(3) The re-entry participant shall practice under a limited certificate, and successfully complete clinical practice directly supervised by the approved preceptor in the same area of practice. Application for a limited certificate shall be made prior to the beginning of the supervised clinical practice. The limited certificate shall be valid for one year, with one renewal of an additional one year permitted. The supervising practitioner shall submit a final evaluation to the Board to verify that the applicant's knowledge and skills are at a safe and acceptable level and verify the hours of supervised practice. An application for a limited license for re-entry without issuance after one calendar year shall be considered void.

(4) Supervised practice hours shall be without compensation.

(5) Upon successful completion of the supervised practice hours and proof of national Board certification, the full nurse practitioner certificate will be issued with an expiration date that coincides with the applicant's registered nurse license.

(6) Re-entry hours must be completed within a two-year time frame from the issuance of the limited license.

(7) Successful completion of Board approved advanced practice re-entry will satisfy requirements for the registered nurse re-entry.

(8) Prescriptive authority will be issued only upon completion of precepted hours to applicants meeting all criteria in OAR 851-056-0006. Written documents during precepted practice shall be signed with the nurse practitioner specialty title, followed with "Re-entry" and the preceptors co-signature.

(9) The applicant shall submit all fees required by the Board with the application. The fees are not refundable.

Stat. Auth: ORS 678.101, 678.150

Stats. Implemented: ORS 678.380

Hist.: BN 10-2003, f. & cert. ef. 10-2-03; BN 8-2004, f. 5-4-04, cert. ef. 5-12-04; BN 13-2006, f. & cert. ef. 10-5-06; BN 8-2009, f. 12-17-09, cert. ef. 7-1-10

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**Rule Caption:** Rules for Approval of Oregon Nurse Practitioners Programs, Requirements for National Certification, and Continuing Education.

**Adm. Order No.:** BN 9-2009

**Filed with Sec. of State:** 12-17-2009

**Certified to be Effective:** 1-1-10

**Notice Publication Date:** 10-1-2009

**Rules Adopted:** 851-050-0008, 851-050-0142

**Rules Amended:** 851-050-0000, 851-050-0001, 851-050-0004, 851-050-0005, 851-050-0010, 851-050-0138

**Subject:** The rule amendments will allow a credentials evaluation service, such as the Commission on Graduates of Foreign Nursing Schools (CGFNS) or the International Education Research Foundation (IERF) to make a determination whether a specific nurse practitioner graduate program outside the United States is equivalent to a Commission on Collegiate Nursing Education (CCNE) or National League for Nursing Accreditation Commission Inc. (NLNAC) accredited program in the United States.

**Rules Coordinator:** KC Cotton—(971) 673-0638

## 851-050-0000

### Definitions

(1) "Assessment" means a process of collecting information regarding a client's health status including, but not limited to, illness; response to illness; health risks of individuals, families and groups; resources; strengths and weaknesses, coping behaviors; and the environment. The skills employed during the assessment process may include, but are not limited to: obtaining client histories, conducting physical examinations, ordering, interpreting and conducting a broad range of diagnostic procedures (e.g., laboratory studies, EKGs, and x rays).

(2) "Asynchronous learning" means using multiple media for students to access the curriculum without the need to be onsite at the education site.

(3) "Client(s) or patient(s)" means a family, group or individual who has been assessed by and has a client/patient record established by the nurse practitioner.

(4) "Clinical Practice Experience" means the supervised provision of direct patient care in a clinical setting that complements course work and ensures acquisition of advanced practice nursing skills.

(5) "Clinical Preceptor" means health care provider qualified by education and clinical competency to provide direct supervision of the clinical practice experience of students in an Oregon nurse practitioner program.

(6) "Collaboration" means working with another health care provider to jointly provide client care.

(7) "Consultation" means discussion with another health care provider for the purpose of obtaining information or advice in order to provide client care.

(8) "Counseling" means a mutual exchange of information through which advice, recommendations, instruction, or education is provided to the client.

(9) "Delinquent Renewal" means the renewal of a nurse practitioner certificate previously held in Oregon which is expired.

(10) "Diagnosis" means identification of actual or potential health problems or need for intervention, based on analysis of the data collected.

(11) "Direct Supervision" means the clinical preceptor or faculty member physically present at the practice site who retains the responsibility for patient care while overseeing the student and if necessary, redirecting or intervening in patient care and is able to intervene if necessary.

(12) "Evaluation" means the determination of the effectiveness of the intervention(s) on the client's health status.

(13) "Holistic Health Care" means an approach to diagnosis and treatment of clients, which considers the status of the whole person (physical, emotional, social, spiritual, and environmental).

(14) "Initial certification" means the first certification granted by the Board. This may follow the applicant's completion of a nurse practitioner

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program or be granted to an applicant in Oregon who has been recognized by and has practiced as a nurse practitioner in another state or jurisdiction.

(15) "Intervention" means measures to promote health, to protect against disease, to treat illness in its earliest stages, and to manage acute and chronic conditions and/or illness. Interventions may include, but are not limited to: issuance of orders, direct nursing care, prescribing or administering medications or other therapies, and consultation or referral.

(16) "Major curriculum change" means a change that results in a refocus of purpose and objectives or a substantive change in program structure or method of instructional delivery.

(17) "Management" means the provision and/or coordination of the care that the client receives related to physical and psycho-social health-illness status;

(18) "National Board Certification" means current certification as an advanced Nurse Practitioner in a role and population focus through testing accredited by the National Commission on Certifying Agencies or the American Boards of Nursing Specialties, as approved by the Board.

(19) "Nurse Practitioner Educator" refers to a licensed Nurse Practitioner faculty member, who has responsibility for developing and implementing the curriculum, policies, and practices associated with student advising and evaluation, mentoring and collaborating with clinical preceptors and other health care professionals.

(20) "Nurse Practitioner Program Administrator" refers to a licensed Nurse Practitioner appointed by the Dean or Director of the Nursing school who is assigned the responsibility and accountability for the nursing educational program within an accredited academic institution, including those functions aligned with program and curricular design and resource acquisition and allocation.

(21) "Nurse Practitioner" (NP) means an advanced practice registered nurse who is certified by the Board to independently assume responsibility and accountability for the care of clients. The title nurse practitioner and population foci of practice shall not be used unless the individual is certified by the Board.

(22) "Nurse Practitioner Orders" means written or verbal instructions or directions by the nurse practitioner for interventions, diagnostic tests, evaluations, drugs, or treatment modalities. Nurse practitioners may establish protocols and standing orders.

(23) "Oregon Based Nurse Practitioner Program" means an academic program accredited by a nursing organization recognized by the United States Department of Education or the Council of Higher Education Accreditation that offers a graduate degree or graduate level certificate to qualified students.

(24) "Practice requirement" in an expanded specialty role means independent clinical practice in the specialty role of certification providing health care or other such activities, which have a clinical focus and are at an advanced nursing level. These activities include, but are not limited to, teaching, consulting, supervision and research related to the specialty area of certification.

(25) "Provision of Care" means holistic health care, which is continuous and comprehensive. Health care includes:

- (a) Health promotion;
- (b) Prevention of disease and disability;
- (c) Health maintenance;
- (d) Rehabilitation;
- (e) Identification of health problems;
- (f) Management of health problems;
- (g) Referral.

(26) "Referral" means directing the client to other resources for the purpose of assessment or intervention.

(27) "State Certification" means certification to practice as a Nurse Practitioner authorized by the Oregon State Board of Nursing.

Stat. Auth.: ORS 678.375, 678.385, 678.380, 678.385, 678.390  
Stats. Implemented: ORS 678.375, 678.385, 678.380  
Hist.: NB 3-1987, f. & ef. 3-12-87; NB 3-1990, f. & cert. ef. 4-2-90; NB 7-1996, f. & cert. ef. 10-29-96; BN 5-2000, f. & cert. ef. 4-24-00; BN 6-2001, f. & cert. ef. 4-24-01; BN 10-2003, f. & cert. ef. 10-2-03; BN 8-2004, f. 5-4-04, cert. ef. 5-12-04; BN 13-2006, f. & cert. ef. 10-5-06; BN 9-2009, f. 12-17-09, cert. ef. 1-11-10

## 851-050-0001

### Standards for Nurse Practitioner Programs

The Board's standards for all nurse practitioner programs for initial applicants are as follows:

(1) The nurse practitioner program shall be a minimum of one academic year in length; however, programs completed before January 1, 1986 and post-Masters programs completed for the purpose of changing category of nurse practitioner certification may be less than one academic year in length if the program otherwise meets all requirements.

(2) Faculty who teach within the nurse practitioner program shall be educationally and clinically prepared in the same specialty area(s) as the theory and clinical areas they teach and shall include advanced practice nurses.

(3) The curriculum content shall contain theory and clinical experience in the nurse practitioner population focus specified in OAR 851-050-0005(6) for which application is being made, preparing the graduate to meet all competencies within the scope including physical assessment, pharmacology, pathophysiology, differential diagnosis and clinical management.

(4) The number of contact hours of clinical experience shall be equal to or greater than the number of contact hours of nurse practitioner theory. The clinical experience must consist of full scope preparation in the population focus for which application is being made.

(5) Post-graduate Nurse Practitioner programs which prepare an individual for dual role or population focus certification must meet all competencies designated for the Nurse Practitioner role including supervised clinical hours of no less than 500 hours for each role or population focus.

(6) Programs must provide documentation that students meet the program's curriculum requirements in effect at the time of enrollment.

(7) Written program materials shall accurately reflect the mission, philosophy, purposes, and objectives of the program.

(8) Programs shall demonstrate appropriate course sequencing and requirements for matriculation into the program, including completion of all pre-licensure nursing curriculum requirements before advancement into nurse practitioner clinical coursework.

(9) Preceptors shall meet clinical and licensure qualifications for the state in which they practice.

(10) Asynchronous learning programs shall meet all standards of OAR 851-050-0001.

(11) All courses required for completion of the nurse practitioner program must be at the graduate level, if completed after January 1, 1986.

(12) Nurse practitioner programs outside of the United States must meet all standards of OAR 851-050-0001. Such programs shall be determined by Board approved credentials review to be equivalent to graduate nurse practitioner programs offered in the United States which prepare the nurse practitioner for practice within the advanced nursing specialty scope. Nationally recognized accreditation standards may be applied by the Board at the Board's discretion, in accordance with the Oregon Office of Degree Authorization regulations.

(13) The Board's additional requirements for Oregon based Nurse Practitioner programs are as follows: The Dean or Director of the Nursing school which provides one or more Nurse Practitioner programs/tracks shall ensure that one or more qualified faculty are appointed and have defined position responsibility to address the administrative functions of the program/track. Administrative functions include budget and resource preparation, curricular design, oversight of program implementation and evaluation. The appointed faculty and preceptor(s) in the program shall meet the following requirements:

Nurse Practitioner Program Faculty, Administration and Preceptors

(a) Nurse Practitioner Program Administrator who has overall responsibility for one or more NP tracks shall meet the following requirements:

(A) A current active unencumbered Oregon Nurse Practitioner state certificate;

(B) National certification as a Nurse Practitioner in at least one population focus area;

(C) A doctoral degree in a health-related field;

(D) Educational preparation or experience in teaching and learning principles for adult education, including curriculum development and administration and at least two years of current clinical experience which meets Oregon's practice requirements;

(E) In a multi-track program, where only one Program Administrator is appointed by the Dean or Director of the school, there must be evidence of additional program administrators or lead Nurse Practitioner faculty to provide oversight for student supervision who are nationally certified in that specific program's population focus.

(b) The Nurse Practitioner Program Educator shall meet the following requirements:

(A) A current active unencumbered Oregon Nurse Practitioner state certificate;

(B) An earned doctoral degree in nursing; or

(C) A masters degree with a major in nursing and an appropriate advanced practice nurse credential; and

(D) Two years of clinical experience as a Nurse Practitioner; and

(E) Current knowledge, competence, and certification as a Nurse Practitioner in the population foci consistent with teaching responsibilities;

(F) Adjunct clinical faculty employed solely to supervise clinical nursing experiences of students shall meet all the faculty requirements.

(c) Clinical Preceptors in the Nurse Practitioner program shall meet the following requirements:

(A) Student preceptor ratio shall be appropriate to accomplishment of learning objectives, to provide for patient safety, and to the complexity of the clinical situation;

(B) Oregon licensure or certification appropriate to the health professional area of practice;

(C) Functions and responsibilities for the preceptor shall be clearly documented in a written agreement between the agency, the preceptor, and the clinical program

(D) Initial experiences in the clinical practicum and a majority of the clinical experiences shall be under the supervision of clinical preceptors who are licensed advanced practice registered nurses.

(d) Nurse Practitioner Educator responsibilities shall include:



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(A) Making arrangements with agency personnel in advance of the clinical experience which provides and verifies student supervision, preceptor orientation, and faculty defined objectives;

(B) Monitoring student assignments, making periodic site visits to the agency, evaluating students' performance on a regular basis with input from the student and preceptor, and availability for direct supervision during students' scheduled clinical time;

(C) Providing direct supervision by a qualified faculty or experienced licensed clinical supervisor as required for patient safety and student skill attainment.

(e) Nurse Practitioner Program Administrator responsibilities shall include:

(A) Ensuring appropriate student faculty ratios to meet program goals and objectives;

(B) Provision of leadership and accountability for the administration, planning, implementation and evaluation of the program;

(C) Preparation and administration of the program budget;

(D) Facilitation of faculty recruitment, development, performance review, promotion and retention;

(E) Assurance that cooperative agreements with clinical practice sites are current.

Program Accreditation Required and Board Notification Process

(f) Upon receipt from the national accrediting agency, and no later than 90 days from enactment of these rules, currently accredited programs that prepare nurse practitioners for state certification under these rules and requirements shall submit to the Board:

(A) A copy of their most recent program self-evaluation reports;

(B) Documentation of current accreditation from all national nursing accrediting agencies; and

(C) Interim reports reviewed by the national nursing accreditation agency.

(g) Programs which prepare nurse practitioners for state certification under development or pre-accreditation review shall submit the following for review by the Board:

(A) Copies of the curricula within 30 days of sending the information to the accrediting agency;

(B) Copies of self-evaluation reports and any interim reports provided to all national nursing accreditation agencies, at the time of notification from the accrediting agency that the program has not been fully accredited;

(C) Verification of accreditation from all accrediting agencies within 30 days of receipt by the program;

(D) Annual reports which enable the monitoring of continued compliance with Board requirements.

(h) Grounds for denial of graduate nurse practitioner applicants for initial certification include failure of the Oregon based Nurse Practitioner program to:

(A) Maintain accreditation status through the National League for Nursing Accreditation Commission, Commission on Collegiate Nursing Education, or Accreditation Commission for Midwifery Education;

(B) Submit curricula, self-evaluation reports, interim reports or notice of accreditation reports as required by the Board.

Approval of a New Nurse Practitioner Educational Program

(i) Any university or college wishing to establish a Nurse Practitioner education program must make application to the Board on forms supplied by the Board no later than one year before proposed enrollment of students.

(j) The following information must be included with the initial application along with supporting documentation:

(A) Purpose for establishing the nursing education program;

(B) Community needs and studies made as the basis for establishing a nursing education program;

(C) Type of program including clear identification of proposed licensure role and population foci for graduates;

(D) Accreditation status, relationship of educational program to parent institution;

(E) Financial provision for the educational program;

(F) Potential student enrollment;

(G) Provision for qualified faculty;

(H) Proposed clinical facilities and other physical facilities;

(I) Proposed time schedule for initiating the program. If initial approval is denied, the applicant may request a hearing before the Board and the provisions of the Administrative Procedures Act shall apply. Survey of Nurse Practitioner Programs Survey Criteria

(k) Board representatives will conduct in person visits to nursing programs for the following purposes:

(A) Review of application for initial program approval;

(B) Initial and continuing full approval of an educational program;

(C) Receipt by the Board of cause for review including but not limited to:

(i) Significant curricular change which includes addition of a new state certification recognized population focus or role;

(ii) Evidence that graduates fail to meet national certification criteria;

(iii) Violation of Board standards.

(D) If approval is denied or withdrawn, the applicant may request a hearing before the Board and the provisions of the Administrative Procedures Act shall apply.

(l) Board representatives will contact nursing programs to schedule site visits:

(A) Within 60 days of receipt of an application for initial program approval;

(B) Upon receipt of national accreditation report for existing programs; one year after implementation of new programs, every 3-5 years for continuing approval;

(C) Within 30 days of receipt of a complaint.

(D) For purposes of reviewing a major curriculum change.

Stat. Auth.: ORS 678.380, 678.150

Stats. Implemented: ORS 678.380, 678.150

Hist.: NB 3-1990, f. & cert. ef. 4-2-90; NB 8-1993, f. & cert. ef. 8-23-93; BN 10-2003, f. & cert. ef. 10-2-03; BN 13-2006, f. & cert. ef. 10-5-06; BN 9-2009, f. 12-17-09, cert. ef. 1-1-10

## 851-050-0004

### Nurse Practitioner Practice Requirements

(1) The practice requirement as a nurse practitioner must be met through practice, which meets the definition in OAR 851-050-0000(17) in the following manner:

(a) Completion of a nurse practitioner program within the past one year;

or

(b) Completion of a nurse practitioner program within the past two years and a minimum of 192 hours of practice as a nurse practitioner; or

(c) 960 hours of nurse practitioner practice within the five years preceding certification application or renewal; or

(d) Completion of a Board supervised advanced practice re-entry program which meets the requirements of OAR 851-050-0006 within two years immediately preceding issuance of certification under a limited or registered nurse license and a limited nurse practitioner certificate.

(2) The prior practice as a registered nurse requirement for nurse practitioner applicants is as follows:

(a) All initial applicants must provide documentation of a minimum of 384 hours of registered nurse practice, which includes assessment and management of clients and is not completed as an academic clinical requirement or continuing education program.

(b) The applicant shall verify completion of the required hours before issuance of the nurse practitioner certificate.

(c) This requirement shall be waived for individuals practicing in the specialty area as a licensed certified nurse practitioner in another state for at least 384 hours in the advanced practice role.

(3) All practice hours claimed are subject to audit and disciplinary action for falsification.

(4) A nurse practitioner student may participate in supervised clinical practicum in Oregon provided he or she meets the following requirements:

(a) A current, unencumbered registered nurse license in Oregon;

(b) Enrollment in a nurse practitioner program accredited by a United States Department of Education or the Council of Higher Education Accreditation approved national accrediting body;

(c) Submission of a written, signed agreement between the nursing program responsible for the student and the Oregon licensed preceptor;

(d) Identification of the faculty advisor accountable for general supervision from the nurse practitioner program; and

(e) Verification of regional accreditation and/or Board of Nursing approval from the state in which the program originates.

Stat. Auth.: ORS 678.375, 678.380 & 678.390

Stats. Implemented: ORS 678.380 & 390

Hist.: BN 10-2003, f. & cert. ef. 10-2-03; BN 8-2004, f. 5-4-04, cert. ef. 5-12-04; BN 9-2009, f. 12-17-09, cert. ef. 1-1-10

## 851-050-0005

### Nurse Practitioner Scope of Practice

(1) Purpose of Scope of Practice:

(a) To establish acceptable levels of safe practice for the nurse practitioner.

(b) To serve as a guide for the Board to evaluate nurse practitioner practice.

(c) To distinguish the scope of practice of the nurse practitioner from that of the registered nurse.

(2) The role of the nurse practitioner will continue to expand in response to societal demand and new knowledge gained through research, education, and experience.

(3) The nurse practitioner provides holistic health care to individuals, families, and groups across the life span in a variety of settings, including hospitals, long term care facilities and community based settings.

(4) Within his or her specialty, the nurse practitioner is responsible for managing health problems encountered by the client and is accountable for health outcomes. This process includes:

(a) Assessment;

(b) Diagnosis;

(c) Development of a plan;

(d) Intervention;

(e) Evaluation.

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(5) The nurse practitioner is independently responsible and accountable for the continuous and comprehensive management of a broad range of health care, which may include:

- (a) Promotion and maintenance of health;
- (b) Prevention of illness and disability;
- (c) Assessment of clients, synthesis and analysis of data and application of nursing principles and therapeutic modalities;
- (d) Management of health care during acute and chronic phases of illness;

(e) Admission of his/her clients to hospitals and/or health services including but not limited to home health, hospice, long term care and drug and alcohol treatment;

- (f) Counseling;
- (g) Consultation and/or collaboration with other health care providers and community resources;
- (h) Referral to other health care providers and community resources;
- (i) Management and coordination of care;
- (j) Use of research skills;
- (k) Diagnosis of health/illness status;

(l) Prescribing, dispensing, and administration of therapeutic devices and measures, including legend drugs and controlled substances as provided in Division 56 of the Oregon Nurse Practice Act, consistent with the definition of the practitioner's specialty category and scope of practice.

(6) The nurse practitioner scope of practice includes teaching the theory and practice of advanced practice nursing.

(7) The nurse practitioner is responsible for recognizing limits of knowledge and experience, and for resolving situations beyond his/her nurse practitioner expertise by consulting with or referring clients to other health care providers.

(8) The nurse practitioner will only provide health care services within the nurse practitioner's scope of practice for which he/she is educationally prepared and for which competency has been established and maintained. Educational preparation includes academic coursework, workshops or seminars, provided both theory and clinical experience are included.

(9) The scope of practice as previously defined is incorporated into the following specialty categories and further delineates the population served:

(a) Acute Care Nurse Practitioner (ACNP) — The Acute Care Nurse Practitioner independently provides health care to persons who are acutely or critically ill;

(b) Adult Nurse Practitioner (ANP) The Adult Nurse Practitioner independently provides health care to adolescents and adults;

(c) Nurse Midwife Nurse Practitioner (NMNP) The Nurse Midwife Nurse Practitioner independently provides health care to women, focusing on pregnancy, childbirth, the postpartum period, care of the newborn, and the family planning and gynecological needs of women. The scope of practice includes treating the male partners of their female clients for sexually transmitted diseases, and reproductive health. Counseling related to sexuality, relationship, and reproductive issues is included in this scope.

(d) Family Nurse Practitioner (FNP) The Family Nurse Practitioner independently provides health care to families and to persons across the lifespan;

(e) Geriatric Nurse Practitioner (GNP) The Geriatric Nurse Practitioner independently provides health care to older adults;

(f) Neonatal Nurse Practitioner (NNP) — The Neonatal Nurse Practitioner independently provides health care to neonates and infants.

(g) Pediatric Nurse Practitioner (PNP) The Pediatric Nurse Practitioner independently provides health care to persons newborn to young adulthood;

(h) Psychiatric/Mental Health Nurse Practitioner (PMHNP) The Psychiatric/Mental Health Nurse Practitioner independently provides health care to clients with mental and emotional needs and/or disorders;

(i) Women's Health Care Nurse Practitioner (WHCNP) The Women's Health Care Nurse Practitioner independently provides health care to adolescent and adult females. The scope of practice includes treating the male partners of their female clients for sexually transmitted diseases and reproductive health. Counseling related to sexuality, relationship, and reproductive health is included in this scope.

Stat. Auth.: ORS 678.380, 678.395

Stats. Implemented: ORS 678.380

Hist.: NB 3-1987, f. & ef. 3-12-87; NB 3-1990, f. & cert. ef. 4-2-90; NB 1-1992, f. & cert. ef. 2-13-92; NB 7-1992, f. & cert. ef. 7-15-92; NB 4-1994, f. & cert. ef. 8-2-94; NB 9-1994, f. & cert. ef. 12-7-94; NB 2-1995, f. & cert. ef. 4-12-95; NB 7-1996, f. & cert. ef. 10-29-96; NB 6-1997, f. & cert. ef. 5-13-97; BN 10-2003, f. & cert. ef. 10-2-03; BN 13-2006, f. & cert. ef. 10-5-06; BN 9-2009, f. 12-17-09, cert. ef. 1-1-10

## 851-050-0008

### Criteria for Evaluating Nurse Practitioner National Certification Examinations

The Board shall determine whether a certification examination can be used to fulfill the requirement for licensure of nurse practitioners based upon verification the following standards:

- (1) The certification program is national in its scope of credentialing.
- (2) Conditions for taking the examination are consistent with acceptable standards of the testing community.

(3) Educational requirements include completion of a graduate advanced practice education program of study in the area of nursing certification.

(4) Educational requirements are consistent with a Board recognized advanced practice role and population foci and include a minimum of 500 hours of supervised clinical practice.

(5) Certification examinations meet the criteria of the National Commission on Certifying Agencies or the American Board of Nursing Specialties.

(6) The examination represents entry-level practice in the nurse practitioner role and population focus.

(7) The certification program demonstrates and maintains an established process of secure communication with the Board of Nursing.

(8) The examination represents the knowledge, skills and abilities for safe advanced nursing care based upon incumbent job analysis and logical job analysis studies.

(9) Examination items are reviewed for content validity and correct scoring using an established mechanism before use and at least every five years.

(10) Examinations are evaluated for psychometric performance with passing standards re-evaluated at least every five years.

(11) Examination security is maintained through established procedures.

(12) Certification is issued based upon meeting all certification requirements and passing the examination.

(13) A re-take policy is in place.

(14) The certification program has mechanisms in place for communication to Boards of Nursing in a timely manner when individuals are certified, recertified, when there is a change in certification status; and when there are changes in the certification program including qualifications, test plan, and scope of practice.

(15) A certification maintenance program, which includes review of qualifications and continued competence is in place.

(16) The Board has a secure mechanism for timely verification of an individual's certification status, changes in certification status, and changes in the certification program requirements including qualifications, test plan and scope of practice; and

(17) An evaluation process is in place to provide quality assurance in the certification program.

Stat. Auth.: ORS 678.380

Stats. Implemented: ORS 678.380

Hist.: BN 9-2009, f. 12-17-09, cert. ef. 1-1-10

## 851-050-0010

### Special Provisions

State of Oregon:

(1) Any nurse practitioner who has been certified by the Oregon State Board of Nursing is eligible to apply for re-certification, renewal, re-entry, or reactivation in that same category.

(2) Any nurse practitioner active in practice, whether with direct or indirect patient care, shall report their current practice address or addresses. Each change in practice setting and mailing address must be submitted to the Board no later than 30 days after the change.

(3) The Board shall notify national board certification programs when nurse practitioners have encumbrances placed on their state certification, prescriptive or dispensing authority.

Stat. Auth.: ORS 678.380

Stats. Implemented: ORS 678.380

Hist.: NB 3-1987, f. & ef. 3-12-87; NER 34, f. & ef. 10-11-76; NER 8-1985, f. & ef. 12-9-85; NB 3-1990, f. & cert. ef. 4-2-90; Renumbered from 851-020-0320; NB 12-1990, f. & cert. ef. 12-28-90; NB 11-1992, f. & cert. ef. 12-15-92; NB 3-1993(Temp), f. & cert. ef. 2-26-93; NB 8-1993, f. & cert. ef. 8-23-93; NB 2-1995, f. & cert. ef. 4-12-95; NB 7-1996, f. & cert. ef. 10-29-96; BN 10-2003, f. & cert. ef. 10-2-03; BN 9-2009, f. 12-17-09, cert. ef. 1-1-10

## 851-050-0138

### Renewal of Nurse Practitioner State Certification

(1) Renewal of state certification shall be on the same schedule as the renewal system of the registered nurse license. The requirements for recertification are:

(a) Current unencumbered license as a registered nurse in the state of Oregon.

(b) Submission of all required application fees. Fees are not refundable. An application that has not been completed during the current biennial renewal cycle shall be considered void.

(c) Completion of 100 clock hours of continuing education related to advanced practice nursing and to the area(s) of population focus certification.

(d) Verification of current national Board certification in a role and population focus congruent with educational preparation and current Oregon nurse practitioner certification. Proof of National board certification may be used to meet structured accredited continuing education course requirements for the current renewal cycle for up to 50% of the total CE requirement.

(e) Verification of practice hours which meet the practice requirement in OAR 851-050-0004.

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(f) Verification of utilization of prescriptive authority which meets the requirements specified in 851-056-0014 unless already certified as an Oregon Nurse Practitioner without prescriptive authority.

(2) An applicant for renewal who has graduated from the nurse practitioner program less than two years prior to his/her first renewal will not be required to document the full 100 clock hours of continuing education. The applicant's continuing education will be prorated on a monthly basis based on the length of time between graduation and the date of the first renewal.

(3) Nurse practitioners shall maintain accurate documentation and records of any claimed continuing education and practice hours for no less than five years from the date of submission to the Board.

(4) Renewal shall be denied if the applicant does not meet the practice, prescribing, or continuing education requirement for renewal.

(5) Applications for renewal past the expiration date shall meet all requirements for renewal and pay a delinquent fee. Applications which are 60 or more days late require reactivation.

(6) Any individual whose nurse practitioner certification is expired may not practice or represent themselves as a nurse practitioner in Oregon until state certification is complete, subject to civil penalty.

(7) Any individual initially licensed after January 1, 2011 whose nurse practitioner national certification is expired may not practice or represent themselves as a nurse practitioner in Oregon regardless of state certification subject to civil penalty.

Stat. Auth.: ORS 678.375 & 678.380

Stats. Implemented: ORS 678.380

Hist.: NER 34, f. & ef. 10-1-76; NER 5-1981, f. & ef. 11-24-81; NER 8-1985, f. & ef. 12-9-85; NB 3-1990, f. & cert. ef. 4-2-90; Renumbered from 851-020-0310; NB 2-1992, f. & cert. ef. 2-13-92; NB 8-1993, f. & cert. ef. 8-23-93; NB 7-1996, f. & cert. ef. 10-29-96; BN 10-2003, f. & cert. ef. 10-2-03; BN 8-2004, f. 5-4-04, cert. ef. 5-12-04; BN 13-2006, f. & cert. ef. 10-5-06; BN 7-2008, f. & cert. ef. 11-26-08; BN 9-2009, f. 12-17-09, cert. ef. 1-1-10

## 851-050-0142

### Standards for Continuing Education for Nurse Practitioners

As of January 2, 2007, no less than 50% of required continuing education shall be comprised of CME or CE accredited courses at the advanced practice specialty level. Continuing education hours shall be documented on the renewal form which is subject to audit.

(1) Continuing education must be obtained in the following ways:

(a) Independent learning activities e.g., reading professional journals;

(b) Unstructured learning activities, e.g. professional meetings and clinical rounds;

(c) Structured learning activities, e.g. seminars and workshops.

(2) Structured learning activities shall meet the following criteria for the purpose of renewal:

(a) Accreditation by one of the following organizations:

(A) American Academy of Family Physicians (AAFP);

(B) American Academy of Nurse Practitioners (AANP);

(C) American Academy of Physician Assistants (AAPA);

(D) American College of Nurse-Midwives (ACNM);

(E) American Psychiatric Association (APA);

(F) American Psychiatric Nurses Association (APNA);

(G) American Psychological Association (APA);

(H) Emergency Nurses Association (ENA);

(I) National Association of Nurse Practitioners in Women's Health (NPWH);

(J) National Association of Pediatric Nurse Practitioners (NAPNAP);

(K) Accreditation Council for Continuing Medical Education (ACCME) (includes CME);

(L) Accreditation Council for Pharmacy Education (ACPE) (includes CPE);

(M) American Nurses Credentialing Center (ANCC) or

(b) Accreditation by a state Board of Nursing or state Nurses Association. Or

(c) National board certification in a Board recognized Nurse Practitioner population focus meeting the criteria of 851-050-0008.

Stat. Auth.: ORS 678.380

Stats. Implemented: ORS 678.380

Hist.: BN 9-2009, f. 12-17-09, cert. ef. 1-1-10

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**Rule Caption:** Rules Change Classroom and Lab Instructor to Student Ratios for Nursing Assistants.

**Adm. Order No.:** BN 10-2009

**Filed with Sec. of State:** 12-17-2009

**Certified to be Effective:** 12-17-09

**Notice Publication Date:** 10-1-2009

**Rules Amended:** 851-061-0090

**Subject:** These rules cover the standards for training programs for Nursing Assistants and Medication Aides. This rule amendment would change classroom and lab instructor student ratios for Nursing Assistant and medication Aides training.

**Rules Coordinator:** KC Cotton—(971) 673-0638

## 851-061-0090

### Standards for Program Approval: Curriculum

(1) Board-approved curriculum shall be used in approved nursing assistant level 1 and medication aide training programs.

(2) A nursing assistant level 1 training program shall consist of:

(a) At least 150 hours of instruction divided into 75 hours of classroom instruction and 75 hours of supervised clinical experience;

(b) At least 24 hours of supervised classroom/laboratory instruction with return student demonstrations of learned skills to determine comprehension and competency, in addition to facility orientation, preceding the students' care of clients; and

(c) At least 75 hours of supervised clinical experience in a hospital, licensed nursing, residential, or assisted living facility that has a registered nurse on duty during all scheduled student clinical hours and is in substantial compliance with all standards of licensure.

(3) An on-line nursing assistant level 1 training program shall consist of:

(a) At least the equivalent of 51 hours according to the nationally recognized standard of content to credit ratio;

(b) At least 24 hours of supervised laboratory instruction provided no later than two weeks after the successful completion of the on-line portion of the curriculum. The laboratory portion of the program shall include return student demonstration of learned skills to determine comprehension and competency, in addition to facility orientation, preceding the students' care of clients;

(c) At least 75 hours of supervised clinical experience in a hospital, licensed nursing, residential, or assisted living facility that has a registered nurse on duty during all scheduled student clinical hours and is in substantial compliance with all standards of licensure;

(d) Ongoing technical support service(s) to sustain the electronically offered program including provisions for staffing, reliability, privacy, and security; and

(e) Ongoing technical support service(s) for students on each required educational technology hardware, software, and delivery system.

(4) A nursing assistant level 2 training program will have Board approved:

(a) Standardized category curriculum that may vary in training hours from other Board approved standardized category curricula; and

(b) Competency evaluation.

(5) Medication aide training program classroom and clinical instruction hours:

(a) A medication aide training program shall consist of at least 80 hours of instruction divided into at least 24 hours of classroom instruction and at least 24 hours of 1:1 supervised clinical experience.

(b) All clinical hours shall be completed at one site (licensed nursing facility, hospital, assisted living facility, or residential care facility).

(c) All required clinical hours shall be in medication administration related activities.

(6) Admission requirements for medication aide training programs shall be:

(a) Current, unencumbered CNA 1 status on the Oregon CNA Registry maintained by the Board;

(b) Documentation of graduation from an approved basic nursing assistant level 1 training program at least six months prior to enrollment in the medication aide training program; and

(c) Documentation of at least six months full time experience as a nursing assistant level 1 or the equivalent in part time experience since graduation from a basic nursing assistant training program.

(7) Classroom and clinical faculty/student ratios for nursing assistant level 1, level 2, and medication aide training programs:

(a) Classroom:

(A) The ratio of students per instructor in the classroom shall be such that each trainee is provided with registered nurse assistance and supervision and be no more than 30 students per instructor for nursing assistant level 1 training programs, 20 students per instructor for medication aide training programs, and 32 students per instructor for CNA level 2 training programs.

(B) The amount of students assigned per instructor with self-directed, on-line instruction shall be such that each trainee is provided with consultation and additional clarification by a Board approved instructor within 72 hours of a trainee's inquiry.

(C) The ratio of students per instructor with instructor-directed, on-line instruction shall be such that each trainee is provided with consultation and additional clarification by a Board approved instructor within 72 hours of a trainee's inquiry, and the class size shall be no more than 20 students per instructor per on-line classroom.

(b) Lab: The ratio of students per instructor in nursing assistant level 1, level 2, and medication aide training programs shall be no more than 10 students per instructor at all times during the lab experience.

(c) Clinical:

(A) The ratio of students per instructor in a nursing assistant level 1 training program shall be no more than 10 students per instructor at all times during the clinical experience.

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(B) The ratio of students per instructor in a nursing assistant level 2 training program shall be no more than 8 students per instructor at all times during the clinical experience.

(C) The ratio of students per instructor in a medication aide training program shall begin with a ratio of one clinical preceptor to one medication aide student during the first 24 hours of the clinical experience. Less intensive supervision (either more students per preceptor or less direct supervision by preceptor) may occur after the first 24 hours, with satisfactory evaluation and approval of the clinical preceptor and primary instructor.

(8) Clinical experience and demonstration of competency for nursing assistant level 1 and medication aide training programs:

(a) A clinical schedule shall be prepared for all students prior to the beginning of the clinical experience, and provided to the clinical facility director of nursing, the clinical instructor/preceptor, and the student.

(b) Student practice and demonstration of competency for nursing assistant level 1 and medication aide training programs:

(A) Students may provide direct client care within their authorized duties under the supervision of an approved instructor.

(B) Students shall be identified as students at all times while in the clinical area.

(C) Students must not be counted as staff or utilized as staff during the hours that are scheduled for clinical experience.

(D) Students may be on a unit, floor or wing of a facility only under direct supervision of a qualified instructor.

(E) Students shall not be on a unit, floor, or wing without a CNA or licensed nurse.

(F) Students shall provide care only to the level they have been taught and determined competent by the approved clinical instructor.

(c) In addition, for medication aide training programs, the clinical experience shall consist of a minimum of 10 medication passes to a minimum of five residents/patients during the first 20 hours of supervised clinical experience;

(9) Program completion:

(a) Completion of a nursing assistant level 1 or medication aide training means that:

(A) The student has successfully completed 100% of the required classroom and clinical hours and content in the curriculum;

(B) The student has successfully demonstrated the required skills on the laboratory and clinical skills checklist;

(C) The student has achieved a score of 75% or higher on the program's final examination;

(D) The student has successfully completed the clinical portion of the program no later than four months following the last date of classroom instruction or within four months after the successful completion of the on-line portion of the program; and

(E) In addition, for nursing assistant level 1 training programs, the student has successfully completed current, adult CPR certification in accordance with Board-approved curriculum.

(b) Completion of a nursing assistant level 2 training means that:

(A) The student has successfully completed 100% of the required classroom and clinical hours and content in the curriculum; and

(B) The student has successfully completed the competency evaluation.

Stat. Auth.: ORS 678.440 & 678.444

Stats. Implemented: ORS 678.444

Hist.: BN 6-1999, f. & cert. ef. 7-8-99; BN 15-2002, f. & cert. ef. 7-17-02; BN 1-2004, f. 1-29-04, cert. ef. 2-12-04; BN 11-2004, f. & cert. ef. 7-13-04; BN 12-2005, f. & cert. ef. 12-21-05; BN 7-2006, f. & cert. ef. 5-8-06; BN 2-2008, f. & cert. ef. 2-25-08; BN 1-2009, f. & cert. ef. 5-15-09; BN 10-2009, f. & cert. ef. 12-17-09

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**Rule Caption:** Changes Made in Authorized Duties for CNA 1s and 2s.

**Adm. Order No.:** BN 11-2009

**Filed with Sec. of State:** 12-17-2009

**Certified to be Effective:** 12-17-09

**Notice Publication Date:** 10-1-2009

**Rules Amended:** 851-063-0030, 851-063-0035

**Subject:** These rules cover the standards and authorized duties for Certified Nursing Assistants and Certified Medication Aides. The revisions in these rule amendments are to make changes in the authorized duties for CNA 1s and CNA 2s.

**Rules Coordinator:** KC Cotton—(971) 673-0638

## 851-063-0030

### Authorized Duties and Standards for Certified Nursing Assistants

(1) Under the supervision of a licensed nurse, the CNA may only provide care and assist clients with the following tasks related to the activities of daily living:

(a) Tasks associated with personal care:

(A) Bathing;

(B) Dressing;

(C) Grooming;

(D) Shaving;

(E) Shampooing and caring for hair;

(F) Providing and assisting with oral hygiene and denture care;

(G) Caring for the skin;

(H) Caring for the nails;

(I) Providing peri care;

(J) Bedmaking and handling linen;

(K) Maintaining environmental cleanliness;

(L) Applying non-prescription pediculicides;

(M) Applying topical, non-prescription barrier creams and ointments for prophylactic skin care; and

(N) Turning oxygen on and off or transferring between wall and tank at pre-established flow rate for stable clients.

(b) Tasks associated with maintaining mobility:

(A) Ambulating;

(B) Transferring;

(C) Transporting;

(D) Positioning;

(E) Turning;

(F) Lifting;

(G) Elevating extremities;

(H) Performing range of motion exercises; and

(I) Maintaining alignment.

(c) Tasks associated with nutrition and hydration:

(A) Feeding and assisting client with eating; and

(B) Assisting client with drinking.

(d) Tasks associated with elimination:

(A) Toileting;

(B) Assisting with use of bed pan and urinal;

(C) Providing catheter care, including the application of and removal of external urinary catheters;

(D) Administering enemas;

(E) Collecting specimens: sputum, stool, and urine including clean catch urine specimens;

(F) Cleaning ostomy site on established, healthy ostomy and emptying ostomy bags or changing ostomy bags which do not adhere to the skin; and

(G) Inserting bowel evacuation suppositories available without a prescription.

(e) Tasks associated with use of assistive devices:

(A) Caring for dentures, eyeglasses and hearing aids;

(B) Caring for, applying and removing:

(i) Antiembolus stockings;

(ii) Prosthetic devices;

(iii) Orthotic devices; and

(iv) Braces.

(C) Assisting with wheelchairs, walkers, or crutches;

(D) Using footboards;

(E) Assisting with and encouraging the use of self-help devices for eating, grooming and other personal care tasks; and

(F) Utilizing and assisting clients with devices for transferring, ambulation, and alignment.

(f) Tasks associated with maintaining environment and client safety.

(g) Tasks associated with data gathering, recording and reporting:

(A) Measuring temperature, pulse, respiration and blood pressure (manual and electronic-upper arm only and orthostatic blood pressure readings);

(B) Measuring height and weight;

(C) Measuring and recording oral intake;

(D) Measuring and recording urinary output, both voided and from urinary drainage systems;

(E) Measuring and recording emesis;

(F) Measuring and recording liquid stool;

(G) Measuring and recording pulse oximetry; and

(H) Collect responses to pain using a facility approved pain scale.

(2) The CNA may, as an unlicensed person, provide care as delegated or assigned by a nurse pursuant to the terms and conditions in OAR 851-047-0000 through 851-047-0040.

(3) ORS 678.440(4) defines the term "nursing assistant" as a person who assists licensed nursing personnel in the provision of nursing care. Consistent with that definition, a CNA must either:

(a) Be regularly supervised by a licensed nurse; or

(b) Work in a community-based care setting or other setting where there is no regularly scheduled presence of a licensed nurse provided there is periodic supervision and evaluation of clients under the provisions of OAR 851-047-0000 through 851-047-0040.

(4) Under no circumstance shall a CNA work independently without supervision or monitoring by a licensed nurse who provides assessment of clients as described in OAR 851-063-0030(3)(a)(b).

(5) A CNA may accept verbal or telephone orders for medication from a licensed health care professional who is authorized to independently diagnose and treat only when working in the following settings under the specified administrative rule:

(a) When working in Adult Foster Homes, as permitted under OAR 411-050-0447(4)(b);

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(b) When working in Residential Care Facilities, as permitted under OAR 411-055-0210(f)(D); and

(c) When working in Assisted Living Facilities, as permitted under OAR 411-056-0015(4).

(6) Standards of Care for Certified Nursing Assistants. In the process of client care the CNA shall consistently:

(a) Apply standard precautions according to the Centers for Disease Control and Prevention guidelines;

(b) Use hand hygiene between episodes of care;

(c) Use appropriate body mechanics to prevent injury to self and client;

(d) Follow the care plan as directed by the licensed nurse;

(e) Use appropriate communication with client, client's family and friends, and coworkers;

(f) Use alternatives to physical restraints, or apply physical restraints as directed by the licensed nurse;

(g) Determine absence of pulse and/or respiration, and initiate an emergency response;

(h) Report to the licensed nurse any recognized abnormality in client's signs and symptoms;

(i) Record observations and measurements, tasks completed, and client statements about condition or care;

(j) Apply safety concepts in the workplace;

(k) Report signs of abuse, neglect, mistreatment, misappropriation or exploitation;

(l) Demonstrate respect for rights and property of clients and coworkers; and

(m) Maintain client confidentiality.

Stat. Auth.: ORS 678.440, 678.442 & 678.444

Stats. Implemented: ORS 678.440, 678.442 & 678.444

Hist.: BN 6-1999, f. & cert. ef. 7-8-99; BN 3-2004, f. 1-29-04, cert. ef. 2-12-04; BN 11-2009, f. & cert. ef. 12-17-09

## 851-063-0035

### Authorized Duties and Standards for CNA 2 Categories of Care

(1) Under the supervision of a licensed nurse, the CNA 2- Restorative Care may only provide care and assist clients with the following:

(a) Tasks associated with performing and reinforcing functional steps of activities of daily living:

(A) Use adaptive, assistive and therapeutic equipment;

(B) Change ostomy dressing or appliance/bag which adheres to the skin; and

(C) Discontinue indwelling catheters.

(b) Tasks associated with relieving pain:

(A) Assist with complementary therapies (aromatherapy, art therapy, effleurage, light therapy, and music therapy) as ordered by a licensed nurse;

(B) Apply warm and cold compresses;

(C) Apply ice bag, ice collar, ice glove, or dry cold pack; and

(D) Use of heated soaks, sitz and whirlpool baths.

(c) Tasks associated with dysphagia:

(A) Add fluid to established gastrostomy or jejunostomy tube feedings and change established tube-feeding bags.

(d) Tasks associated with mobility:

(A) Provide range of motion on clients with complex medical problems;

(B) Use advanced transfer techniques;

(C) Recognize ability and degree in which a client can ambulate and when functional loss has occurred;

(D) Apply therapeutic positioning; and

(E) Use adaptive, assistive, and therapeutic equipment.

(e) Tasks associated with conditions that affect functional ability:

(A) Change simple, nonsterile dressings using aseptic technique when no wound debridement or packing is involved;

(B) Perform clean intermittent straight urinary catheterization for chronic conditions;

(C) Empty, measure, and record output from other drainage devices;

(D) Perform urine specimen tests;

(E) Perform hemocult test for occult blood;

(F) Obtain capillary blood glucose (CBGs);

(G) Assist with incentive spirometer; and

(H) Suction oral pharynx.

(f) Tasks associated with communication and documentation.

(2) Under the supervision of a licensed nurse, the CNA 2- Acute Care may only provide care and assist clients with the following:

(a) Tasks associated with responsive observations:

(A) Vital signs:

(i) Pulse- electronic; and

(ii) Blood pressure- manual and electronic on upper arm, thigh, and lower leg.

(B) Warm and cold therapies.

(b) Tasks associated with technical skills:

(A) Add fluid to established post pyloric, jejunostomy and gastrostomy tube feedings and change established tube feeding bags;

(B) Apply sequential compression devices;

(C) Assist patients in and out of Continuous Passive Motion machines;

(D) Bladder scanning;

(E) Capillary blood glucose (CBG) testing;

(F) Interrupt and re-establish nasogastric (NG) suction;

(G) Newborn hearing screening;

(H) Placing electrodes/leads and running electrocardiogram (EKG);

(I) Placing electrodes/leads for telemetry;

(J) Remove cast in non-emergent situations;

(K) Set up traction equipment;

(L) Suction oral pharynx;

(M) Testing gastric contents for occult blood or pH;

(N) Testing stool for occult blood;

(O) Urine dip stick testing; and

(P) Reinforce use of an incentive spirometer.

(c) Tasks associated with interpersonal skills and communication.

(d) Tasks associated with safety.

(e) Tasks associated with infection control:

(A) Change dressing or ostomy appliance/bag which adheres to the skin;

(B) Discontinue foley catheter;

(C) Measure, record and/or empty output from drainage devices and closed drainage systems;

(D) Obtain rectal swab;

(E) Obtain sterile urine specimen from port of catheter; and

(F) Perform clean intermittent straight catheterization for chronic conditions.

(f) Tasks associated with documentation.

(3) Under the supervision of a licensed nurse, the CNA 2- Dementia Care may only provide care and assist clients with the following:

(a) Tasks associated with person-directed care;

(A) Adjust care to meet individual preferences and unique needs; and

(B) Gather information on specific strengths, abilities, and preferences of a person with dementia.

(b) Tasks associated with responsive observation;

(A) Identify findings, patterns, habits, and behaviors that deviate from usual in a person with dementia;

(B) Recognize changes in persons with dementia that should be reported to the licensed nurse;

(C) Observe person's response to medications and notify licensed nurse when necessary;

(D) Observe and collect response to pain for the person with dementia; and

(E) Provide input to licensed nurse on person with dementia's response to interventions for problems and care plan approaches.

(c) Tasks associated with interpersonal skills/communication;

(A) Utilize de-escalation strategies;

(B) Protect person with dementia and self in a crisis situation; and

(C) Use communication techniques to enhance the quality of life for a person with dementia.

(d) Tasks associated with activities of daily living (ADL);

(A) Utilize techniques to encourage self care for the person with dementia; and

(B) Coordinate ADL approaches with the person with dementia's own patterns/habits.

(e) Tasks associated with activities;

(A) Make meaningful moments for the person with dementia; and

(B) Support individual preferences and habits.

(f) Tasks associated with safety;

(A) Identify safety risks for a person with dementia; and

(B) Apply preventive/supportive/protective strategies or devices when working with a person with dementia.

(g) Tasks associated with environment including contributing to a safe, calm, stable, home-like environment for a person with dementia.

(h) Tasks associated with technical skills;

(A) Data gathering skills:

(i) Perform tests on urine specimens;

(ii) Empty, measure, and record output from drainage devices;

(iii) Perform hemocult test for occult blood;

(iv) Perform capillary blood glucose (CBGs); and

(v) Bladder scanning.

(B) Designated tasks:

(i) Change simple, nonsterile dressings using aseptic technique when no wound debridement or packing is involved;

(ii) Change ostomy dressing or appliance/bag which adheres to the skin;

(iii) Discontinue foley catheters;

(iv) Perform clean intermittent straight urinary catheterization for chronic conditions;

(v) Insert over-the-counter vaginal suppositories and vaginal creams;

(vi) Assist with incentive spirometer;

(vii) Suction oral pharynx;

(viii) Interrupt and re-establish suction (with the exception of chest tubes); and

(ix) Add fluid to established jejunostomy and gastrostomy tube feedings and change established tube feeding bags.

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- (i) Tasks associated with end of life care;
- (A) Recognize symptoms for a person reaching the end-of-life; and
- (B) Provide compassionate end-of-life care.
- (j) Tasks associated with documentation; and
- (k) Tasks associated with caregiver self care.

2. Standards of Care for CNA 2. In the process of client care the CNA shall consistently apply standards set for CNA 1s and:

- (a) Establish competency as a CNA 2;
- (b) Maintain competency as a CNA 2;
- (c) Perform within authorized duties of each CNA 2 category in which the CNA has established competency.

Stat. Auth.: ORS 678.440 & 678.442  
Stats. Implemented: ORS 678.440 & 678.442  
Hist.: BN10-2007, f. & cert. ef. 10-1-07; BN 2-2009, f. & cert. ef. 5-15-09; BN 11-2009, f. & cert. ef. 12-17-09

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**Rule Caption:** Rule Change Clarifies Conduct Unbecoming for Nursing Assistants and Medication Aides.

**Adm. Order No.:** BN 12-2009

**Filed with Sec. of State:** 12-17-2009

**Certified to be Effective:** 12-17-09

**Notice Publication Date:** 11-1-2009

**Rules Amended:** 851-063-0090

**Subject:** These rules cover the standards and authorized duties for Certified Nursing Assistants and Medication Aides. These amendments clarify conduct unbecoming for Nursing Assistants and Medication Aides related to disclosing the contents of the nursing assistant or medication aide state certification examination.

**Rules Coordinator:** KC Cotton—(971) 673-0638

## 851-063-0090

### Conduct Unbecoming a Nursing Assistant

A CNA, regardless of job location, responsibilities, or use of the title "CNA," who, in the performance of nursing related duties, may adversely affect the health, safety or welfare of the public, may be found guilty of conduct unbecoming a nursing assistant. Conduct unbecoming a nursing assistant includes but is not limited to:

- (1) Conduct related to the client's safety and integrity:
  - (a) Leaving a nursing assistant assignment without properly notifying appropriate supervisory personnel;
  - (b) Failing to report to proper authorities information regarding incompetent, unethical or illegal practice of any health care provider;
  - (c) Failing to respect client rights and dignity regardless of social or economic status, personal attributes or nature of health problems or disability;
  - (d) Failing to report actual or suspected incidents of client abuse; or
  - (e) Engaging in sexual misconduct related to the client or to the workplace.
- (2) Conduct related to other federal or state statutes/rule violations:
  - (a) Knowingly aiding, abetting or assisting an individual to violate or circumvent any law, rule or regulation intended to guide the conduct of health care providers;
  - (b) Violating the rights of privacy, confidentiality of information or knowledge concerning the client, unless required by law to disclose such information;
  - (c) Discriminating against a client on the basis of age, race, religion, sex, sexual preference, national origin or disability;
  - (d) Abusing a client. The definition of abuse includes but is not limited to intentionally causing physical harm or discomfort, striking a client, intimidating, threatening or harassing a client;
  - (e) Neglecting a client. The definition of neglect includes but is not limited to unreasonably allowing a client to be in physical discomfort or be injured;
  - (f) Engaging in other unacceptable behavior or verbal abuse towards or in the presence of a client such as using derogatory names or gestures or profane language;
  - (g) Using the client relationship to exploit the client by gaining property or other items of value from the client either for personal gain or sale, beyond the compensation for services;
  - (h) Possessing, obtaining, attempting to obtain, furnishing or administering prescription or controlled drugs to any person, including self, except as directed by a person authorized by law to prescribe drugs; or

- (i) Removing or attempting to remove drugs, supplies, property or money from the workplace without authorization.

- (3) Conduct related to communication:
  - (a) Inaccurate recordkeeping in client or agency records;
  - (b) Incomplete recordkeeping regarding client care; including but not limited to failure to document care given or other information important to the client's care or documentation which is inconsistent with the care given;

(c) Falsifying a client or agency record; including but not limited to filling in someone else's omissions, signing someone else's name, recording care not given, fabricating data/values;

(d) Altering a client or agency record; including but not limited to changing words/letters/numbers from the original document to mislead the reader of the record, adding to the record after the original time/date without indicating a late entry;

(e) Destroying a client or agency record;

(f) Failing to maintain client records in a timely manner which accurately reflects management of client care, including failure to make a late entry within a reasonable time period; or

(g) Failing to communicate information regarding the client's status to the supervising nurse or other appropriate person in a timely manner.

- (4) Conduct related to the client's family:
  - (a) Failing to respect the rights of the client's family regardless of social or economic status, race, religion or national origin;
  - (b) Using the CNA client relationship to exploit the family for the CNA's personal gain or for any other reason;
  - (c) Stealing money, property, services or supplies from the family; or
  - (d) Soliciting or borrowing money, materials or property from the family.

(5) Conduct related to co-workers: violent, abusive, threatening, harassing or intimidating behavior towards a co-worker which either occurs in the presence of clients or otherwise relates to the delivery of safe care to clients.

- (6) Conduct related to achieving and maintaining clinical competency:
  - (a) Failing to competently perform the duties of a nursing assistant;
  - (b) Performing acts beyond the authorized duties for which the individual is certified; or

(c) Assuming duties and responsibilities of a nursing assistant without nursing assistant training or when competency has not been established or maintained.

- (7) Conduct related to impaired function:
  - (a) Using intoxicants, prescription, over the counter or controlled drugs to an extent or in a manner injurious to the nursing assistant or others or to the extent that such use impairs the ability to conduct safely the duties of a nursing assistant; or
  - (b) Having a physical or mental condition that makes the nursing assistant unable to perform safely the duties of a nursing assistant.

(8) Conduct related to certificate violations:

- (a) Providing, selling, applying for or attempting to procure a certificate by willful fraud or misrepresentation;
- (b) Functioning as a medication assistant without current certification as a medication assistant;

(c) Altering a certificate of completion of training and/or nursing assistant certification issued by the Board;

(d) Disclosing contents of the competency examination or soliciting, accepting or compiling information regarding the contents of the examination before, during or after its administration;

(e) Allowing another person to use one's nursing assistant certificate for any purpose;

- (f) Using another's nursing assistant certificate for any purpose; or
- (g) Representing oneself as a CNA without current, valid CNA certification.

(9) Conduct related to the certificate holder's relationship with the Board:

(a) Failing to cooperate with the Board during the course of an investigation. The duty to cooperate does not include waiver of confidentiality privileges, except if a client is harmed. This waiver of confidentiality privileges does not apply to client-attorney privilege.

(b) Failing to answer truthfully and completely any question asked by the Board on an application for initial certification, renewal of certification or recertification;

(c) Failing to provide the Board with any documents requested by the Board; or

- (d) Violating the terms and conditions of a Board order.
- Stat. Auth.: ORS 678.442  
Stats. Implemented: ORS 678.442  
Hist.: BN 6-1999, f. & cert. ef. 7-8-99; BN 9-2002(Temp), f. & cert. ef. 3-5-02 thru 8-1-02; BN 16-2002, f. & cert. ef. 7-17-02; BN 12-2009, f. & cert. ef. 12-17-09

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**Rule Caption:** Rules for Delegation of Dispensing Functions by Nurse Prescribers and Antibiotic Prescribing for Expedited Partner Therapy.

**Adm. Order No.:** BN 13-2009

**Filed with Sec. of State:** 12-17-2009

**Certified to be Effective:** 1-1-10

**Notice Publication Date:** 10-1-2009

**Rules Amended:** 851-056-0000, 851-056-0006, 851-056-0010, 851-056-0016, 851-056-0020, 851-056-0024

**Subject:** These rules permit nurse prescribers (clinical nurse specialists and nurse practitioners) with dispensing authority issued by

# ADMINISTRATIVE RULES

the Oregon State Board of Nursing to delegate certain non-judgmental dispensing functions to staff provided that medication is prepackaged and labeled with identifying information.

They also permit nurse prescribers (clinical nurse specialists and nurse practitioners) to provide a prescription for partner(s) of a patient they see with a diagnosed sexually transmitted infection per Department of Human Services guidelines.

**Rules Coordinator:** KC Cotton—(971) 673-0638

## 851-056-0000

### Definitions

(1) "Addiction" means a primary, chronic, neurobiological disease with genetic, psychosocial, and environmental factors influencing its development and manifestations. It is characterized by behaviors that include one or more of the following: impaired control over drug use, compulsive use, continued use despite harm, and craving. Neither physical dependence nor tolerance alone, as defined by these rules, constitutes addiction.

(2) "Administer" means the direct application of a drug or device, whether by injection, inhalation, ingestion, or any other means to the body of a patient or research subject.

(3) "Assessment" means a process of collecting information regarding a client's health status including, but not limited to, illness, response to illness, health risks of individuals, families and groups, resources, strengths and weaknesses, coping behaviors, and the environment. The skills employed during the assessment process may include, but are not limited to, obtaining client histories, conducting physical examinations, and ordering, interpreting, and conducting a broad range of diagnostic procedures (e.g., laboratory studies, EKGs, and X-rays).

(4) "Client(s) or patient(s)" means a family, group or individual who has been assessed by and has a client/patient record established by the clinical nurse specialist or nurse practitioner.

(5) "Clinical education in patient management" means a set of structured learning activities, including but not limited to, supervised clinical practice in the pharmacological management of individual clients, as well as other learning activities to promote understanding of pharmacological interventions.

(6) "Diagnosis" means identification of actual or potential health problems or need for intervention based on analysis of the data collected.

(7) "Differential diagnosis" means the process of determining a medical diagnosis from among similar diseases and conditions based upon collection and analysis of clinical data.

(8) "Discrete pharmacology course" means an advanced pharmacology course with pharmacologically specific requirements, objectives, and content, which is offered for academic or continuing education credit, and is not integrated into other coursework.

(9) "Dispense" or "dispensing" means the labeling and distribution of a medication to the clinical nurse specialist's or nurse practitioner's client which is prepackaged by a manufacturer registered with the State Board of Pharmacy, or repackaged by a pharmacist licensed with the State Board of Pharmacy.

(10) "Dispensing authority" means to prepare and deliver substances to the client provided the authority is exercised in compliance with applicable federal and state laws.

(11) "Distribute" means the delivery of a drug other than by administering or dispensing, such as prepackaged samples.

(12) "Functional impairment" means:

(a) Practicing nursing when unable/unfit to perform procedures and/or make decisions due to physical impairment as evidenced by documented deterioration of functioning in the practice setting and/or by assessment of a health care provider qualified to diagnose physical condition/status.

(b) Practicing nursing when unable/unfit to perform procedures and/or make decisions due to psychological or mental impairment as evidenced by documented deterioration of functioning in the practice setting, and/or by the assessment of a health care provider qualified to diagnose mental condition/status.

(c) Practicing nursing when physical or mental ability to practice is impaired by use of drugs, alcohol, or mind-altering substances.

(13) "Pain" means an unpleasant sensory and emotional experience related to adverse nociceptive or neuropathic stimuli. It may also be idiopathic in nature.

(a) "Acute pain" is brief and responds to timely intervention or subsides as healing takes place. Inadequate treatment may delay recovery. Such pain responds to anti-inflammatory and opioid medications, as well as to other approaches.

(b) "Chronic pain" is on going or frequently recurring and may become unresponsive to intervention over time.

(c) "Intractable pain" means a pain state in which the cause cannot be removed or otherwise treated and no relief or cure has been found after reasonable efforts.

(14) "Pharmacodynamics" means the study of the biochemical and physiologic effects of drugs and their mechanism of action.

(15) "Pharmacokinetics" means the action of drugs in the body over a period of time.

(16) "Pharmacotherapeutics" means the study of the uses of drugs in the treatment of disease.

(17) "Physical dependence" means the physiologic adaptation to the presence of a medication characterized by withdrawal when its use is stopped abruptly.

(18) "Prescribe" means a written, verbal, or electronic legal directive to procure or designate for use legend drugs or controlled substances. Additionally, a prescription may be issued or required for use of over-the-counter medications.

(19) "Prescribing authority" means the legal permission to determine which drugs and controlled substances shall be used by or administered to a client.

(20) "Specialty" means the defined area of expertise such as that provided by academic education, clinical training, and may include additional legal or professional credentialing mechanisms.

(21) "Target audience" means a population for whom an educational program is designed.

(22) "Therapeutic device" means an instrument or an apparatus intended for use in diagnosis or treatment and in the prevention of disease or maintenance or restoration of health.

(23) "Tolerance" means the physiologic adaptation to a controlled substance over time, resulting in the need to increase the dose to achieve the same effect, or in a reduction of response with repeated administration.

Stat. Auth.: ORS 678.150

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

Hist.: BN 10-2006, f. & cert. ef. 10-5-06; BN 13-2009, f. 12-17-09, cert. ef. 1-1-10

## 851-056-0006

### Application Requirements for Prescriptive Authority in Oregon

(1) Current, unencumbered registered nurse license in the State of Oregon.

(2) Currently has or is eligible for an unencumbered nurse practitioner or clinical nurse specialist certificate in the State of Oregon.

(3) Submission of application and fees required by the Board. Fees are nonrefundable. An application not completed after one calendar year will be considered void.

(4) Evidence of successful completion of 45 contact hours of pharmacology as defined in OAR 851-056-0008 including content related to the specialty scope of practice which shall be met through:

(a) Completion within two years prior to the application date; or

(b) Evidence of completion of a 30 hour discrete pharmacology course congruent with the specialty role sought with:

(A) An additional 15 CE hours in pharmacological management congruent with the area of clinical specialty completed in the two years prior to the application date; and

(B) Current prescriptive authority in another state or U.S. jurisdiction, including a U.S. federal institution or facility; or

(c) Evidence of completion of a clinical nurse specialist or nurse practitioner program within two years prior to application date, which included a 45 hour pharmacology course and subsequent clinical practicum in pharmacologic management of individual patients prior to graduation.

(5) Evidence of successful completion of required clinical education in patient management. An applicant may be considered to meet this requirement through:

(a) Completion of graduate level nursing academic credits, or continuing education credits accredited by a national nursing accrediting body that include a directly supervised clinical practicum of not less than 150 hours containing evidence of clinical experiences in differential diagnosis and applied pharmacological management of patients congruent with the specialty role; or

(b) Evidence of unencumbered prescriptive authority in another state or U.S. jurisdiction, including a U.S. federal institution or facility with a minimum of 400 hours utilizing prescriptive authority and patient management within the past two years.

(6) Evidence of successful completion of accredited graduate level nursing courses documented by CE or academic credit. Such courses must include physical assessment, pathophysiology, and clinical management sufficient to prepare the applicant for safe prescribing with individual patients. Integrated courses taken before January 1, 1996 may be considered if content otherwise meets all requirements for equivalency.

(7) Applicants for initial certification as a nurse practitioner shall meet all requirements for prescriptive authority. Clinical nurse specialists may obtain and renew certification with the Board without prescriptive authority.

(8) Initial applicants seeking prescriptive authority who do not meet Oregon's pharmacology requirements shall complete a pharmacology course from a list approved by the Board, equal to a minimum of 45 contact hours.

(9) Nurse practitioners who were certified in Oregon prior to July 1, 1997, and who did not have prescriptive authority as of that date, are not required to obtain or renew with prescriptive authority.

Stat. Auth.: ORS 678.150

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

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Hist.: BN 10-2006, f. & cert. ef. 10-5-06; BN 5-2008, f. & cert. ef. 6-24-08; BN 7-2008, f. & cert. ef. 11-26-08; BN 13-2009, f. 12-17-09, cert. ef. 1-1-10

## 851-056-0010

### Prescription Requirements

(1) A written prescription shall include the date, printed name, legal signature, specialty category/title, business address, and telephone number of the prescribing nurse practitioner or clinical nurse specialist in addition to the required patient and drug information.

(2) An electronically transmitted prescription as defined in OAR 855-006-0015 of the Pharmacy Act shall include the name and immediate contact information of the prescriber and be electronically encrypted or in some manner protected by up-to-date technology from unauthorized access, alteration or use. Controlled substances have additional restrictions as defined by the DEA which shall be followed.

(3) A tamper resistant prescription shall meet criteria as defined in OAR 855-006-0015 of the Pharmacy Act.

(4) Prescriptions may be written for over the counter drugs, durable medical equipment (DME) and devices.

(5) Prescriptions shall be signed by the prescriber with the abbreviated specialty title of the nurse practitioner as per OAR 851-050-0005(9) or the title CNS as per 851-054-0015.

(6) The nurse practitioner or clinical nurse specialist shall comply with all applicable laws and rules in prescribing, administering, and distributing drugs, including compliance with the labeling requirements of ORS Chapter 689.

(7) A nurse practitioner or clinical nurse specialist shall only prescribe controlled substances in conjunction with their own valid and current DEA registration number appropriate to the classification level of the controlled substance.

(8) Clinical nurse specialists and nurse practitioners with prescriptive authority are authorized to prescribe:

- (a) Over-the-counter drugs;
- (b) Appliances and devices;
- (c) Orphan drugs; and
- (d) Limited access drugs;

(e) Antibiotics to partner(s) of patients diagnosed with a sexually transmitted infection without first examining the partner of the patient, consistent with Department of Human Services guidelines regarding Expedited Partner Therapy.

Stat. Auth.: ORS 678.150

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

Hist.: BN 10-2006, f. & cert. ef. 10-5-06; BN 5-2008, f. & cert. ef. 6-24-08; BN 13-2009, f. 12-17-09, cert. ef. 1-1-10

## 851-056-0016

### Conduct Derogatory to the Standards for Prescriptive or Dispensing Authority

(1) The Board may deny, suspend or revoke the authority to write prescriptions and/or dispense drugs for the causes identified in ORS 678.111(1) or with proof that the authority has been abused.

(2) The abuse of the prescriptive or dispensing authority constitutes conduct derogatory to nursing standards and is defined as:

(a) Prescribing, dispensing or distributing drugs which are not FDA approved unless done through protocol registration in a United States Institutional Review Board or Expanded Access authorized clinical trial.

(b) Prescribing, dispensing, administering, or distributing drugs for other than therapeutic or prophylactic purposes;

(c) Prescribing, dispensing, or distributing drugs to an individual who is not the clinical nurse specialist's or nurse practitioner's client unless written under Expedited Partner Therapy guidelines from the Department of Human Services or is not within the scope of practice or type of client population served;

(d) Prescribing, dispensing, or distributing drugs for personal use;

(e) Prescribing, dispensing, administering, or distributing drugs while functionally impaired;

(f) Prescribing, dispensing, administering, or distributing drugs in an unsafe or unlawful manner or without adequate instructions to the client according to acceptable and prevailing standards or practice;

(g) Prescribing, dispensing, or distributing drugs which are specifically restricted under federal law;

(h) Failure to properly assess and document client assessment when prescribing, dispensing, administering, or distributing drugs;

(i) Selling, purchasing, trading, or offering to sell, purchase or trade any drug sample;

(j) Dispensing medications without dispensing authority granted by the Board or other dispensing authority issued by the State of Oregon;

(k) Charging a client or any third party payer in a grossly negligent manner.

Stat. Auth.: ORS 678.111, 678.113 & 678.150

Stats. Implemented: ORS 678.350, 678.370, 678.372, 678.375, 678.380 & 678.385,

Hist.: BN 10-2006, f. & cert. ef. 10-5-06; BN 5-2008, f. & cert. ef. 6-24-08; BN 13-2009, f. 12-17-09, cert. ef. 1-1-10

## 851-056-0020

### Dispensing Authority

(1) An "applicant" for dispensing authority must be an unencumbered Oregon certified nurse practitioner or clinical nurse specialist with prescriptive authority in good standing with the Oregon State Board of Nursing.

(2) Applicants shall submit an application and information as required by the Board.

(3) Applicants must demonstrate, through a description of the clinical nurse specialist's or nurse practitioner's patient population, a lack of readily available access to pharmacy services as provided in ORS 678.390 and that the grant of dispensing authority to the applicant would correct this lack of access.

(4) The applicant shall show evidence of completion of the following dispensing program:

(a) Documented review of content regarding safe dispensing listed below:

(A) Board of Nursing handbook "Nurse Practitioner and Clinical Nurse Specialist Prescriptive Authority in Oregon";

(B) The Drug Enforcement Administration Pharmacist's Manual (2004);

(C) OAR 851 division 56;

(D) ORS Chapter 689 and OAR chapter 855;

(E) U.S. Consumer Product Safety Commission publication "Poison Prevention Packaging: A Text for Pharmacists and Physicians," and;

(F) The Institute for Safe Medication Practices (ISMP) "List of Error-Prone Abbreviations, Symbols, and Dose Designations" (2007); and

(G) Information on available electronic or hard copy prescription drug references which provide information to professionals authorized to dispense prescription medications.

(b) Successful self examination as provided by the Board on these materials.

(5) Dispensing under this authority is limited to patients that meet any of the following criteria:

(a) Lack of patient access to a pharmacy due to the following:

(A) The patient lives outside the boundaries of a metropolitan statistical area as defined by the federal Office of Management and Budget;

(B) The patient lives 30 or more highway miles from the closest hospital within the major population center in a metropolitan statistical area as defined by the federal Office of Management and Budget; or

(C) The patient lives in a county with a population of less than 75,000.

(b) The patient faces a financial barrier to purchase prescriptions, including but not limited to:

(A) The patient receives services from a health care safety net program;

(B) The patient is eligible for participation in a patient assistance program of a pharmaceutical company.

(c) Patients of a certified nurse practitioner seen at a qualified institution of higher education as defined by ORS 399.245.

(6) The staff of the Board shall provide written notice to the Oregon Board of Pharmacy upon receipt and again upon approval of such application.

(7) Applicants must provide complete and accurate information requested by the Board. Failure to complete application material as requested or failure to meet criteria in this rule shall be grounds for denial, suspension, or revocation of dispensing authority.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 678.390

Stats. Implemented: ORS 678.670, 678.375, 678.385, 678.390

Hist.: BN 10-2006, f. & cert. ef. 10-5-06; BN 13-2009, f. 12-17-09, cert. ef. 1-1-10

## 851-056-0024

### Drug Delivery and Dispensing

(1) Policies and procedures: A nurse practitioner or clinical nurse specialist with dispensing authority shall follow procedures established by federal and state law for:

(a) Drug dispensing, storage, security and accountability;

(b) Maintenance of all drug records;

(c) Procedures for procurement of drugs.

(2) Dispensing:

(a) Drugs shall be prepackaged by a pharmacy or manufacturer registered with the Oregon State Board of Pharmacy, and provide on the label:

(A) The name and strength of the drug. If the drug does not have a brand name, then the generic name of the drug and the drug manufacturer must be on the label.

(B) The quantity of the drug;

(C) Cautionary statements, if any, required by law;

(D) The name, address, and phone number of the practitioner's practice site; and

(E) The manufacturer's expiration date, or an earlier date if preferable, after which the patient should not use the drug.

(b) The nurse practitioner or clinical nurse specialist shall personally dispense drugs which require hand labeling with the following information:

(A) Name of the patient;

(B) Directions for use; and

(C) Physical description, including any identification code that may appear on tablets and capsules.



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(c) The nurse practitioner or clinical nurse specialist may delegate the dispensing function to staff assistants under limited circumstances where the staff assistant performs technical support that does not require prescriptive judgment. The staff assistant can dispense only those drugs that are pre-labeled by the dispensing pharmacy with the following information:

- (A) Name of the patient;
- (B) Name of the prescriber;
- (C) Directions for use; and
- (D) A physical description, including any identification code that may appear on tablets and capsules.

(E) Staff assistants may complete and label the drug with the patient's address, date of dispensing, and initials of dispensing personnel and distribute them to the patient.

(d) Drugs shall be dispensed in containers complying with the federal Poison Prevention Packaging Act unless the patient requests a non-complying container.

(e) The nurse practitioner or clinical nurse specialist shall provide a means for patients to receive verbal and written information on drugs dispensed to the patient. The written drug information shall include:

- (A) Drug name and class;
  - (B) Proper use and storage;
  - (C) Common side effects;
  - (D) Precautions and contraindications; and
  - (E) Significant drug interactions.
- (3) Drug security, storage and disposal:

(a) In the absence of the person authorized to dispense and prescribe, drugs shall be kept in a locked cabinet or drug room which is sufficiently secure to deny access to unauthorized persons.

(b) Controlled substances shall be maintained in a secure, locked container at all times.

(c) All drugs shall be stored in areas which will assure proper sanitation, temperature, light, ventilation, and moisture control.

(d) Drugs which are outdated, damaged, deteriorated, misbranded, or adulterated shall be physically separated from other drugs until they are destroyed or returned to their supplier.

(e) Controlled substances, which are expired, deteriorated, or unwanted, shall be disposed of in conformance with current State and Federal Regulations, including but not limited to, 21 CFR 1307.21 and OAR 855-080-0105.

(4) Drug records:

(a) A drug dispensing record shall be maintained separately from the patient record and kept for a minimum of three years. The dispensing record shall show, at a minimum, the following:

- (A) Name of patient;
- (B) Brand name of drug, or generic name and manufacturer or distributor;
- (C) Date of dispensing; and
- (D) Initials of nurse practitioner or clinical nurse specialist.

(b) A physical copy of the prescription for each medication dispensed shall be retained in the patient chart and shall be produced upon request.

(c) All records required by these rules or by federal or state law shall be readily retrievable and available for inspection by the Board and the Board of Pharmacy.

(d) A patient record shall be maintained for all patients to whom the nurse practitioner or clinical nurse specialist dispenses medications.

(5) Clinical nurse specialists and nurse practitioners with dispensing authority shall be responsible for safe storage, distribution, and destruction of all drugs under their authority.

(6) Clinical nurse specialists and nurse practitioners granted dispensing authority under this rule shall comply with the labeling and record keeping requirements of OAR 851-050-0164.

(7) A person granted dispensing authority under this rule shall have available at the dispensing site a hard copy or electronic version of prescription drug reference works commonly used by professionals authorized to dispense prescription medications.

(8) A person granted dispensing authority under this rule shall permit representatives of the Oregon State Board of Pharmacy, upon receipt of a complaint about that person's dispensing practices and notice to the Board of Nursing, to inspect a dispensing site.

Stat. Auth.: ORS 678.390  
Stats. Implemented: ORS 673.390  
Hist.: BN 10-2006, f. & cert. ef. 10-5-06; BN 13-2009, f. 12-17-09, cert. ef. 1-1-10

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

**Rule Caption:** Amends Exhibit J, which lists all of the general, and some of the special, conditions of supervision.

**Adm. Order No.:** PAR 5-2009

**Filed with Sec. of State:** 12-31-2009

**Certified to be Effective:** 1-1-10

**Notice Publication Date:** 12-1-2009

**Rules Amended:** 255-070-0001

**Subject:** The Board has jurisdiction to impose conditions of supervision for offenders on parole, post-prison supervision (PPS), or both. OAR 255-070-0001 provides that the Board may order parole conditions or PPS conditions and that supervision conditions are not limited to those shown in Exhibit J. Exhibit J is being amended to reflect the current general conditions of supervision and to list some of the special conditions that the Board orders. Exhibit J is also being amended to make formatting changes and to streamline the conditions ordered consistent with best-practices in the field.

**Rules Coordinator:** Michelle Mooney—(503) 945-0914

**255-070-0001**

**Conditions Not Limited by Exhibit J**

(1) The Board may order parole conditions pursuant to OAR 255-070-0015.

(2) The Board shall approve post-prison supervision conditions pursuant to OAR 213-011-0001.

(3) Conditions of parole and post-prison supervision are not limited to those shown in Exhibit J.

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

Stat. Auth.: ORS 144.096, 144.102 & 144.270

Stats. Implemented:

Hist.: 2PB 15-1985, f. & ef. 5-31-85; 2PB 1-1986(Temp), f. & ef. 11-3-86; PAR 2-1987, f. & ef. 4-1-87; PAR 5-1988(Temp), f. & ef. 4-15-88; PAR 6-1988, f. & ef. 5-19-88; PAR 8-1988, f. & ef. 7-1-88; PAR 17-1988, f. & ef. 10-18-88; PAR 2-1990, f. & cert. ef. 4-5-90; PAR 4-1990, f. & cert. ef. 7-1-90; PAR 3-1992, f. & cert. ef. 4-15-92; PAR 4-1992(Temp), f. & cert. ef. 4-30-92; PAR 8-1992, f. & cert. ef. 10-9-92; PAR 3-1993, f. & cert. ef. 10-15-93; PAR 5-1993(Temp), f. & cert. ef. 12-3-93; PAR 1-1994, f. & cert. ef. 4-4-94; PAR 3-1994, f. & cert. ef. 11-9-94, cert. ef. 12-1-94; Administrative correction 8-14-97; PAR 5-1998, f. & cert. ef. 11-9-98; PAR 2-1999, f. & cert. ef. 1-15-99; PAR 6-1999(Temp), f. & cert. ef. 9-15-99 thru 3-12-00; PAR 9-1999, f. & cert. ef. 11-15-99; PAR 5-2000, f. & cert. ef. 5-22-00; PAR 6-2001(Temp), f. & cert. ef. 1-1-02 thru 6-29-02; PAR 3-2001, f. & cert. ef. 2-29-02; PAR 5-2002(Temp), f. & cert. ef. 4-15-02 thru 10-11-02; PAR 8-2002, f. & cert. ef. 6-17-02; PAR 4-2003(Temp), f. & cert. ef. 6-13-03 thru 12-9-03; PAR 6-2003, f. & cert. ef. 10-10-03; PAR 1-2004, f. & cert. ef. 1-14-04; PAR 4-2006, f. & cert. ef. 4-5-06; PAR 1-2009(Temp), f. 4-9-09, cert. ef. 4-10-09 thru 10-7-09; Administrative correction 10-22-09; PAR 5-2009, f. 12-31-09 cert. ef. 1-1-10

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**Rule Caption:** Adopts guidelines for setting deferral periods.

**Adm. Order No.:** PAR 1-2010(Temp)

**Filed with Sec. of State:** 1-5-2010

**Certified to be Effective:** 1-5-10 thru 7-3-10

**Notice Publication Date:**

**Rules Adopted:** 255-062-0005, 255-062-0010, 255-062-0015, 255-062-0020, 255-062-0025, 255-062-0030

**Subject:** Division 62 rules put in place procedures for implementing statutory changes that prohibit the Board from holding a subsequent hearing after the Board denies a petition for a change in terms of confinement of an inmate convicted of aggravated murder or murder, and that prohibit the Board from granting a release date in less than two years, or more than 10 years, after the Board denies a firm parole or post-prison supervision release date for certain inmates.

**Rules Coordinator:** Michelle Mooney—(503) 945-0914

**255-062-0005**

**When Parole Deferral Periods May Occur**

(1) After the Board denies a petition for change in terms of confinement of an inmate convicted of aggravated murder or murder, the Board may not hold a subsequent hearing that is less than two years, or more than 10 years, from date petition is denied.

(2) After the Board denies a firm parole or post-prison supervision release date for certain inmates, the Board may not hold a subsequent hearing to consider granting a release date in less than two years, or more than 10 years, from date on which release on parole or post-prison supervision is denied.

(3) Upon finding that it is not reasonable to expect that the inmate would be granted a change in the terms of confinement or would be granted a firm release date following two years, the Board will deliberate and select a deferral date of between two and 10 years from the date of the decision.

Stat. Auth.: ORS 144.228, 144.232, 163.105, 163.115 & 2009 OL Ch. 660  
Stats. Implemented: ORS 144.228, 144.232, 163.105, 163.115 & 2009 OL Ch. 660  
Hist.: PAR 1-2010(Temp), f. & cert. ef. 1-5-10 thru 7-3-10

**255-062-0010**

**Type of Hearing Eligible for a Deferral of More than Two Years**

OAR 255-062-0005 applies to the following hearings:

(1) *Murder Review Hearing:* If the State Board of Parole and Post-Prison Supervision denies a petition for a change in the terms of confinement filed by an inmate under ORS 163.105 or ORS 163.115, the Board may not

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grant the inmate a subsequent hearing that is less than two years, or more than 10 years, from the date the petition is denied.

(2) *Exit Interview Hearing: Crime Commitment Date prior to 05/19/1988 – but on or after 10/4/1977:* If the State Board of Parole and Post-Prison Supervision concludes that an inmate suffers from a present severe emotional disturbance such as to constitute a danger to the health or safety of the community, the Board may not defer the projected parole release date for less than two years, or more than 10 years, from the date of inmate's current projected parole release date.

(3) *Exit Interview Hearing: Crime Commitment Date on or after 05/19/1988 – but before 11/11/1989:* If the State Board of Parole and Post-Prison Supervision determines that the psychological evaluation does constitute a finding that an inmate suffers from a present severe emotional disturbance such as to constitute a danger to the health or safety of the community (and after considering the psychological evaluation and all of the other evidence in the record), the Board may not defer the projected parole release date for less than two years, or more than 10 years, from the date of inmate's current projected parole release date.

(4) *Exit Interview Hearing: Crime Commitment Date on or between 1/29/1977 and 10/3/1977:* If the State Board of Parole and Post-Prison Supervision finds, based on the doctor's report and diagnosis, coupled with all the information that the Board is considering, and applying OAR 254-50-015 (1977), ORS 144.180, and pursuant to ORS 144.175 (1) (2), that deferral of the inmate's projected parole release date is necessary, the Board may not defer the projected parole release date for less than two years, or more than 10 years, from the date of inmate's current projected parole release date.

(5) *Parole Consideration Hearing:* If the State Board of Parole and Post-Prison Supervision finds that an inmate has a mental or emotional disturbance, deficiency, condition, or disorder predisposing the inmate to the commission of any crime to a degree rendering him or her a danger to the health or safety of others, and that therefore, the condition that made the inmate dangerous is not in remission and the inmate continues to remain a danger, and that the inmate cannot be adequately controlled with supervision and mental health treatment which are available in the community, the Board will conduct the next review hearing no less than two years, or more than 10 years, from the current parole consideration date.

(6) *Parole Hearing: Crime Commitment Date before 1/29/1977:* If the State Board of Parole and Post-Prison Supervision finds that there is not a reasonable probability that an inmate will, after parole, remain outside the institution without violating the law, and that the inmate's parole release is not compatible with the welfare of society, the Board may not grant the inmate a subsequent hearing that is less than two years, or more than 10 years, from the date the petition is denied.

Stat. Auth.: ORS 144.228, 144.232, 163.105, 163.115 & 2009 OL Ch. 660  
Stats. Implemented: ORS 144.228, 144.232, 163.105, 163.115 & 2009 OL Ch. 660  
Hist.: PAR 1-2010(Temp), f. & cert. ef. 1-5-10 thru 7-3-10

## 255-062-0015

### Factors to be Considered in Establishing a Deferral Period Longer Than Two Years

Following an interview and consideration of all the information presented at the hearing, the Board may find by unanimous vote of the members participating in the hearing, that it is not reasonable to expect that the inmate would be granted a change in the terms of confinement, or it is not reasonable to expect that the inmate would be granted a firm release date following two years, based on any of the following non-exclusive factors:

(1) A determination by the Board, based on the psychological evaluation and all the information available at the hearing, that the inmate has a mental or emotional disturbance, deficiency, condition, or disorder predisposing him/her to the commission of any crime to a degree rendering the inmate a danger to the health or safety of others;

(2) Infractions of institutional rules and discipline;

(3) Commission of crimes subsequent to the crime of conviction;

(4) Inmate's failure to demonstrate understanding of the factors that led to his/her criminal offense(s);

(5) Inmate's demonstrated lack of effort to address criminal risk factors of psychological or emotional problems;

(6) Inmate's demonstrated lack of effort to address criminal risk factors of substance abuse problems;

(7) Failure to seek and maintain appropriate work or training;

(8) Inmate's failure to seek out and benefit from programming including but not limited to sex offender treatment, batterers intervention programs, anger management, cognitive therapy, and victim impact panels where available;

(9) Inmate's inability to experience or demonstrate remorse or empathy, including but not limited to any registered victims;

(10) Demonstrated poor planning and foresight;

(11) Demonstrated impulsivity; or

(12) Demonstrated lack of concern for others, including but not limited to any registered victims.

Stat. Auth.: ORS 144.228, 144.232, 163.105, 163.115 & 2009 OL Ch. 660  
Stats. Implemented: ORS 144.228, 144.232, 163.105, 163.115 & 2009 OL Ch. 660  
Hist.: PAR 1-2010(Temp), f. & cert. ef. 1-5-10 thru 7-3-10

## 255-062-0020

### Request for Interim Hearing

(1) When the Board defers the inmate's next hearing for more than two years from the date a petition is denied or from the current projected parole release date, current parole consideration date, or current parole hearing date, the inmate may submit a request for an interim hearing not earlier than the date that is two years from the date the petition is denied or from the current projected parole release date, current parole consideration date, or current parole hearing date, and at intervals of not less than two years thereafter. Such petitions must conform to the following format:

(a) Petitions must be legible and double spaced. Handwritten petitions will be accepted, although typed documents are preferred;

(b) In no more than one page, a summary outlining how the inmate qualifies for an interim hearing;

(c) From the date of the last hearing to the petition date, a current copy of the following documents:

(1) Oregon Corrections Plan

(2) Earned time computation form

(3) Spending Account

(4) Disciplinary Report

(d) In no more than 10 pages, any supporting facts, information or documents relevant to the criteria outlined in section (3) or other factors specific to how the inmate has demonstrated a significant change or progression;

(e) Although reference to rules, codes, or laws may be appropriate, the Board will not accept or consider additional pages or exhibits including copies of codebooks, manuals, other manuscripts, certificates, news articles, legal opinions, or other materials not directly related to the inmate's case.

(2) The Board shall consider the request for an interim hearing by file pass.

(3) At its discretion, the Board may request additional information from the inmate.

(4) If a petition is denied, the inmate may petition again no earlier than two years from the date of the denial.

Stat. Auth.: ORS 144.228, 144.232, 163.105, 163.115 & 2009 OL Ch. 660  
Stats. Implemented: ORS 144.228, 144.232, 163.105, 163.115 & 2009 OL Ch. 660  
Hist.: PAR 1-2010(Temp), f. & cert. ef. 1-5-10 thru 7-3-10

## 255-062-0025

### Interim Hearing Finding

If the Board finds, based upon a properly-submitted request for an interim hearing, that there is reasonable cause to believe that the inmate may be granted a change in the terms of confinement or a firm release date, the Board shall conduct a hearing as soon as is reasonably convenient. An interim hearing may be granted by a majority of the Board, except in cases where a full Board is required by ORS 144.054.

Stat. Auth.: ORS 144.228, 144.232, 163.105, 163.115 & 2009 OL Ch. 660  
Stats. Implemented: ORS 144.228, 144.232, 163.105, 163.115 & 2009 OL Ch. 660  
Hist.: PAR 1-2010(Temp), f. & cert. ef. 1-5-10 thru 7-3-10

## 255-062-0030

### Final Orders

(1) When the Board grants an inmate a hearing that is more than two years from the date a petition is denied or from the current projected parole release date, current parole consideration date, or current parole hearing date, and when the Board denies a petition for an interim hearing, the Board shall issue a final order.

(a) The order shall be accompanied by findings of fact and conclusions of law.

(b) The findings of fact shall consist of a concise statement of the underlying facts supporting the findings as to each contested issue of fact and as to each ultimate fact required to support the board's order.

Stat. Auth.: ORS 144.228, 144.232, 163.105, 163.115 & 2009 OL Ch. 660  
Stats. Implemented: ORS 144.228, 144.232, 163.105, 163.115 & 2009 OL Ch. 660  
Hist.: PAR 1-2010(Temp), f. & cert. ef. 1-5-10 thru 7-3-10

## Board of Pharmacy Chapter 855

**Rule Caption:** Amend criteria for implementation of rules for a Public Health Emergency. Correct grammar and ambiguities.

**Adm. Order No.:** BP 4-2009

**Filed with Sec. of State:** 12-24-2009

**Certified to be Effective:** 12-24-09

**Notice Publication Date:** 11-1-2009

**Rules Amended:** 855-007-0010, 855-007-0020, 855-007-0030, 855-007-0040, 855-007-0050, 855-007-0060, 855-007-0080, 855-007-0090, 855-007-0100, 855-007-0110, 855-007-0120

**Subject:** Current rules do not allow for a situation where the President or a federal official has declared an emergency or has authorized a state to implement measures in preparation for an emergency. In addition, current rules do not adequately address an emergency that is limited in scope. This amendment corrects the omission. The

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rules are also amended to correct ambiguities and grammatical errors, and to provide greater clarity.

**Rules Coordinator:** Karen MacLean—(971) 673-0001

## 855-007-0010

### Declaration of Emergency

(1) With the exception of OAR 855-007-0060(2)(a) and (b), 855-007-0080(2), 855-007-0080(8)(a) and (b), and 855-007-0120 that are always in effect, the rules in this Division are only effective when:

(a) A State of Emergency or a Public Health Emergency has been declared by the Governor of Oregon under ORS 401.055 or 433.441 through 433.452;

(b) The provisions of any relevant rules in chapter 855 Oregon Administrative Rules have been suspended by the Governor under the authority of ORS 401.065(2);

(c) A signatory to the Pacific Northwest Emergency Management Arrangement (the states of Alaska, Idaho, Oregon, Washington, the Province of British Columbia, and Yukon) has requested assistance during a civil emergency as authorized in Chapter 25 Oregon Laws 2008;

(d) A signatory to the Emergency Management Assistance Compact has requested assistance during a civil emergency as authorized in ORS 401.043;

(e) The President of the United States or another federal official has declared a public health emergency; or

(f) The Governor has authorized the Public Health Director to take the actions described in ORS 431.264.

(2) When these rules are authorized by any one of the actions listed in (1)(a)–(f) they are in effect to the extent necessitated by the scope of the declaration, and control to the extent that they are in conflict with other Divisions of OAR Chapter 855.

Stat. Auth.: ORS 401.043, 401.065, 433.441 & 689.205

Stats. Implemented: 2008 OL Ch. 25, ORS 401.055 & 689.155

Hist.: BP 4-2008(Temp), f. 12-31-08, cert. ef. 1-5-09 thru 7-3-09; BP 1-2009, f. & cert. ef. 6-22-09; BP 3-2009(Temp), f. & cert. ef. 8-19-09 thru 2-15-10; BP 4-2009, f. & cert. ef. 12-24-09

## 855-007-0020

### Applicability

(1) These rules apply to all persons licensed or registered with the Board under OAR chapter 855 and to any persons acting under the authority of Oregon State Public Health Division or any other state agency, or any local or county health department or emergency manager, during a Declared Emergency or a Public Health Emergency, or to any such person acting in preparation for a Public Health Emergency.

(2) These rules may apply to the whole state of Oregon or only to a county or area included in the declared emergency. They also apply to the activities of any licensee or registrant who is working during a declared emergency in the state or territory of any of the signatories of Pacific Northwest Emergency Management Arrangement or the Emergency Management Assistance Compact.

(3) These rules apply to the dispensing and administration of drugs and vaccines to any person within an area subject to an emergency declaration or to any person who has been displaced from their place of residence even if the place to which they have been displaced has not been included in the emergency declaration.

(4) Insofar as neither the Governor of Oregon nor the Board has the authority to waive any provisions of Federal Law, nothing in these rules that conflicts with the Federal Controlled Substances Act (CSA) or the implementing regulations in 21 CFR, shall apply to federal controlled substances as listed in Division 80 of this chapter of rules, unless an agency of the US Government has waived the appropriate section of the CSA or the implementing regulations in 21 CFR.

Stat. Auth.: ORS 401.065, 433.441 & 689.205

Stats. Implemented: 2008 OL Ch. 25 & ORS 689.155

Hist.: BP 4-2008(Temp), f. 12-31-08, cert. ef. 1-5-09 thru 7-3-09; BP 1-2009, f. & cert. ef. 6-22-09; BP 4-2009, f. & cert. ef. 12-24-09

## 855-007-0030

### Definitions

(1) “Administer” has the meaning given that term in ORS 689.005.

(2) “Community Partner” has the meaning given that term in OAR 855-007-0080.

(3) “Dispense” has the meaning given that term in ORS 689.005.

(4) “Distribute” has the meaning given that term in ORS 689.005.

(5) “Drug” in this division of rules, the term “drug” means a drug or vaccine or medical device, or any combination of these terms.

(6) “Emergency” has the meaning given that term in ORS 401.025.

(7) “Emergency Management Assistance Compact” (EMAC) means the compact for mutual assistance that was ratified by Congress and signed by all states, and is codified in ORS 401.043.

(8) “Emergency Prescription” means a record that is created in a pharmacy that records the dispensing of a refill of a drug, or a new or modified drug therapy to a patient in the absence of a valid prescription.

(9) “Health-care provider” means an individual licensed, certified or otherwise authorized or permitted by the laws of this state or another state to administer health-care services within their scope of practice.

(10) “Mobile Pharmacy” means a pharmacy that is located in a vehicle or a trailer.

(11) “Oregon State Public Health Division” (OSPHD) means that division of the Oregon Department of Human Services (DHS) that is responsible for planning for and responding to a public health emergency.

(12) “Pacific Northwest Emergency Management Arrangement” (PNEMA) means the compact, ratified in Chapter 25 Oregon Laws 2008, between the states of Alaska, Idaho, Oregon and Washington, and the Province of British Columbia, and Yukon, to provide mutual assistance in an emergency or public health emergency.

(13) “Public Health Emergency” has the meaning given that term in ORS 433.442.

(14) “Strategic National Stockpile” (SNS) means the US Government stockpile of antiviral drugs and other drugs and medical supplies that can be made available to a state in an emergency.

(15) “Temporary Pharmacy” means a facility established under these rules to temporarily provide pharmacy services within or adjacent to an area subject to a State of Emergency.

Stat. Auth.: ORS 401.065, 433.441 & 689.205

Stats. Implemented: 2008 OL Ch. 25 & ORS 689.155

Hist.: BP 4-2008(Temp), f. 12-31-08, cert. ef. 1-5-09 thru 7-3-09; BP 1-2009, f. & cert. ef. 6-22-09; BP 4-2009, f. & cert. ef. 12-24-09

## 855-007-0040

### Delegation of Authority

When these rules are in effect, any authority vested in the Board may be exercised by the Executive Director (ED), any person acting as Executive Director in the ED’s absence or incapacity, or any person the ED designates to make such decisions on the ED’s behalf.

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 689.165

Hist.: BP 4-2008(Temp), f. 12-31-08, cert. ef. 1-5-09 thru 7-3-09; BP 1-2009, f. & cert. ef. 6-22-09; BP 4-2009, f. & cert. ef. 12-24-09

## 855-007-0050

### Emergency Licensure

(1) Article V of ORS 401.043 (EMAC) and Article V of Annex B of PNEMA provide that whenever a person holds a license, certificate or other permit issued by a signatory to the compact evidencing the meeting of qualifications for professional, mechanical or other skills, and when such assistance is requested by the receiving signatory, the person is deemed to be licensed, certified or permitted by the signatory requesting assistance to render aid involving the skill to meet an emergency or disaster, to the extent allowed by law and subject to limitations and conditions as the requesting signatory prescribes by executive order or otherwise.

(2) When an emergency has been declared, a drug outlet may employ a pharmacist, intern or pharmacy technician who does not hold a license issued by the Board, provided that the individual provides evidence that they hold a comparable license issued by any other state or signatory to PNEMA or EMAC.

(3) In an emergency, the Board may grant an emergency temporary license to a licensee of the board of pharmacy of any state, province, foreign state or political sub-division that is not a signatory to PNEMA or EMAC as follows:

(a) A pharmacist, intern, pharmacy technician or certified pharmacy technician who holds an active license in another state, province, foreign state or political sub-division that is not suspended or restricted for any reason and who is sponsored by a pharmacy that has an active registration from the Board may be granted an emergency temporary license subject to approval by the Board of an application that contains:

(A) The name, permanent address and phone number of the applicant;

(B) The license number and state, province or political sub-division of permanent licensure;

(C) The name and license number of the sponsoring Oregon pharmacy; and

(D) Any other information requested by the Board.

(b) The emergency temporary license issued under these rules shall be valid for a period determined by the Board, but not exceeding six months. If the emergency still exists after six months, the Board may renew any emergency temporary license for an additional six months.

(c) The Board shall notify the sponsoring pharmacy of the approval of each emergency temporary license.

(d) A licensee granted an emergency temporary license under this rule may only practice in the sponsoring pharmacy or a pharmacy under common ownership with the sponsoring pharmacy, except that the licensee may transfer to another pharmacy that is not under common ownership with the sponsoring pharmacy, provided that the licensee notifies the Board within three days.

(4) Inactive License Reactivation: In an emergency, the Board may allow a pharmacist whose license has been inactive for no more than two years to reactivate their license without completing any required continuing

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education or MPJE. The license will revert to an inactive status at the end of six months unless all required continuing education has been completed.

Stat. Auth.: ORS 401.065, 433.441 & 689.205  
Stats. Implemented: 2008 OL Ch. 25, ORS 689.151 & 689.155  
Hist.: BP 4-2008(Temp), f. 12-31-08, cert. ef. 1-5-09 thru 7-3-09; BP 1-2009, f. & cert. ef. 6-22-09; BP 4-2009, f. & cert. ef. 12-24-09

## 855-007-0060

### SNS and State Stockpile Emergency Drugs

(1) General: When drugs from the Strategic National Stockpile (SNS) are delivered to the state, the drugs may be delivered to a state Receipt, Staging and Storage center (RSS) for further distribution to Points of Dispensing (PODs) selected by OSPHD. State drugs (state stockpile) may also be delivered to the RSS.

(2) Storage of drugs from SNS or state stockpile:

(a) The RSS, PODs and local health departments (LHD) are authorized to store any drugs from the SNS or state stockpile prior to and during an emergency without any registration from the Board.

(b) All such drugs must be stored in accordance with manufacturers' guidelines.

(c) This authority to possess drugs shall extend beyond the declared emergency until procedures issued by OSPHD for the return or destruction of unused drugs have been completed.

(3) Repackaging: If it is necessary to repackage drugs into unit-of-use regimen packages, this will be done at RSS under Centers for Disease Control (CDC) protocols as follows:

(a) Repackaging equipment will be provided by SNS or OSPHD;

(b) Staff from the CDC Technical Advisory Response Unit (TARU) will train the repackaging team members on the use of the equipment and will provide team leadership.

(c) OSPHD will provide repackaging procedures and team members.

(d) For SNS drugs, unit-of-use regimens shall be labeled in accordance with SNS protocols as follows:

(A) Official health agency name, city and state;

(B) Prescriber's name — when using State protocols prescriber's name will be "State Protocol";

(C) Date repackaged;

(D) Quantity of drugs in the regimen;

(E) Prescription number, name, strength, expiration date and lot number of the drug;

(F) Number for 24-hour telephone line;

(G) Patients name left blank — to be filled in at time of dispensing.

(4) Distribution: The RSS, POD or LHD may distribute or dispense SNS or state stockpile drugs in accordance with the distribution and dispensing procedures provided by OSPHD.

(5) Administration and dispensing: A health-care provider designated by OSPHD or a LHD to supervise the administration and dispensing of SNS or state stockpile drugs shall follow protocols approved by OSPHD, a local health officer or CDC.

(6) An Intake Form that shall serve as a valid prescription is to be filled out for each person receiving a drug at a POD. The intake form is to be retained as specified in OAR 855-007-0110.

(7) Returns: At the conclusion of the emergency, all such drugs are to be returned to the RSS or other designated location under instructions issued by OSPHD.

Stat. Auth.: ORS 401.065, 433.441 & 689.205

Stats. Implemented: ORS 689.155

Hist.: BP 4-2008(Temp), f. 12-31-08, cert. ef. 1-5-09 thru 7-3-09; BP 1-2009, f. & cert. ef. 6-22-09; BP 4-2009, f. & cert. ef. 12-24-09

## 855-007-0080

### Emergency Immunization and Drug Distribution

When these rules are in effect, the following principles and procedures shall apply to the distribution, dispensing and administration of vaccines or drugs:

(1) The distribution of vaccines and drugs is to be in accordance with instructions provided by OSPHD.

(2) LHDs are authorized to distribute SNS or state stockpile drugs to designated Treatment Centers (TC) or health-care providers designated by the State Public Health Director or a local health administrator.

(3) A TC may include but is not limited to:

(a) A LHD;

(b) A clinician;

(c) A community health clinic;

(d) An independent or chain pharmacy;

(e) A hospital or other health-care facility;

(f) A temporary pharmacy;

(g) A mobile pharmacy; or

(h) A tribal health-care facility.

(4) A TC may possess, distribute, dispense and administer vaccines and drugs if these rules are in effect.

(5) A health-care provider, designated by the local health administrator, at a TC shall be responsible for administration, distribution and tracking of vaccines and drugs in accordance with procedures established by OSPHD.

(6) A health-care provider may, if permitted under that provider's scope of practice and these rules, distribute, dispense and administer vaccines and drugs.

(7) An Individual Data Collection Form (IDCF) shall be filled out for each person receiving a vaccine or drug at a TC or from a health-care provider, and this IDCF shall be treated as a valid prescription and retained as follows:

(a) An IDCF initiated at a pharmacy or other licensed health-care facility shall be filed and retained for three years;

(b) An IDCF initiated at a facility that is not a licensed health-care facility or at a temporary or mobile pharmacy shall be sent to OSPHD at the end of the state of emergency except that where the temporary or mobile facility has been established under the authority of OAR 855-007-0100 all records shall be filed and retained in accordance with 855-007-0110.

(8) Community Partner: A Community Partner means any entity that is authorized by OSPHD or OBOP to:

(a) Purchase and store vaccines or drugs prior to a pandemic event;

(b) Store vaccines or drugs in a Board registered facility or at a tribal site;

(c) Take possession of the vaccines or drugs and distribute to critical infrastructure and key resources when so directed by OSPHD in accordance with OSPHD protocols and procedures.

(d) A Community Partner shall:

(A) Distribute all drugs within 72 hours of removal from the storage site;

(B) Store all drugs in accordance with manufacture's guidelines;

(C) Record all distributions on a Distribution Log that shall include:

(i) The name and age of the person receiving the drugs;

(ii) The name, strength and quantity of the drugs;

(iii) The date and the time of the distribution.

(e) The Distribution Log shall be treated as a valid prescription and stored or otherwise disposed of as specified in 855-007-0110;

(9) This authority for LHDs, TCs, health-care providers and Community Partners to possess drugs shall extend beyond the declared emergency until procedures issued by OSPHD for the return or destruction of unused drugs have been completed.

Stat. Auth.: ORS 401.065, 433.441 & 689.205

Stats. Implemented: 689.155

Hist.: BP 4-2008(Temp), f. 12-31-08, cert. ef. 1-5-09 thru 7-3-09; BP 1-2009, f. & cert. ef. 6-22-09; BP 4-2009, f. & cert. ef. 12-24-09

## 855-007-0090

### Emergency Pharmacy Rules

(1) Refills: A pharmacist in the area covered by a declared emergency or in an area engaged in disaster assistance may dispense a refill of a prescription drug without a valid prescription provided that:

(a) In the pharmacist's professional judgment, the drug is essential to the maintenance of the patient's health or the continuation of therapy; and

(b) The pharmacist provides no more than a 30-day supply; and

(c) The pharmacist records all relevant information and indicates that it is an Emergency Prescription; and

(d) The pharmacist informs the patient or the patient's agent that the drug is being provided without a prescriber's authorization and that a prescriber authorization is required for any additional refill.

(e) If the refill is for a controlled substance, permission has been granted by the DEA for this type of refill, either by waiver of appropriate controlled substance regulations or by notification to the Board.

(2) New and modified drug therapy: A pharmacist in the area covered by a declared emergency or in an area engaged in disaster assistance may, after consultation with any authorized prescriber, initiate or modify any drug therapy, and dispense an amount of the drug to meet the patient's health needs until that patient can be seen by a health-care practitioner, provided that:

(a) The pharmacist acts in accordance with currently accepted standards of care; and

(b) In the pharmacist's professional judgment, the drug is essential to the maintenance of the patient's health or to the continuation of therapy; and

(c) The pharmacist records all relevant information to a form and indicates that a drug therapy has been initiated or modified and that this is an Emergency Prescription; and

(d) The pharmacist informs the patient or the patient's agent at the time of dispensing that the drug is being provided in the absence of a valid patient — prescriber relationship but that a prescriber was consulted regarding the appropriateness of the drug therapy; and

(e) The pharmacist informs the patient or the patient's agent that a prescriber authorization is required for any refill.

Stat. Auth.: ORS 401.065, 433.441 & 689.205

Stats. Implemented: ORS 689.155

Hist.: BP 4-2008(Temp), f. 12-31-08, cert. ef. 1-5-09 thru 7-3-09; BP 1-2009, f. & cert. ef. 6-22-09; BP 4-2009, f. & cert. ef. 12-24-09

## 855-007-0100

### Temporary Pharmacies

(1) When these rules are in effect, the Board may issue a Temporary Pharmacy Registration to any facility or mobile facility.

# ADMINISTRATIVE RULES

(2) A facility, including a mobile pharmacy, holding a Temporary Pharmacy Registration may store and dispense drugs in accordance with the requirements of OAR 855-041 and these rules. The supervising pharmacist of a mobile pharmacy shall notify the Board of the pharmacy location within three working days of commencing business, and within three working days of any change in location.

(3) A Temporary Pharmacy Registration automatically expires when the state of emergency ends unless specifically extended by the Board.

(4) Within 30 days of the end of the declared emergency, the holder of a Temporary Pharmacy Registration shall notify the Board as to the disposition of its drug inventory and records.

(5) A temporary or mobile pharmacy that is established for the sole purpose of expediting distribution of emergency immunizations, antibiotics or antiviral drugs under OAR 855-007-0080, is located adjacent to an existing pharmacy registered with the Board and is under the supervision of the PIC of the existing pharmacy, does not need to be registered as a temporary pharmacy.

Stat. Auth.: ORS 401.065, 433.441 & 689.205

Stats. Implemented: ORS 689.155

Hist.: BP 4-2008(Temp), f. 12-31-08, cert. ef. 1-5-09 thru 7-3-09; BP 1-2009, f. & cert. ef. 6-22-09; BP 4-2009, f. & cert. ef. 12-24-09

## 855-007-0110

### Emergency Recordkeeping

All records initiated during a state of emergency shall be disposed of as follows:

(1) POD intake forms and Individual Data Collection Forms or electronic records shall be transferred to OSPHD at the end of the emergency;

(2) Community Partner's Logs:

(a) Vaccines: Logs shall be transferred to OSPHD within 14 days of administration to be entered into the statewide immunization information system. If the Community Partner is a registered health-care facility or under the control of a licensed health-care provider, a copy of the log shall be made before submission and retained for three years.

(b) Antivirals and other drugs: Logs shall be transferred to OSPHD at the end of the emergency unless the Community Partner is a registered health-care facility or under the control of a licensed health-care provider in which case logs shall be stored securely by the Community Partner;

(3) Emergency Prescriptions and Individual Data Collection Forms for drugs dispensed from a pharmacy that is not a Temporary or Mobile Pharmacy shall be stored at the pharmacy.

(4) Emergency Prescriptions and Individual Data Collection Forms for drugs dispensed from a Temporary or Mobile Pharmacy shall be stored at whichever of the following locations is most appropriate:

(a) At the parent pharmacy that provided the majority of the drugs to the Temporary or Mobile Pharmacy; or

(b) At the pharmacy that employs the supervising pharmacist of the Temporary or Mobile Pharmacy; or

(c) At the pharmacy that receives the unused drugs from the Temporary or Mobile Pharmacy at the end of the emergency.

(5) Unless otherwise specified, all records are to be retained for three years and must be made available to the Board upon request.

Stat. Auth.: ORS 401.065, 433.441 & 689.205

Stats. Implemented: ORS 689.155

Hist.: BP 4-2008(Temp), f. 12-31-08, cert. ef. 1-5-09 thru 7-3-09; BP 1-2009, f. & cert. ef. 6-22-09; BP 4-2009, f. & cert. ef. 12-24-09

## 855-007-0120

### Damage to a Pharmacy and Drug Integrity

(1) If a pharmacy prescription department sustains damage, whether by flood or otherwise, the entire drug inventory, including any prescriptions that are awaiting pickup, is unfit for dispensing, shall be classified as adulterated and must be destroyed unless, in the pharmacist's professional judgment, any items are deemed safe for dispensing. Any incident of this nature must be reported to the Board within three working days.

(2) If a pharmacy loses power that affects temperature or humidity controls such that USP standards for proper storage of drugs have been violated, such drugs shall be classified as adulterated and may not be dispensed.

**NOTE:** for those drugs labeled for storage at "controlled room temperature," the acceptable range of temperature is 68° to 77°F with allowances for brief deviations between 59° to 86°F.

(3) Controlled substances damaged, lost or stolen shall be documented and reported to the DEA and the Board on DEA Form 41 or DEA Form 106 as appropriate.

(4) A pharmacy that is required to temporarily close or relocate due to an emergency must report this event to the Board within three working days.

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 689.155

Hist.: BP 4-2008(Temp), f. 12-31-08, cert. ef. 1-5-09 thru 7-3-09; BP 1-2009, f. & cert. ef. 6-22-09; BP 4-2009, f. & cert. ef. 12-24-09

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**Rule Caption:** Amend and adopt registration rules for drug distribution agents and wholesalers, and amend fee schedules.

**Adm. Order No.:** BP 5-2009

**Filed with Sec. of State:** 12-24-2009

**Certified to be Effective:** 12-24-09

**Notice Publication Date:** 11-1-2009

**Rules Adopted:** 855-062-0003, 855-062-0005, 855-062-0020, 855-062-0030, 855-062-0040, 855-062-0050, 855-110-0003

**Rules Amended:** 855-065-0001, 855-065-0005, 855-065-0006, 855-110-0005, 855-110-0007, 855-110-0010

**Rules Repealed:** 855-062-0003(T), 855-062-0005(T), 855-062-0020(T), 855-062-0030(T), 855-062-0040(T), 855-062-0050(T), 855-110-0003(T)

**Subject:** The new rules in division 62, and the amended rules in division 65 define which entities must register as drug distribution agents and as drug wholesalers. The new category of Drug Distribution Agent is created in division 62 to accommodate entities that are involved in the drug manufacturing and distribution industry but that do not ever take ownership or possession of actual product and are not licensed with the FDA as manufacturers. Division 65 is further amended to eliminate confusion over the status of repackagers and brokers, to eliminate the requirement for a surety bond for a wholesale drug outlet that is accredited by the National Association of Boards of Pharmacy's Verified Accredited Wholesale Distributor (VAWD) program, and to classify certain entities as Class 2 Wholesalers. The fee schedule in division 110 is amended to include the new category of Drug Distribution Agent. Division 110 is also amended to add the \$25 Electronic Prescription Monitoring Fund Fee mandated by SB 355 (Oregon Laws 2009, Chapter 799), to the pharmacist license fee.

**Rules Coordinator:** Karen MacLean—(971) 673-0001

## 855-062-0003

### Application

(1) Any person who is involved in the manufacture or wholesale distribution of a drug that is intended for distribution, dispensing or administration in Oregon, but who does not at any time have possession of any of the Active Product Ingredients (API) or the final product, and does not participate in the actual manufacturing process, must register under these rules as a Drug Distribution Agent, except that any such person, registered with the FDA as a manufacturer, who is accountable to the FDA for the purity and integrity of a drug must register as a manufacturer under Division 60 of this chapter of rules.

(2) The following persons must register as a Drug Distribution Agent under this division of rules:

(a) A broker;

(b) An import broker;

(c) An agent for a foreign manufacturer who is registered with the FDA;

(d) Sales and marketing office for a drug;

(e) A Drug Order Contractor;

(f) A person registered with the FDA as the holder of a New Drug Application (NDA) or an Abbreviated New Drug Application (ANDA) that contracts with a third-party for the manufacture of a drug but does not take physical possession of the drug, does not have its name on the label and is not accountable to the FDA for the purity and integrity of the drug.

(3) Any person who would otherwise be required to register as a wholesaler under Division 65 of this chapter of rules but who does not at any time have possession of a drug intended for distribution must register as a Drug Distribution Agent under this division of rules.

(4) A person whose sole purpose is the marketing, brokering or arranging the initial distribution of drugs manufactured by a registered manufacturer, but does not take physical possession of a product must register as a Drug Distribution Agent.

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 689.155

Hist.: BP 2-2009(Temp), f. 6-22-09, cert. ef. 6-26-09 thru 12-23-09; BP 5-2009, f. & cert. ef. 12-24-09

## 855-062-0005

### Definitions

(1) "Broker" means a person engaged in the marketing, offering, or contracting for wholesale distribution and sale of a drug into, within, or out of Oregon and who does not take physical possession of the drug.

(2) "Closed Door Pharmacy" means a pharmacy that provides pharmaceutical services to a defined and exclusive group of patients and is not open for dispensing to the general patient population and cannot be registered as a wholesale distributor.

(3) "Co-Manufacturing Partner" means a pharmaceutical manufacturer that has entered into an agreement with another pharmaceutical manufacturer to engage in a business activity or occupation related to the manufacture or distribution of a prescription drug.

# ADMINISTRATIVE RULES

(4) "Drug": In this division of rules, the term "drug" shall mean any drug and any prescription device as these terms are defined in ORS 689.005.

(5) "Manufacturer" means any person, including a manufacturer's co-manufacturing partner, that is engaged in the manufacture of a drug, is responsible or otherwise accountable to the FDA for the manufacture of the drug, or is the private label manufacturer or distributor of product bearing its NDC number that is intended for sale, distribution, dispensing or administration in Oregon, and who holds one or more of the following registrations or licenses with the FDA:

- (a) A New Drug Application number (NDA);
- (b) An Abbreviated New Drug application number (ANDA);
- (c) A Labeler Code number (LC) or National Drug Code Number (NDC);
- (d) An FDA Central File Number (CFN);
- (e) An FDA Establishment Identifier number (FEI);
- (f) A Biologic License Application (BLA).

(6) "Manufacture" means the preparation, propagation, compounding, or processing of a drug or device intended for human or animal use. Manufacture includes repackaging or otherwise changing the container, wrapper, or labeling of any drug package in furtherance of the distribution of the drug from the original place of manufacture to the person who makes final delivery or sale to the ultimate consumer or user, except when the process is part of a shared pharmacy service agreement as defined in OAR 855-006-0005.

(7) "Person" means individual, corporation, partnership, association, joint-stock company, business trust or unincorporated organization.

Stat. Auth.: ORS 689.205  
Stats. Implemented: ORS 689.155  
Hist.: BP 2-2009(Temp), f. 6-22-09, cert. ef. 6-26-09 thru 12-23-09; BP 5-2009, f. & cert. ef. 12-24-09

## 855-062-0020 Registration

(1) Any person engaged in any part of the process of manufacture or wholesale distribution of a drug into, out of, or within Oregon must be registered with the Board. A person must register as either:

- (a) A manufacturer under Division 60 of this chapter of rules; or
- (b) A wholesaler under Division 65 of this chapter of rules; or
- (c) A Drug Distribution Agent under this division of rules.

(2) A person that is required to register as a Drug Distribution Agent must be registered before commencing business in Oregon and before any drug for which they provide a manufacturing, marketing or distribution service, may be sold, distributed, dispensed or administered in Oregon.

(3) A person that is required to register as a Drug Distribution Agent must apply for registration on a form provided by the Board and must provide information required by the Board that shall include but is not limited to:

- (a) The name, business address, social security number or federal tax identification number of each owner, officer, and stockholder owning more than 10 per cent of the stock of the company, unless the stock of the company is publicly traded;
- (b) Every trade or business name used by the applicant;
- (c) Any disciplinary action taken by any state or federal authority against the applicant or any other distributor under common ownership or control, or any owner, principal or designated representative of the applicant, in connection with the drug laws or regulations of any state or the federal government.

(4) An applicant for renewal must complete the form provided by the Board and submit it to the Board with the appropriate fee by August 31 annually.

(5) An applicant that provides a manufacturing or distribution service in respect of a controlled substance as defined in Division 80 of this chapter of rules must also complete and submit the Controlled Substance registration form provided by the Board, with the appropriate fee.

(6) The Board may require a criminal history and financial background check of each principal, owner or officer of the applicant prior to initial registration and prior to any renewal unless the applicant is publicly traded. Any such checks shall be at the applicant's expense.

(7) The Board may require a physical inspection of each facility prior to initial registration and prior to any renewal.

(8) Each separate business entity and each location that does business in Oregon must be separately registered by the Board.

(9) The registrant must notify the Board, within 15 days, of any substantial change to the information provided on the registration application. Substantial change shall include but is not limited to:

- (a) Change of ownership;
- (b) Change of business address;
- (c) Any disciplinary action taken or pending by any state or federal authority against the registrant, or any of its principals, owners, directors, officers.

(10) The registration certificate is issued to a specific person and is non-transferable. Any addition or deletion of an owner or partner constitutes a change of ownership.

(11) The Board may waive any requirement of this rule if, in the Board's judgment, a waiver will further public health or safety. A waiver granted under this section shall only be effective when issued in writing.

Stat. Auth.: ORS 689.205  
Stats. Implemented: ORS 689.155  
Hist.: BP 2-2009(Temp), f. 6-22-09, cert. ef. 6-26-09 thru 12-23-09; BP 5-2009, f. & cert. ef. 12-24-09

## 855-062-0030 Minimum Qualifications

The Board may deny an application for registration or renewal of registration as a Drug Distribution Agent on any of the following grounds:

(1) The applicant has been found by the Board or by a court to have violated the pharmacy or drug laws or rules of this state or of any other state, or of the federal government;

(2) The applicant has a history of non-compliance with state or federal rules or laws regulating the manufacture, distribution, or dispensing of drugs;

(3) The applicant has made a material misrepresentation to the Board in the course of applying for an initial or renewal of registration;

(4) Disciplinary action has been taken by the federal government or by any state, or local government regarding any license or registration currently or previously held by the applicant for the manufacture, distribution or dispensing of any drugs;

(5) The applicant has engaged in any conduct involving moral turpitude;

(6) The Board determines that granting the registration is not consistent with the public health or safety or is otherwise not in the public interest.

Stat. Auth.: ORS 689.205  
Stats. Implemented: ORS 689.155  
Hist.: BP 2-2009(Temp), f. 6-22-09, cert. ef. 6-26-09 thru 12-23-09; BP 5-2009, f. & cert. ef. 12-24-09

## 855-062-0040 Record Keeping

(1) A Drug Distribution Agent must establish and maintain records of all transactions regarding the distribution or other disposition of a drug. These records must comply with all federal drug laws and regulations and must include the following information:

(a) The source of the drug, including the name and physical address of the seller or transferor and any broker or other person involved in the transaction, the address of the location from which the drug was shipped and the address of the location to which the drug was shipped;

(b) The name, dose and quantity of the drug distributed;

(c) The date of distribution or other disposition of the drug.

(2) Records required by this rule must be made available for inspection and copying by any authorized official of the Drug Enforcement Agency, the Food and Drug Administration, the Department of Agriculture, authorized law enforcement agencies, and this Board.

(3) Records required under these rules must be maintained for three years.

(4) Records required under these rules that are less than 13 months old must be kept at the address of record or be immediately retrievable by computer or other electronic means, and must be immediately available for inspection. All other records required by these rules must be made available for inspection within three business days of a request.

Stat. Auth.: ORS 689.205  
Stats. Implemented: ORS 689.155  
Hist.: BP 2-2009(Temp), f. 6-22-09, cert. ef. 6-26-09 thru 12-23-09; BP 5-2009, f. & cert. ef. 12-24-09

## 855-062-0050 Prohibited Practices

(1) The following practices are expressly prohibited:

(a) A Drug Distribution Agent may not participate in the purchase of a drug from a closed-door pharmacy;

(b) A Drug Distribution Agent may not participate in any way in the sale, distribution or transfer of a drug to a person who is required by the laws and rules of Oregon to be registered with the Board and who is not appropriately registered. Before authorizing or facilitating the distribution of a drug, a Drug Distribution Agent must verify that the person supplying or receiving the drug is appropriately registered with the Board.

(2) A Drug Distribution Agent may not perform, cause the performance of, or aid the performance of any of the following:

(a) The manufacture, repackaging, sale, delivery, holding, or offering for sale of a drug that is adulterated, misbranded, counterfeit, suspected counterfeit, or is otherwise unfit for distribution;

(b) The adulteration, misbranding, or counterfeiting of a drug;

(c) The receipt of a drug that is adulterated, misbranded, stolen, obtained by fraud or deceit, counterfeit, or suspected counterfeit, and the delivery or proffered delivery of the drug for pay or otherwise;

(d) The alteration, mutilation, destruction, obliteration, or removal of the whole or a part of the labeling of a drug or the commission of another act with respect to a drug that results in the drug being misbranded;

(e) The forging, counterfeiting, simulating, or falsely representing a drug using a mark, stamp, tag, label, or other identification device;

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(f) The purchase or receipt of a drug from a person that is not registered to distribute drugs to the purchaser or recipient;

(g) The sale or transfer of a drug to a person that is not authorized under the law of the jurisdiction in which the person receives the drug, to purchase or receive drugs from the person selling or transferring the drug;

(h) The failure to maintain or provide records as required under these rules;

(i) Providing the Board, a representative of the Board, or a state or federal official with false or fraudulent records or making false or fraudulent statements regarding a matter related to these rules;

(j) Participating in the wholesale distribution of a drug that was:

(A) Purchased by a public or private hospital or other health care entity under the terms of an "own-use" contract; or

(B) Donated or supplied at a reduced price to a charitable organization;

or

(C) Stolen or obtained by fraud or deceit; or

(D) Illegally imported into the USA.

(k) Facilitating the distribution or attempting to facilitate the distribution of a drug by fraud, deceit, or misrepresentation;

(L) Facilitating the distribution of a drug that was previously dispensed by a retail pharmacy or a practitioner;

(m) Failing to report an act prohibited by any of the rules in OAR Chapter 855 to the appropriate state or federal authorities.

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 689.155

Hist.: BP 2-2009(Temp), f. 6-22-09, cert. ef. 6-26-09 thru 12-23-09; BP 5-2009, f. & cert. ef. 12-24-09

## 855-065-0001

### Application

(1) These rules (OAR 855-065-0001 to 855-065-0013) apply to any person, including any business entity, located in or outside Oregon that engages in the wholesale distribution of prescription or non-prescription drugs in Oregon except that a manufacturer that is registered under Division 60 of this chapter of rules does not also need to register as a wholesale distributor under these rules if they only distribute their own products or those manufactured by a Co-Manufacturing Partner as defined in OAR 855-065-0005.

(2) Any person that participates in the wholesale distribution of a drug but that does not at any time take physical possession or ownership of any drug must register as a Drug Distribution Agent in accordance with Division 62 of this chapter of rules, however a person that is registered with the Board as a manufacturer or a wholesaler does not also need to register as a Drug Distribution Agent.

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 689.155

Hist.: 1PB 2-1979(Temp), f. & ef. 10-3-79; 1PB 2-1980, f. & ef. 4-3-80; PB 3-1992, f. & cert. ef. 3-26-92 (and corrected 4-8-92); PB 1-1994, f. & cert. ef. 2-2-94; BP 4-2002, f. 6-27-02, cert. ef. 7-1-02; BP 12-2006, f. & cert. ef. 12-19-06; BP 2-2009(Temp), f. 6-22-09, cert. ef. 6-26-09 thru 12-23-09; BP 5-2009, f. & cert. ef. 12-24-09

## 855-065-0005

### Definitions

(1) "Authenticate" means to verify that each transaction listed on the pedigree and other accompanying documentation has occurred and is accurately recorded.

(2) "Authorized Distributor of Record" means a wholesale distributor with whom a manufacturer has established an ongoing relationship to distribute the manufacturer's prescription drug. An ongoing relationship is deemed to exist between such wholesale distributor and a manufacturer when the wholesale distributor, including any affiliated group of the wholesale distributor, as defined in Section 1504 of the Internal Revenue Code, complies with either or both of the following:

(a) The wholesale distributor has a written agreement currently in effect with the manufacturer evidencing such ongoing relationship; or

(b) The wholesale distributor is listed on the manufacturer's current list of authorized distributors of record, which is updated by the manufacturer no less than monthly.

(3) "Broker" means a person engaged in the marketing, offering, or contracting for wholesale distribution and sale of a drug into, within, or out of Oregon and who does not take physical possession of the brokered substance.

(4) "Chain Pharmacy Warehouse" means a physical location for drugs that acts as a central warehouse and performs intra company sales or transfers of drugs to a group of chain pharmacies that have the same common ownership and control.

(5) "Closed Door Pharmacy" means a pharmacy that provides pharmaceutical services to a defined and exclusive group of patients and is not open for dispensing to the general patient population and cannot be registered as a wholesale distributor.

(6) "Co-Manufacturing Partner" means a pharmaceutical manufacturer that has entered into an agreement with another pharmaceutical manufacturer to engage in a business activity or occupation related to the manufacture or distribution of a prescription drug.

(7) "Common Carrier" means an organization that is available to the public to transport a product or service using its facilities, or those of other carriers.

(8) "Contraband Drug" means a drug that is counterfeit, stolen, misbranded, obtained by fraud, or purchased by an entity for its own use and placed in commerce in violation of an own-use agreement for that drug.

(9) "Cooperative Pharmacy Warehouse" means a physical location for drugs that acts as a central warehouse and is owned, operated or affiliated with a group purchasing organization or pharmacy buying cooperative and distributes drugs exclusively to its members. To be considered part of the Normal Chain of Distribution as defined in section (16) of this rule, a Cooperative Pharmacy Warehouse must also be listed as an Authorized Distributor of Record for that manufacturer.

(10) "Designated Representative" means an individual designated by each wholesale distributor registered by the Board who will serve as the primary contact person for the wholesale distributor with the Board and who is responsible for managing the company's operations at that registered location.

(11) "Drop Shipment" means a drug transaction whereby the manufacturer, that manufacturer's co-manufacturing partner, that manufacturer's third-party logistics provider, or that manufacturer's exclusive distributor delivers a drug directly to a chain pharmacy warehouse, a cooperative pharmacy warehouse, a pharmacy, or other person authorized to administer or dispense prescription drugs to a patient, but transfers title to the drug to a wholesale distributor. A drop shipment shall be considered as part of a normal chain of distribution as defined in section (16) of this rule.

(12) "Drug Sample" means a unit of a drug that is intended to promote the sale of the drug, but which is not itself for sale.

(13) "Intra Company Transfer" means the transfer of any drug between a division, subsidiary, parent, and an affiliated or related company under the common ownership and control of a corporate entity.

(14) "Manufacturer" means anyone, including a manufacturer's co-manufacturing partner, who is engaged in manufacturing, preparing, propagating, compounding, processing, packaging, repackaging, or labeling of a drug, except when the process is part of a shared pharmacy service agreement as defined in OAR 855-006-0005.

(15) "Manufacturer's Exclusive Distributor" means an entity, including a manufacturer's wholly owned distributor, that contracts with a manufacturer who is registered under Division 60 of this chapter of rules, to provide or coordinate warehousing, distribution, or other services on behalf of a manufacturer and takes title to that manufacturer's drug, but does not have general responsibility to direct the drug's sale or disposition. To be considered part of the Normal Chain of Distribution as defined in section (16) of this rule, a Manufacturer's Exclusive Distributor must also be listed as an Authorized Distributor of Record for that manufacturer.

(16) "Normal Chain of Distribution" means a chain of distribution, including a drop-shipment, for a prescription drug that goes from: a manufacturer; a manufacturer's co-manufacturing partner; a manufacturer's exclusive distributor; or a manufacturer's third-party logistics provider to:

(a) A pharmacy or a person authorized to administer or dispense a prescription drug to a patient; or

(b) A manufacturer's authorized distributor of record, to a pharmacy or a person authorized to administer or dispense a prescription drug to a patient; or

(c) A manufacturer's authorized distributor of record, to a chain pharmacy warehouse, to that chain pharmacy warehouse's intra company pharmacy, to a patient or a person authorized to administer or dispense a prescription drug to a patient; or

(d) A chain pharmacy warehouse, to that chain pharmacy warehouse's intra company pharmacy, to a patient or a person authorized to administer or dispense a prescription drug to a patient; or

(e) A manufacturer's authorized distributor of record, to a specialty wholesaler, to a pharmacy or a person authorized to administer or dispense a prescription drug to a patient; or

(f) A manufacturer's authorized distributor of record to a cooperative pharmacy warehouse, to a member of the affiliated group purchasing organization or pharmacy buying cooperative, to a patient or a person authorized to administer or dispense a prescription drug to a patient.

(17) "Pedigree" means a statement or record in a written or electronic form that accurately records each wholesale distribution of a prescription drug from the sale by a manufacturer through acquisition and sale by any wholesale distributor or repackager until final sale to a pharmacy or other person authorized to administer or dispense the drug. The pedigree must include, but not be limited to, the following information for each transaction:

(a) The source of the prescription drug, including the name and principal address of the seller;

(b) The proprietary and established name of the prescription drug, the National Drug Code number, the amount of the prescription drug, its dosage form and dosage strength, the date of the purchase, the sales invoice number or other unique shipping document number that identifies the transaction, container size, number of containers, expiration date, and lot number or control number of the prescription drug;

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(c) The business name and address of each owner of the prescription drug and its shipping information, including the name and address of the facility of each person certifying delivery or receipt of the prescription drug.

(18) "Prescription Drug" means any drug required by law to be dispensed only by a prescription.

(19) "Repackage" means repackaging or otherwise changing the container, wrapper, or labeling to further the distribution of a prescription drug excluding that completed by the pharmacist responsible for dispensing the product to a patient.

(20) "Specialty Wholesale Distributor" means an entity that exclusively distributes a limited product line of drugs to a specific group of pharmacies or registered practitioners as approved in writing by the Board. To be considered part of the Normal Chain of Distribution as defined in section (16) of this rule, a Specialty Wholesale Distributor must also be listed as an Authorized Distributor of Record for that manufacturer.

(21) "Third-Party Logistics Provider" means an entity that contracts with a manufacturer who is registered under these rules to provide or coordinate warehousing, distribution, or other services on behalf of the manufacturer, but does not take title to the drug or have general responsibility to direct the sale or disposition of the drug. To be considered part of the Normal Chain of Distribution as defined in section (16) of this rule, a Third-Party Logistics Provider must also be listed as an Authorized Distributor of Record for that manufacturer.

(22) "Wholesale Distribution" means distribution of a drug to a person other than a consumer or patient, but does not include:

(a) Delivery by a retail pharmacy of a prescription drug to a patient or patient's agent pursuant to the lawful order of a licensed practitioner.

(b) The sale of minimal quantities of a prescription drug by retail pharmacies to licensed practitioners for office use.

(c) The sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug for emergency medical reasons, including but not limited to transfer of a drug by a pharmacy to another pharmacy to alleviate a temporary shortage.

(d) Intra company transfer of drugs as defined in these rules.

(e) The lawful distribution of a drug sample by a manufacturer's or a distributor's representative.

(f) The sale of a drug by a charitable organization described under 501(c)(3) of the Internal Revenue Code to a non-profit affiliate of the organization to the extent permitted by law.

(g) The purchase or acquisition of a drug by a hospital or other health care entity that is a member of a group purchasing organization, for the hospital's or health care entity's own use, from the group purchasing organization or from other hospitals or health care entities that are members of the organization or under common control.

(h) The transfer of a prescription drug between pharmacies pursuant to a shared pharmacy service agreement as defined in OAR 855-006-0005.

(i) The distribution by a manufacturer, as part of a prescription assistance program, of a drug intended for a specific patient, to a person authorized to prescribe, administer or dispense prescription drugs.

(j) The sale, purchase, or trade of blood and blood components intended for transfusion.

(k) Drug returns, when conducted in accordance with state and federal laws and regulations. A drug return includes the sale or transfer from a retail pharmacy or chain pharmacy warehouse of expired, damaged, returned or recalled drugs to the original manufacturer, wholesale distributor, or to a third-party returns processor or reverse wholesaler, and the returns of saleable drugs to the original manufacturer or wholesaler.

(L) The transporting of a drug by common carrier where the common carrier does not take title to the drug and does not have responsibility to direct the drug's sale or distribution.

(m) The sale, transfer, merger or consolidation of all or part of the business of a pharmacy from or with another pharmacy.

(n) The distribution of drugs by a manufacturer registered under Division 60 of this chapter of rules of its own products to a person other than a patient.

(23) "Wholesale Distributor" means any entity engaged in the wholesale distribution of drugs, including any entity whose business name appears on any invoice or other type of shipping document indicating possession or title. The term "Wholesale Distributor" includes but is not limited to, own-label distributors; private-label distributors; warehouses, including manufacturers' and distributors' warehouses; drug wholesalers or distributors; independent wholesale drug traders; third-party logistics providers; cooperative pharmacy warehouses; retail pharmacies that conduct wholesale distribution; and chain pharmacy warehouses that conduct wholesale distribution. To be considered part of the Normal Chain of Distribution as defined in section (16) of this rule, a Wholesale Distributor must also be listed as an Authorized Distributor of Record for that manufacturer.

(24) "Wholesaler" means any wholesale distributor:

(a) "Class I Wholesaler" means any person operating or maintaining a wholesale distribution center, wholesale business or any other business in which prescription drugs, medicinal chemicals, or poisons are sold, dispensed, stocked, exposed or offered for sale at wholesale to a pharmacy or other legally licensed drug outlets or persons;

(b) "Class II Wholesaler" means any person operating or maintaining a wholesale distribution center, wholesale business or any other business in which any of the products in paragraphs (A) – (D) below are stored, or offered for sale or distribution at wholesale to a drug outlet or practitioner legally authorized to resell, distribute, dispense or administer:

(A) Non-prescription drugs;

(B) Drugs distributed exclusively for veterinary use. If any prescription drugs not intended for veterinary use are offered for sale, the wholesaler must register as a Class I wholesaler;

(C) Prescription devices that do not contain a prescription drug;

(D) Drugs or devices possessed by a state or local government agency, or non-profit relief organization approved by the Board.

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 689.155

Hist.: 1PB 2-1979(Temp), f. & ef. 10-3-79; 1PB 2-1980, f. & ef. 4-3-80; PB 3-1992, f. & cert. ef. 3-26-92 (and corrected 4-8-92); BP 12-2006, f. & cert. ef. 12-19-06; BP 2-2009(Temp), f. 6-22-09, cert. ef. 6-26-09 thru 12-23-09; BP 5-2009, f. & cert. ef. 12-24-09

## 855-065-0006

### Registration Requirements

(1) Every wholesale distributor, wherever located, that engages in wholesale distribution into, out of, or within Oregon must be registered with the Board in accordance with the laws and regulations of Oregon before engaging in wholesale distribution of drugs. Every applicant for registration or renewal of registration must pay the appropriate fee in accordance with OAR 855-110-0007 and 855-110-0010. An applicant must register as a Class I Wholesaler or a Class II Wholesaler unless the applicant qualifies for registration as a Drug Distribution Agent under Division 62 of this chapter of rules.

(2) Application for registration must be on a form approved by the Board and must include, but not be limited to, the following information:

(a) The name, business address, social security number and federal tax identification number of each owner, officer, and stockholder owning more than 10 per cent of the stock of the company, unless the stock of the company is publicly traded;

(b) All trade or business names used by the applicant including any businesses outside Oregon;

(c) The names, addresses and telephone numbers of the designated representatives for all facilities used by the applicant that engage in wholesale distribution into, out of, or within Oregon;

(d) The normal business hours for the applicant; and

(e) Any disciplinary action taken by any state or federal authority against the applicant or any other wholesale distributor under common ownership or control, or any owner, principal or designated representative of the applicant, in connection with the drug laws or regulations of any state or the federal government.

(3) The Board may require a criminal history and financial background check of each principal, owner, officer and designated representative of the applicant prior to initial registration and prior to any renewal. Any such checks shall be at the applicant's expense.

(4) The Board may require a physical inspection of each facility prior to initial registration and prior to any renewal.

(5) Any wholesale distributor located outside the boundaries of Oregon, applying for registration or re-registration, as a Class I Wholesaler, must provide evidence of one of the following:

(a) A current license or registration as a wholesale distributor in a state that has a license or registration procedure approved by the Board that included a physical inspection within the past three years; or

(b) A current accreditation by a process approved by the Board such as The National Association of Boards of Pharmacy's Verified Accredited Wholesale Distributor (VAWD) program or other nationally recognized accreditation program or contract inspection service.

(6) Any wholesale distributor located inside the boundaries of Oregon, applying for registration or re-registration, as a Class I Wholesaler, must provide evidence of one of the following:

(a) A current accreditation by a process approved by the Board such as The National Association of Boards of Pharmacy's Verified Accredited Wholesale Distributor (VAWD) program or other nationally recognized accreditation program or contract inspection service; or

(b) That it is a small business as defined in ORS 183.310(10); and

(A) The applicant has no affiliation with any out-of-state pharmaceutical company; and

(B) All owners and principals of the applicant are Oregon residents; and

(C) No owner or principal, or close family member of an owner or principal, has a controlling or business interest in any other pharmaceutical company; and

(D) Neither the applicant, nor any of its owners or principals, has ever been found to be in violation of any drug law or regulation in this or any other state.

(7) In addition to the above registration requirements, an applicant for registration as a Class I wholesaler under this rule, that has not received VAWD accreditation, must provide evidence that it has obtained a bond or equivalent means of security of at least \$100,000 that provides direct access to the Oregon Board of Pharmacy as a beneficiary to secure payment of any



# ADMINISTRATIVE RULES

administrative penalties that may be imposed by the Board and any fees and costs that may be incurred by the Board and that:

- (a) Are related to a registration held by the wholesale distributor; and
- (b) Are authorized under Oregon law; and
- (c) The wholesale distributor fails to pay less than thirty days after the penalties, fees, or costs become final.

(8) The Board may make a claim against a bond or security posted under section (7) of this rule within one year after the wholesale distributor's registration is no longer valid or sixty days after the conclusion of whichever occurs later:

(a) An administrative or legal proceeding before or on behalf of the Board that involves the wholesale distributor and results in penalties, fees or costs; or

(b) An appeal of such a proceeding.

(9) Where operations are conducted at more than one location by a single wholesale drug outlet, each such location that does business in Oregon must be registered by the Board.

(10) The registrant must notify the Board, within 15 days, of any substantial change to the information provided on the registration application. Substantial change shall include but not be limited to: change of ownership; change of business address; change of normal business hours; any disciplinary action taken or pending by any state or federal authority against the registrant, or any of its principals, owners, directors, officers, or designated representatives.

(11) The registration certificate is issued to a specific person and is non-transferable. Additions or deletions of an owner or partner shall be considered as a change of ownership.

(12) A new registration form is required for a change of ownership or location and must be submitted to the Board with the fees as specified in OAR 855-110-0007 within 15 days of the change.

(13) Upon written request, the Board may waive any of the requirements of this rule if a waiver will further public health or safety. A waiver granted under this section shall only be effective when it is issued in writing.

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 689.155

Hist.: BP 12-2006, f. & cert. ef. 12-19-06; BP 2-2009(Temp), f. 6-22-09, cert. ef. 6-26-09 thru 12-23-09; BP 5-2009, f. & cert. ef. 12-24-09

## 855-110-0003

### General

(1) All fees paid under these rules are non-refundable.

(2) Fees cannot be prorated.

(3) A delinquent fee must be paid:

(a) When an application is postmarked after the date specified in these rules; or

(b) When the Board requests additional information from an applicant and this information is not provided within 30 days.

(4) A delinquent fee may be assessed when an application is submitted incomplete and the Board requests the missing information.

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 689.135

Hist.: BP 2-2009(Temp), f. 6-22-09, cert. ef. 6-26-09 thru 12-23-09; BP 5-2009, f. & cert. ef. 12-24-09

## 855-110-0005

### Licensing Fees

(1) Pharmacist license examination (NAPLEX) and re-examination fee — \$50.

(2) Pharmacist jurisprudence (MPJE) re-examination fee — \$25.

(3) Pharmacist licensing by reciprocity fee — \$200.

(4) Pharmacist licensing by score transfer fee — \$200.

(5) Intern license fee. Expires May 31 every four years — \$30.

(6) Pharmacist:

(a) License fee. Expires June 30 annually — \$120. Delinquent renewal fee, (postmarked after May 31) — \$50.

(b) Electronic Prescription Monitoring Fund fee. Due by June 30 annually — \$25. (This is a mandatory fee, required by Chapter 799 Oregon Laws 2009, that must be paid with the pharmacist license renewal fee).

(7) Certification of approved provider of continuing education course fee, none at this time.

(8) Pharmacy Technician license fee. Expires September 30 annually — \$35. Delinquent renewal fee, (postmarked after August 31) — \$20.

(9) Certified Pharmacy Technician license fee. Expires September 30 annually — \$35. Delinquent renewal fee, (postmarked after August 31) — \$20.

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 689.135, Ch. 799, OL 2009

Hist.: 1PB 2-1979(Temp), f. & ef. 10-3-79; 1PB 2-1980, f. & ef. 4-3-80; 1PB 3-1980, f. 5-3-80, ef. 5-3-80 & 7-1-80; 1PB 2-1982, f. 3-8-82, ef. 4-1-82; 1PB 1-1984, f. & ef. 2-16-84; 1PB 3-1985, f. & ef. 12-2-85; 1PB 3-1988, f. & cert. ef. 5-23-88; 1PB 7-1989, f. & cert. ef. 5-1-89; 1PB 15-1989, f. & cert. ef. 12-26-89; 1PB 10-1990, f. & cert. ef. 12-5-90; 1PB 3-1991, f. & cert. ef. 9-19-91; 1PB 1-1992, f. & cert. ef. 1-31-92 (and corrected 2-7-92); 1PB 4-1992, f. & cert. ef. 8-25-92; 1PB 1-1994, f. & cert. ef. 2-2-94; 1PB 1-1996, f. & cert. ef. 4-5-96; 1PB 2-1997(Temp), f. 10-2-97, cert. ef. 10-4-97; 1PB 2-1998, f. & cert. ef. 3-23-98; 1PB 1-2001, f. & cert. ef. 3-5-01; BP 2-2001(Temp), f. & cert. ef. 7-26-01 thru 1-22-02; BP 1-2002, f. & cert. ef. 1-8-02; BP 1-2003, f. & cert. ef. 1-14-03; BP 1-2006, f. & cert. ef. 6-9-06; BP 5-

2006(Temp), f. & cert. ef. 8-25-06 thru 1-20-07; BP 9-2006, f. & cert. ef. 12-19-06; BP 5-2009, f. & cert. ef. 12-24-09

## 855-110-0007

### Fees for Registration, Renewal, and Reinspection of Drug Outlets

(1) County Health Clinic (including family planning clinics). Expires March 31 annually — \$75. Delinquent renewal fee (postmarked after February 28) — \$25.

(2) Drug Distribution Agent. Expires September 30 annually — \$400. Delinquent renewal fee (postmarked after August 31) — \$100.

(3) Drug Room (including correctional facility). Expires March 31 annually — \$75. Delinquent renewal fee (postmarked after February 28) — \$75.

(4) Manufacturer. Expires September 30 annually — \$400. Delinquent renewal fee (postmarked after August 31) — \$100.

(5) Medical Device, Equipment & Gas Class C. Expires January 31 annually — \$50. Delinquent renewal fee (postmarked after December 31) — \$25.

(6) Nonprescription Class A. Expires January 31 annually — \$50. Delinquent renewal fee (postmarked after December 31) — \$25.

(7) Nonprescription Class B. Expires January 31 annually — \$25. Delinquent renewal fee (postmarked after December 31) — \$10.

(8) Nonprescription Class D. Expires January 31 annually — \$100. Delinquent renewal fee (postmarked after December 31) — \$25.

(9) Prophylactic and/or Contraceptive Wholesaler and/or Manufacturer — \$50. Expires December 31 annually.

(10) Re-inspection fee — \$100. Applies to any re-inspection of a drug outlet occasioned to verify corrections of violations found in an initial inspection.

(11) Retail or Institutional Drug Outlet. Expires March 31 annually — \$175. Delinquent renewal fee (postmarked after February 28) — \$75.

(12) Veterinary Drug Outlet, Expires September 30 annually — \$00. Delinquent renewal fee (postmarked after August 31) — \$00.

(13) Wholesaler. Expires September 30 annually — \$400. Delinquent renewal fee (postmarked after August 31) — \$100.

(14) Remote Dispensing Machine. Expires March 31 annually — \$100. Due by February 28 annually.

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 689.135

Hist.: PB 1-1996, f. & cert. ef. 4-5-96; PB 1-1997, f. & cert. ef. 9-22-97; BP 3-1998, f. & cert. ef. 3-23-98; BP 2-2001(Temp), f. & cert. ef. 7-26-01 thru 1-22-02; BP 1-2002, f. & cert. ef. 1-8-02; BP 4-2002, f. 6-27-02, cert. ef. 7-1-02; BP 2-2005, f. 2-14-05, cert. ef. 4-3-05; BP 2-2009(Temp), f. 6-22-09, cert. ef. 6-26-09 thru 12-23-09; BP 5-2009, f. & cert. ef. 12-24-09

## 855-110-0010

### Fees for Registration for Controlled Substances under ORS 475.095

(1) Animal Euthanasia controlled substance registration fee — \$25 annually.

(2) County Health Clinic (including family planning clinics) controlled substance registration fee — \$25 annually.

(3) Drug Distribution Agent controlled substance registration fee — \$50 annually.

(4) Drug Room (including correctional facility) controlled substance registration fee — \$25 annually.

(5) Manufacturer controlled substance registration fee — \$50 annually.

(6) Retail or Institutional Drug Outlet controlled substance registration fee — \$25 annually.

(7) Schedule II Precursor registration fee — \$25 annually.

(8) Wholesaler controlled substance registration fee — \$50 annually.

(9) Remote Dispensing Machine controlled substance registration fee — \$25 annually.

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 689.135

Hist.: 1PB 2-1979(Temp), f. & ef. 10-3-79; 1PB 2-1980, f. & ef. 4-3-80; 1PB 6-1982, f. & ef. 8-6-82; 1PB 2-1984, f. & ef. 3-7-84; 1PB 15-1989, f. & cert. ef. 12-26-89; 1PB 10-1990, f. & cert. ef. 12-5-90; 1PB 3-1991, f. & cert. ef. 9-19-91; 1PB 1-1996, f. & cert. ef. 4-5-96; BP 2-2005, f. 2-14-05, cert. ef. 3-1-05; BP 2-2009(Temp), f. 6-22-09, cert. ef. 6-26-09 thru 12-23-09; BP 5-2009, f. & cert. ef. 12-24-09

## Board of Psychologist Examiners Chapter 858

**Rule Caption:** Rule corrections and updates; fee modifications; change in renewal process; criminal background checks.

**Adm. Order No.:** BPE 1-2010

**Filed with Sec. of State:** 1-8-2010

**Certified to be Effective:** 1-8-10

**Notice Publication Date:** 11-1-2009

**Rules Adopted:** 858-010-0016, 858-010-0017, 858-010-0018, 858-010-0034, 858-010-0037, 858-010-0038, 858-010-0039, 858-040-0020, 858-040-0026

**Rules Amended:** 858-010-0001, 858-010-0005, 858-010-0007, 858-010-0010, 858-010-0015, 858-010-0020, 858-010-0025, 858-010-

# ADMINISTRATIVE RULES

0030, 858-010-0036, 858-010-0041, 858-010-0050, 858-010-0055, 858-010-0060, 858-010-0065, 858-020-0015, 858-020-0025, 858-020-0035, 858-020-0045, 858-020-0055, 858-020-0065, 858-020-0085, 858-030-0005, 858-040-0015, 858-040-0025, 858-040-0035, 858-040-0036, 858-040-0055, 858-040-0065

**Rules Repealed:** 858-040-0075, 858-040-0085, 858-040-0095, 858-050-0100, 858-050-0105, 858-050-0110, 858-050-0120, 858-050-0125, 858-050-0140, 858-050-0145, 858-050-0150

**Subject:** Provides for public notice via email; clarifies application review process; adds criminal background check requirement for new applicants and some licensees under investigation; provides that the Board may inquire into State and national databanks to determine eligibility for licensure; deletes obsolete language regarding national written exam; shortens notice required from applicants to sit for the jurisprudence exam and notice to applicants of time, date, and location of the jurisprudence exam; defines "psychological work" for the purposes of residency; requires that at least 50% of residency work experience be face-to-face client contact; requires licensees to report felony convictions, pending criminal charges or history of discipline as a requirement of renewal; establishes a semi-active licensure status and specifies the requirements; changes effective period for visitor's permits; adds requirement for mandatory health professionals reporting; provides that failure by an licensee who is under investigation to cooperate with a board investigation constitutes unprofessional conduct; clarifies complaint investigation process; increases jurisprudence exam fee; increases biennial active license fee; increases biennial inactive license fee establishes the biennial semi-active license fee; changes renewal period to biennial birth month; increases limited permit fee; increases miscellaneous service fees; clarifies definition of acceptable continuing education programs; revises continuing education reporting process; and clarifies continuing education audit process; Deletes Division 50 (Psychologist Associates) and relocates those rules within Division 10.

**Rules Coordinator:** Debra Orman—(503) 378-1155

## 858-010-0001

### Definitions

The practice of psychology is defined to include:

- (1) Evaluation: assessing or diagnosing mental disorders or mental functioning, including administering, scoring, and interpreting tests of mental abilities or personality;
- (2) Therapy: treating mental disorders;
- (3) Consultation: conferring or giving expert advice on the diagnosis or treatment of mental disorders;
- (4) Supervision: overseeing a professional's work on the diagnosis or treatment of mental disorders.

Stat. Auth.: ORS 675.010 - 675.150

Stats. Implemented: ORS 675.110

Hist.: BPE 2-2002, f. & cert. ef. 2-27-02; BPE 2-2004, f. & cert. ef. 8-30-04; BPE 1-2008, f. & cert. ef. 3-26-08; BPE 1-2010, f. & cert. ef. 1-8-10

## 858-010-0005

### Board Duties and Procedure

(1) Board Meetings. The State Board of Psychologist Examiners shall meet as necessary at a time and place specified by the Board and at such other times and places as specified by the Chair of the Board, a majority of members of the Board or by the Governor. The time and place of all meetings shall be posted on the Board's website.

(2) Internal Organization. At the last meeting in each fiscal year, the first order of business shall be organizational matters, including election of Board Chair and Vice-Chair and the assignment of standing responsibilities to Board members. The term of the Chair, Vice Chair or any standing assigned responsibility can be changed or terminated at any meeting where the proposal has been placed on the agenda and sent to the members one week in advance of the meeting, or by unanimous consent of the Board.

(3) Chair and Vice Chair Responsibilities:

(a) The Chair is authorized to take emergency action between Board meetings, subject to ratification by the Board. However, in the case of actions significant enough to normally require Board decisions, the Chair shall first attempt to get authorization for such decisions from the Board members through telephone or email communication. All emergency actions of any kind shall be noted in the agenda for the next meeting and shall become the first order of business at that next meeting;

(b) The Vice-Chair shall perform the duties of the Chair when the Chair is unable to do so.

(4) Board Communications. Only the Board Chair shall write other than routine or form letters in the name of the Board unless members are specifically authorized in a Board meeting to do so. The Board should approve in advance any correspondence that may materially affect Board policies and procedures. When a delay might render the Board's functioning ineffective, the Chair may be required to take immediate action that shall be reviewed at the next meeting of the Board.

(5) Board Files. All Board files shall be assembled in the Board's official office. The Board Administrator shall maintain the Board's files under the direction of the Chair. The Board Administrator shall maintain a master record of any files that are checked out of the Board office by Board members. The Board Administrator shall be notified whenever any Board file is transferred from the possession of one person to another, and shall so note in the Board's records. Individuals who have in their possession documents or files pertaining to Board affairs are responsible for their protection and privacy.

(6) Minutes and Agendas:

(a) The minutes of a meeting shall be distributed to all Board members at least one week in advance of the next meeting;

(b) The agenda shall be prepared by the Board Chair or Board Administrator and distributed to all Board members at least one week before each meeting. The agenda items shall include reports by the Board Administrator, the Chair and each Board member who has received a specific assignment at the previous meeting or has a report to make regarding standing assignments. If there is insufficient time to inform the Board Chair, the Board Administrator shall make additional scheduling at the direct request of Board members. The Board may at its discretion, revise the agenda or limit it to a particular topic under special circumstances. Reports may be added as an addendum to the minutes of any meeting.

(c) The agenda shall be distributed to all licensees and applicants for licensure.

(7) The Attorney General's Model Rules of Procedure under the Administrative Procedure Act, printed and promulgated by the Attorney General, effective January 1, 2009, shall be the rules of procedure before the Board under ORS 183.310 to 183.500.

Stat. Auth.: ORS 675.010 - 675.150

Stats. Implemented: ORS 675.110 & 675.130

Hist.: PE 6, f. 12-19-73, ef. 1-11-74; PE 8, f. 12-5-74, ef. 12-25-74; PE 12, f. & ef. 3-5-76; PE 13, f. & ef. 9-15-76; PE 1-1979, f. & ef. 9-5-79; PE 1-1982, f. 4-13-82, ef. 6-1-82; PE 2-1982, f. & ef. 7-23-82; PE 1-1987(Temp), f. & ef. 3-6-87; PE 1-1988, f. & cert. ef. 7-25-88; PE 1-1991, f. & cert. ef. 4-3-91; PE 4-1993, f. & cert. ef. 7-19-93; PE 1-1996, f. & cert. ef. 6-25-96; BPE 1-2001(Temp), f. & cert. ef. 8-31-01 thru 2-27-02; BPE 2-2002, f. & cert. ef. 2-27-02; BPE 2-2004, f. & cert. ef. 8-30-04; BPE 1-2008, f. & cert. ef. 3-26-08; BPE 1-2010, f. & cert. ef. 1-8-10

## 858-010-0007

### Notice of Proposed Rule

Prior to the adoption, amendment, or repeal of a permanent rule, the Board of Psychologist Examiners shall give notice of the proposed adoption, amendment, or repeal:

(1) In the Secretary of State's Bulletin referred to in ORS 183.360, at least twenty-one (21) days prior to the effective date;

(2) By mailing or emailing a copy of the notice to individuals on the Board's mailing list established pursuant to ORS 183.335(6);

(3) By mailing or emailing a copy of the notice to the following individuals, organizations, or publications:

- (a) Associated Press;
- (b) All licensees of the Board;
- (c) Oregon Psychological Association; and
- (d) All applicants for licensure.

(4) Prior to the adoption, amendment, or repeal of any rule of the Board relating to continuing education, the Board shall additionally mail a copy of the notice to the State Board of Higher Education.

Stat. Auth.: ORS 675.010 - 675.150

Stats. Implemented: ORS 675.110

Hist.: PE 13, f. & ef. 9-15-76; PE 1-1990, f. & cert. ef. 2-16-90; PE 2-1991, f. 8-15-91, cert. ef. 8-16-91; PE 4-1993, f. & cert. ef. 7-19-93; PE 1-1996, f. & cert. ef. 6-25-96; BPE 1-2001(Temp), f. & cert. ef. 8-31-01 thru 2-27-02; BPE 2-2002, f. & cert. ef. 2-27-02; BPE 2-2004, f. & cert. ef. 8-30-04; BPE 1-2008, f. & cert. ef. 3-26-08; BPE 1-2010, f. & cert. ef. 1-8-10

## 858-010-0010

### Education Requirements — Psychologist

(1) To meet the education requirement of ORS 675.030(1), an applicant must possess either:

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

(b) A doctoral degree in psychology from a program at a college or university that is regionally accredited at the doctoral level by any one of the following regional accrediting associations: Northwest, North Central, Western, New England, Middle States or Southern, and

(c) A minimum of three academic years of full-time graduate study including at least one year which is in residence at the institution from which the degree is granted, or its equivalent. Residence requires interaction with

# ADMINISTRATIVE RULES

psychology faculty and other matriculated psychology students; one year's residence or its equivalent is defined as follows:

- (i) Thirty semester hours or 45 quarter hours or the equivalent; or
  - (ii) A minimum of 500 hours of student-faculty contact involving face-to-face individual or group educational meetings. Such educational meetings must include both faculty-student and student-student interaction, be conducted by the psychology faculty of the institution at least 90 percent of the time, be documented by the applicant and the institution, and relate substantially to the program components specified.
- (2) The program under sections (1)(a) or (b) must be defined as follows:
    - (a) Organizational Structure. The organizational structure of the graduate program must be defined as follows:
      - (A) The program must be identified and labeled as a program in psychology;
      - (B) The program must stand as a recognized entity within the institution;
      - (C) There must be an authority and primary responsibility for the core and specialty areas, whether or not the program cuts across administrative lines;
      - (D) There must be a sequence of study planned by those responsible for the program to provide an appropriate, integrated experience covering the field;
      - (E) There must be a faculty and a person administratively responsible for the program;
      - (F) There must be a body of students selected on the basis of high ability and appropriate educational preparation.
    - (b) Curriculum. The curriculum of the program must require applicant's successful completion of the following:
      - (A) 40 semester hours (60 quarter hours) of graduate courses identified by title and course content as psychology, that may include clinical, counseling, industrial/ organizational and school psychology, excluding thesis and practica;
      - (B) An original dissertation or equivalent that was psychological in nature that meets the requirement for an approved doctoral program.
      - (C) Three or more graduate semester hours (five or more graduate quarter hours) each in biological basis of behavior (including, but not limited to physiological psychology, comparative psychology, neuropsychology, psychopharmacology, sensation and perception, biological basis of development); cognitive-affective basis of behavior (including, but not limited to learning, thinking, motivation, emotion, cognitive development); social basis of behavior (including, but not limited to social psychology, organization theory, community psychology, social development); individual differences (including, but not limited to human development, personality theory, psychopathology);
      - (D) At least one graduate course each in research design and methodology; statistics and psychometrics; and scientific and professional ethics.

Stat. Auth.: ORS 675.030  
Stats. Implemented: ORS 675.030(1)(a)(b)(c)(d)(e)(2)  
Hist.: PE 6, f. 12-19-73, ef. 1-11-74; PE 1-1992, f. & cert. ef. 1-16-92; PE 3-1992, f. & cert. ef. 7-14-92; PE 1-1996, f. & cert. ef. 6-25-96; PE 1-1997, f. & cert. ef. 6-17-97; BPE 1-2001(Temp), f. & cert. ef. 8-31-01 thru 2-27-02; BPE 2-2002, f. & cert. ef. 2-27-02; BPE 1-2008, f. & cert. ef. 3-26-08; BPE 1-2010, f. & cert. ef. 1-8-10

## 858-010-0015

### Education Requirements – Psychologist Associate

- (1) To meet the education requirement of ORS 675.030(1), an applicant must possess either:
  - (a) A masters degree in psychology from a program accredited by the American Psychological Association as of the date the degree was awarded; or
  - (b) A masters degree in psychology from a program at a college or university that is regionally accredited at the doctoral level by any one of the following regional accrediting associations: Northwest, North Central, Western, New England, Middle States or Southern.
- (2) The masters program shall include at least 45 quarter hours or 30 semester hours of graduate credit, 30 quarter hours or 20 semester hours of which must be in graded (not “pass-no pass”) courses. Hours shall be from at least five of the basic areas of psychology including:
  - (a) Experimental psychology; Learning theory; Physiological psychology; Motivation; Perception; Comparative psychology; Statistical methods; Design of research; Developmental psychology; Individual differences; Social psychology; Organizational psychology; Personality theory; Abnormal psychology; and
  - (b) A minimum of one graduate level course in ethics.
  - (c) A minimum of one graduate level course psychological tests and measurements.

Stat. Auth.: ORS 675.065  
Stats. Implemented: ORS 675.065(1)(4)(c)  
Hist.: PE 6, f. 12-19-73, ef. 1-11-74; PE 1-1979, f. & ef. 9-5-79; PE 1-1989(Temp), f. & cert. ef. 2-24-89; PE 2-1989, f. & cert. ef. 5-24-89; PE 3-1989(Temp), f. & cert. ef. 9-7-89; PE 1-1990, f. & cert. ef. 2-16-90; PE 3-1992, f. & cert. ef. 7-14-92; PE 1-1993(Temp), f. & cert. ef. 2-12-93; PE 3-1993, f. & cert. ef. 4-13-93; PE 5-1993, f. & cert. ef. 10-6-93; PE 1-1995, f. & cert. ef. 2-16-95; PE 1-1996, f. & cert. ef. 6-25-96; BPE 1-2001(Temp), f. & cert. ef. 8-31-01 thru 2-27-02; BPE 1-2002(Temp), f. 1-28-02, cert. ef. 1-31-02 thru 2-27-02; BPE 2-2002, f. & cert. ef. 2-27-02; BPE 2-2004, f. & cert. ef. 8-30-04; BPE 1-2008, f. & cert. ef. 3-26-08; BPE 1-2010, f. & cert. ef. 1-8-10

## 858-010-0016

### Standard Application Procedure

Filing of Applications. Upon receipt of an application for licensure, the Board shall process the application and determine if the application is complete. An application is considered complete when the following supporting documents have been received:

- (1) Proof of Master's or Doctorate Degree
  - (a) Final Graduate Level Transcript imprinted with date degree was awarded; or
  - (b) A Verification of Educational Degree Form;
  - (2) University Accreditation Form (non-APA accredited schools only);
  - (3) Reference Forms;
  - (4) Educational Record in Psychology Form (non-APA accredited schools only);
  - (5) Social Security Number Authorization Form;
  - (6) Verification of pre-degree supervised work (if any);
  - (7) Verification of post-degree supervised work experience (if any);
  - (8) National Written Examination (EPPP) score (if any);
  - (9) Verification of Licensure in other states (if any);
  - (10) Verification of ABPP status (if any);
  - (11) Application Fee;
  - (12) Criminal Background Check Fee; and
  - (13) Other clarifying information requested by the Board.

Stat. Auth.: ORS 675.030  
Stats. Implemented: ORS 675.030(1)(a)(b)(c)(d)(e)(2)  
Hist.: BPE 1-2010, f. & cert. ef. 1-8-10

## 858-010-0017

### Non-Standard Application Procedure

(1) Certification in Behavioral Psychology (Diplomate). If an applicant holds a valid CBP issued by the American Board of Professional Psychology (ABPP), the applicant's ABPP file will be accepted as primary source documentation and the Board may issue a license if the applicant:

- (a) Has a doctoral degree in psychology;
- (b) Submits a complete application for licensure;
- (c) Requests ABPP to send a copy of the applicant's Certification file directly to the Oregon Board;
- (d) Passes the Oregon jurisprudence examination;
- (e) Pays the criminal background check fee; and
- (f) Pays the application fee.

(2) Certificate of Professional Qualification (CPQ). If an applicant holds a valid Certificate of Professional Qualification (CPQ) issued by the Association of State and Provincial Psychology Board (ASPPB), the applicant's CPQ file will be accepted as primary source documentation and the Board may issue a license if the applicant:

- (a) Has a doctoral degree in psychology;
- (b) Submits a complete application for licensure;
- (c) Requests ASPPB to send a copy of the applicant's CPQ file directly to the Oregon Board;
- (d) Passes the Oregon jurisprudence examination;
- (e) Pays the criminal background check fee; and
- (f) Pays the application fee.

(3) Health Service Provider in Psychology (HSPP). If an applicant holds a valid HSPP credential issued by the National Register, the Board may issue a license if the applicant:

- (a) Has a doctoral degree in psychology;
- (b) Possesses and has maintained an active license as a psychologist in another state for at least five years;
- (c) Submits a complete application for licensure;
- (d) Requests the National Register to send a copy of the applicant's HSPP file directly to the Board;
- (e) Passes a Board-administered jurisprudence examination;
- (f) Pays the criminal background check fee; and
- (g) Pays the application fee.

(4) Senior Psychologist. The Board may issue a license if the applicant:

- (a) Possesses and has maintained for at least 15 years a license to practice based on a doctoral degree in psychology that is issued by a board that is a member jurisdiction of the Association of State and Provincial Psychology Boards;
- (b) Submits a complete application for licensure;
- (c) Requests the state(s) in which the applicant is licensed to send a copy of the applicant's licensure file directly to the Oregon Board;
- (d) Passes the Oregon jurisprudence examination;
- (e) Pays the criminal background check fee; and
- (f) Pays the application fee.

Stat. Auth.: ORS 675.030  
Stats. Implemented: ORS 675.030  
Hist.: BPE 1-2010, f. & cert. ef. 1-8-10

## 858-010-0018

### Investigatory Powers

(1) Additional Investigation. The Board shall not be limited in its investigation of an applicant's qualifications for licensure to the information supplied in the licensure application form and may direct additional investigation

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with respect to an applicant's qualifications prior to deciding whether or not the applicant is eligible to take the EPPP or the Jurisprudence examination or enter into a residency contract.

(2) Record of Complaints. The Board shall review the Board's records of complaints and insert any reference to an applicant in the applicant's file.

(3) State and National Databanks. The Board shall also make inquiry, if appropriate, of other state, national or foreign certification or licensure boards, the National Practitioner Databank (NPDB-NIPDB), the Association of State and Provincial Psychology Boards' Disciplinary Databank or Oregon Judicial Information Network (OJIN) for relevant information.

Stat. Auth.: ORS 675.040, 675.045 & 675.050  
Stats. Implemented: ORS 675.040, 675.045 & 675.050  
Hist.: BPE 1-2010, f. & cert. ef. 1-8-10

## 858-010-0020

### Process and Disposition of Application for License

(1) Application Review Procedure. When the application and all of the required supporting documents have been received, the application file shall be reviewed for eligibility. The reviewer shall either:

(a) Approve the application. When the reviewer determines the application is complete, a letter of approval shall be sent notifying the applicant of eligibility to take the EPPP and the Jurisprudence examination and to enter into a Resident Supervision Contract.

(b) Deny the application. If the application is denied, the reviewer shall send the applicant a letter noting the reason.

(c) Full Board review. Under unusual circumstances, the application will be reviewed by the full Board for determination of disposition.

(d) Applicants for licensure may appeal a decision by the reviewer by requesting in writing an application review by the full Board.

(2) Active Application. The Board shall maintain an incomplete application file for one year from the date the application was received. A file shall be presumed inactive if Correspondence from the Board is returned as "undeliverable."

(3) The Board may extend the application period upon written request prior to the one year expiration date. Failure to receive a courtesy reminder notice from the Board shall not relieve an applicant of the responsibility to request an extension.

(4) Reapplication. If an application for licensure has been denied by the Board for any reason, the Board will not review a second application until at least one year has lapsed from the date of the previous denial.

(5) Information Changes. An Applicant must notify the Board immediately if any information submitted on the application changes, including but not limited to: address and telephone number; complaints; disciplinary actions; and, civil, criminal, or ethical charges and employment investigations which lead to termination or resignation. Failure to do so may be grounds for denial of the application or revocation of the license, once issued.

Stat. Auth.: ORS 675.040, 675.045 & 675.050  
Stats. Implemented: ORS 675.040(1)(2)(3), 675.045(1)(2)(a)(b), 675.050(1)(a)(b)(2)  
Hist.: PE 6, f. 12-19-73, ef. 1-11-74; PE 2-1989, f. & cert. ef. 5-24-89; PE 1-1996, f. & cert. ef. 6-25-96; BPE 1-2001(Temp), f. & cert. ef. 8-31-01 thru 2-27-02; BPE 2-2002, f. & cert. ef. 2-27-02; BPE 2-2004, f. & cert. ef. 8-30-04; BPE 1-2008, f. & cert. ef. 3-26-08; BPE 1-2010, f. & cert. ef. 1-8-10

## 858-010-0025

### Procedure for Written Examination

(1) National Written Examination. The Board shall utilize the Examination for Professional Practice in Psychology (EPPP) developed by the Professional Examination Service (PES) for the Association of State and Provincial Psychology Boards (ASPPB).

(a) Applicants whose educational credentials and professional references have been approved by the Board shall be eligible to take the EPPP.

(b) Eligible applicants prepared to take the EPPP must submit a written request to the Board. The Board shall provide PES with the names of eligible applicants.

(c) Applicants who have taken the EPPP prior to April 20, 1990, must have passed the examination by achieving a score at or above the national mean of doctoral candidates taking the examination for the first time on that day. Applicants who have taken the EPPP prior to April 1993 must have passed the examination by achieving a score at or above the national mean of doctoral candidates taking the examination for the first time on that day or 75 percent, whichever is lower. The passing score for the EPPP from April 1993 to April 2001 shall be 140 or 70 percent. For computer administered forms of the EPPP, the Board requires a scaled score of 500.

(d) Special Accommodations. The Board shall provide PES an approval for special accommodations for a verified disability or for English as a second language upon written request by the applicant as described in OAR 858-010-0030(5).

(2) Re-examination. Any applicant who fails to achieve a passing score on the EPPP shall be allowed to take the examination a second time. If the examination is failed twice, the candidate must submit a written study plan for the Board to review and approve.

Stat. Auth.: ORS 675.040 & 675.045  
Stats. Implemented: ORS 675.040 & 675.045  
Hist.: PE 6, f. 12-19-73, ef. 1-11-74; PE 1-1979, f. & cert. ef. 9-5-79; PE 1-1980, f. & cert. ef. 3-10-80; PE 1-1981(Temp), f. & cert. ef. 12-9-81; PE 1-1982, f. 4-13-82, ef. 6-1-82; PE 2-1982, f. & cert. ef. 7-23-82; PE 2-1989, f. & cert. ef. 5-24-89; PE 1-1990, f. & cert. ef. 2-16-90; PE 1-1991, f. &

cert. ef. 4-3-91; PE 3-1993, f. & cert. ef. 4-13-93; PE 4-1993, f. & cert. ef. 7-19-93; PE 1-1995, f. & cert. ef. 2-16-95; PE 1-1996, f. & cert. ef. 6-25-96; BPE 1-2001(Temp), f. & cert. ef. 8-31-01 thru 2-27-02; BPE 2-2002, f. & cert. ef. 2-27-02; BPE 1-2008, f. & cert. ef. 3-26-08; BPE 1-2010, f. & cert. ef. 1-8-10

## 858-010-0030

### Procedures for Oregon Jurisprudence Examination

(1) Jurisprudence Examination. The purpose of the examination is to measure the candidate's knowledge and application of state laws and regulations related to the professional practice of psychology, including the American Psychological Association's ethical principles incorporated by Board statute and rule.

(a) Candidates whose education credentials, training and references have been accepted by the Board shall be notified in writing of their eligibility to take the jurisprudence examination.

(b) The jurisprudence examination shall be administered at least twice a year.

(2) Eligible candidates prepared to take the jurisprudence examination must submit a written request to the Board postmarked at least 30 days prior to the examination date and pay the examination fee.

(3) The Jurisprudence examination fee is not refundable.

(4) The applicant shall be given no less than two weeks' notice of the date, time and place of the applicant's scheduled examination. Appearance at the scheduled examination shall constitute a waiver of the prior written notice.

(5) Special Accommodations. Requests for special accommodations for a disability or for English as a second language must be made at the time of the written request to sit for the examination is made, or when the disability becomes known to the applicant. The request must include:

(a) Written verification of the disability from a qualified care provider (i.e. a person certified or licensed by the state to provide such services) detailing:

(A) Nature, extent and duration of disability;

(B) Recommendation(s) for accommodation.

(b) English as a Second Language: Written request for reasonable accommodation detailing:

(A) Level of proficiency in English including, but not limited to, number of years speaking and/or writing English.

(B) History of special accommodations granted in similar testing circumstances.

(C) Other information to support request for special accommodation;

(D) Recommendation(s) for accommodation.

(6) Administration.

(a) The Board shall determine the questions on each examination and shall determine the passing score.

(b) The Board shall provide a Candidate Handbook that includes a copy of the Board's examination rules and an explanation of the Board requirements related to scheduling and the conduct during the examination, current examination study materials and the Candidate Handbook shall be available at all times on the Board's website at [www.Oregon.gov/OBPE](http://www.Oregon.gov/OBPE).

(c) Disqualification. A candidate sitting for the jurisprudence examination may be disqualified during or after the examination for conduct which affects the integrity of the candidate's performance or the examination. Disqualification will result in denial of the candidate's application.

(7) Scoring. Candidates shall be assigned a number so test scorers do not know the identity of the test taker until the examination report is prepared for the Board. The Board shall notify each candidate in writing regarding the result of the examination within one week of the date of the examination. If a candidate has a complaint under investigation, the Board may delay issuing the licensure of that candidate until the complaint has been resolved.

(8) Reconsideration, Review and Reexamination.

(a) Within thirty days after notice of the examination results, a candidate who does not pass the examination may petition the Board in writing to have their examination rescored.

(b) Review. A candidate who does not pass the examination may review the examination record of incorrect questions and answers at the Board's office within a period of ninety days following the date of the examination and upon written request to the Board. The purpose of the review is to assist the candidate prepare to retake the examination. No more than one review shall be allowed.

(c) Reexamination. A candidate who does not pass the examination may be reexamined. If a candidate does not pass the second examination and wishes to take a third examination the candidate must submit a study plan for the Board's review and approval prior to sitting for the third examination. If a candidate fails to pass the third examination, the candidate's application for licensure shall be denied.

Stat. Auth.: ORS 675.030, 675.040, 675.045, 675.050 & 675.065  
Stats. Implemented: ORS 675.030, 675.040, 675.045, 675.050 & 675.065  
Hist.: PE 6, f. 12-19-73, ef. 1-11-74; PE 1-1979, f. & cert. ef. 9-5-79; PE 1-1981(Temp), f. & cert. ef. 12-9-81; PE 1-1982, f. 4-13-82, ef. 6-1-82; PE 2-1982, f. & cert. ef. 7-23-82; PE 1-1985(Temp), f. & cert. ef. 12-20-85; PE 1-1986, f. & cert. ef. 7-1-86; PE 1-1988, f. & cert. ef. 7-25-88; PE 3-1988(Temp), f. & cert. ef. 11-30-88; PE 1-1990, f. & cert. ef. 2-16-90; PE 1-1991, f. & cert. ef. 4-3-91; PE 2-1991, f. 8-15-91, cert. ef. 8-16-91; PE 3-1992(Temp), f. & cert. ef. 12-10-91; PE 1-1992, f. & cert. ef. 1-16-92; PE 3-1992, f. & cert. ef. 7-14-92; PE 1-1995, f. & cert. ef. 2-16-95; PE 1-1996, f. & cert. ef. 6-25-96; PE 1-1997, f. & cert. ef. 6-17-97; BPE 1-2000(Temp), f. 3-8-00, cert. ef. 3-8-00 thru 9-4-00; BPE 3-2000, f. & cert. ef. 9-7-00; BPE

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1-2001(Temp), f. & cert. ef. 8-31-01 thru 2-27-02; BPE 2-2002, f. & cert. ef. 2-27-02; BPE 4-2002, f. & cert. ef. 10-11-02; BPE 1-2004(Temp), f. & cert. ef. 3-2-04 thru 8-29-04; BPE 2-2004, f. & cert. ef. 8-30-04; BPE 1-2006, f. & cert. ef. 9-1-06; BPE 1-2008, f. & cert. ef. 3-26-08; BPE 1-2010, f. & cert. ef. 1-8-10

## 858-010-0034

### Criminal Background Checks

(1) The purpose of these rules is to provide for the reasonable screening of all applicants for licensure, and licensees who are under investigation, on or after March 1, 2010 in order to determine if they have a history of criminal behavior and are not fit to be issued a license by the Board.

(2) These rules are to be applied when evaluating the criminal history of an applicant for licensure or a licensee under investigation and conducting fitness determinations based upon such history. The fact that an applicant has cleared the criminal history check does not guarantee the granting of a license. The fact that a licensee under investigation has cleared the criminal history check does not guarantee continued licensure.

(3) The Board may require fingerprints of all applicants for a psychologist or psychologist associate license to determine fitness to practice. The Board may require licensees under investigation to provide fingerprints when the Board has a rational reason to determine if the licensee has a history of criminal behavior. Fingerprints will be provided on prescribed forms provided by the Board. Fingerprints may be obtained at a law enforcement office or at a private service acceptable to the Board; the Board will submit fingerprints to the Oregon Department of State Police to conduct a Criminal History Check and a National Criminal History Check. Any original fingerprint cards will subsequently be destroyed by the Oregon Department of State Police in accordance with ORS 181-534(4).

(4) The Board may determine whether an applicant is fit to be granted a license, or whether a licensee under investigation is fit for continued licensure, based on the criminal records background check, any false statements made regarding their criminal history, any refusal to submit or consent to a criminal records check including fingerprint identification. The Board may make a fitness determination conditional upon applicant's or licensee's acceptance of probation, conditions, limitations, or other restrictions upon licensure.

(5) Except as otherwise provided in section (2), in making the fitness determination, the Board shall consider:

(a) The nature of the crime;

(b) The facts that support the conviction or pending indictment or that indicate the making of the false statement;

(c) The relevancy, if any, of the crime or the false statement to the specific requirements of the applicant's or licensee's present or proposed license; and

(d) Mitigating circumstances relevant to the responsibilities and circumstances of the license. Mitigating circumstances include but are not limited to:

(A) The passage of time since the commission of the crime;

(B) The age of the applicant or licensee at the time of the crime;

(C) The likelihood of a repetition of offenses or of the commission of another crime;

(D) The subsequent commission of another relevant crime;

(E) Whether the conviction was set aside and the legal effect of setting aside the conviction; and

(F) Evidence, if any, of rehabilitation submitted.

(6) All requested background checks include available state and national data, unless obtaining one or the other is an acceptable alternative.

(7) In order to conduct the Oregon and National Criminal History Check and fitness determination, the Board may require additional information from the licensee under investigation or applicant as necessary, such as but not limited to, proof of identity; residential history; names used while living at each residence; or additional criminal, judicial or other background information.

(8) Criminal offender information is confidential. Dissemination of information received under HB 2157 is only available to people with a demonstrated and legitimate need to know the information. The information is part of the investigation of an applicant or licensee and as such is confidential pursuant to ORS 676.175(1).

(9) The Board will permit the individual for whom a fingerprint-based criminal records check was conducted to inspect their own state and national criminal offender records and, if requested, provide the individual with a copy of their own state and national criminal offender records.

(10) The Board may consider any conviction of any violation of the law in compliance with ORS 670.280, and for which the court could impose a punishment. The Board may also consider any arrests and court records that may be indicative of an individual's inability to perform as a licensee with care and safety to the public.

(10) The Board may consider any conviction of any violation of the law for which the court could impose a punishment and in compliance with ORS 670.280. The Board may also consider any arrests and court records that may be indicative of an individual's inability to perform as a licensee with care and safety to the public.

(11) If an applicant or licensee is determined not to be fit for licensure, the applicant or licensee is entitled to a contested case process pursuant to

ORS 183.414-470. Challenges to the accuracy or completeness of information provided by the Oregon Department of State Police, Federal Bureau of Investigation and agencies reporting information must be made through the Oregon Department of State Police, Federal Bureau of Investigation, or reporting agency and not through the contested case process pursuant to ORS 183.

(12) If the applicant or licensee successfully contests the accuracy or completeness of information provided by the Oregon State Police, the Federal Bureau of Investigation or other agency reporting information to the Board, the Board will conduct a new criminal history check and reevaluate the criminal history upon submission of a new criminal history request form.

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

Stat. Auth.: ORS 181.534, 675.070

Stats. Implemented: ORS 181.534, 675.070

Hist.: BPE 1-2010, f. & cert. ef. 1-8-10

## 858-010-0036

### Guidelines for Supervised Work Experience Psychologists

(1) Policy. Two years of supervised work experience is required for licensure. A minimum of one year of the required work experience must take place after the doctorate degree is conferred.

(a) One year of supervised work experience is defined as 1,500 hours of psychological work performed over a period not less than twelve months.

(b) The Board may approve one year of pre-doctoral supervised work experience if the experience was a formal requirement of the applicant's doctoral program.

(c) Psychological work is defined as psychotherapy and treatment for an individual or group; diagnosis and assessment; completing documentation related to diagnosis or treatment provided; treatment planning; termination reports; chart reviews; client care meetings and consultation; psychological testing; research related to client care; report writing; and receiving formal training including workshops and conferences.

(d) At least 50% of psychological work must be face-to-face client contact.

(e) For the purposes of licensure, psychological work does not include business development; credentialing activities; marketing; purchasing; creating forms; administrative billing or other business management activities.

(2) The following guidelines shall be used by the Board to define supervised employment. While obtaining postdoctoral supervised work experience, the applicant must be in a Board approved Resident Supervision Contract:

(a) Working under the supervision of an Oregon licensed psychologist licensed in Oregon for at least two years; or

(b) Working under the supervision of an Oregon licensed psychologist licensed for at least two years in a state with licensing standards comparable to Oregon.

(c) Supervised employment in other jurisdictions must be in a formal supervised work experience arrangement under the supervision of a psychologist who has been licensed for at least two years in a state with licensing standards comparable to Oregon or

(d) For the period April 8, 2008 through December 31, 2009, an employee of an institution or agency exempt from licensure under ORS 675.090 (1)(c), who provides documentation of supervision by a psychologist licensed for at least two years may, at the discretion of the Board, receive supervised employment credit.

(3) Applicants whose educational credentials and professional references have been approved by the Board shall be eligible to enter into a Resident Supervision Contract as described in subsection (2)(a) of this rule.

(a) Resident status shall begin the date the Board approves the Resident Supervision Contract.

(b) Termination of a Resident Supervision Contract will be granted by the Board at the written request of the supervisor or the resident. The termination shall be effective at the time the Board approves the request in writing.

(c) If the supervisor is to be paid for supervision payment must be in the form of a per-hour fee.

(d) Supervision of more than two residents concurrently shall require prior approval by the Board.

(4) Resident's Responsibilities. The resident's conduct must conform to the following standards:

(a) Title. The resident must be designated at all times by the title "psychologist resident." All signed materials, letterheads, business cards, telephone directory listings, Internet postings; brochures, insurance billings and any other public or private representation must include the individual's title as "psychologist resident" and the supervisor's name and designation "supervisor."

(b) Scope of Practice. The resident will only offer services in those areas that the supervisor is competent.

(c) Nature of Supervision. The resident must obtain frequent and regular supervision meetings throughout the duration of the Resident Supervision Contract. The resident must provide the supervisor with a periodic evaluation

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of all cases and psychological activities in which the resident is engaged. The resident's practice must comply with Oregon laws and administrative rules.

(d) The supervisor is not required to be working on-site with the resident.

(e) Non-routine individual supervision may occur by electronic means when geographical distance, weather or emergency prohibit a face-to-face meeting.

(f) Frequency. If a resident works 1-20 hours in a week the resident must at least one hour of individual supervision every week. If a resident works more than 21 hours in a week the resident must receive at least two hours of supervision every week. One hour must be individual and one hour may be group supervision. On a non-routine basis individual supervision may be delayed up to 14 days to accommodate vacations, illness, travel or inclement weather.

(A) Group supervision must be:

(i) A formal and on-going group of at least three mental health professionals;

(ii) Facilitated by a licensed mental health professional;

(iii) Approved by the resident's supervisor; and

(iv) All legal and ethical issues must be referred back to the supervisor if the group facilitator is not a licensed psychologist.

(g) Duration. The resident status is a transitional step toward licensure and is not intended as a means to avoid licensure. A Psychologist Resident Contract shall be effective for a period, not to exceed two years from the date of Board approval. The Board may extend the contract beyond two years upon a written request from the resident and the supervisor prior to the expiration of the contract. Failure to receive a courtesy reminder notice from the Board shall not relieve the resident of the responsibility to request an extension.

(h) Confidentiality. The resident must advise all clients orally and in their informed consent policy that the supervisor may have access to all information and material relevant to the client's case.

(i) Promptly communicate to the Board any significant interruption or expected termination of the Resident Supervision Contract;

(j) The resident must provide the Board with a Supervisor Evaluation Report at the conclusion, or termination of the Resident Supervision Contract.

(5) Responsibilities of the Supervisor. The supervisor's conduct must conform to the following standards:

(a) Closely review, supervise and evaluate representative and problem cases with attention to diagnostic evaluation, treatment planning, ongoing case management, emergency intervention, recordkeeping and termination;

(b) Countersign all psychological reports and professional correspondence produced by the resident; and ensure that letterhead, business cards, telephone directory listings, brochures, insurance billing and any other public or private representation includes the appropriate title of "Psychologist Resident" or "Psychologist Associate Resident" the supervisor's name and designation as "supervisor" Client progress notes do not need to be co-signed by the supervisor.

(c) Review with the resident, Oregon laws and administrative rules related to the practice of psychology, including the 2002 APA "Ethical Principles of Psychologists and Code of Conduct," professional relationships and referrals, protection of records, billing practices, recordkeeping and report writing;

(d) Assist the psychologist resident in developing a plan to prepare for the national written exam and the Oregon jurisprudence examination;

(e) Promptly communicate to the Board any professional or ethical concerns regarding the resident's conduct or performance;

(f) Promptly communicate to the Board any significant interruption or expected termination of the Resident Supervision Contract;

(g) Ensure that the resident has access to supervision by telephone to discuss urgent matters, if the supervisor is unavailable for any reason, during a period not to exceed fourteen days;

(h) In the absence of the primary supervisor, not to exceed fourteen days, one-on-one supervision hours may be conducted retro-actively.

(i) Keep notes of each supervisory session, and provide them to the Board upon request;

(j) Maintain a record of hours of supervision and provide it to the Board upon request and

(k) Provide the Board with a Resident Evaluation Report at the conclusion, or termination, of the Resident Supervision Contract.

(6) Associate Supervisor. Any supervision of the resident by a person other than the primary supervisor must be identified in the Resident Contract and approved by the Board.

(a) The associate supervisor is responsible for providing supervision as described in section (5) of this rule in the event that the primary supervisor is unavailable for any reason; and

(b) The associate supervisor is responsible for reporting any professional or ethical concerns regarding the resident's conduct or performance to the primary supervisor and the Board.

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 1-1988, f. & cert. ef. 7-25-88; PE 1-1990, f. & cert. ef. 2-16-90; PE 1-1991, f. & cert. ef. 4-3-91; PE 2-1991, f. 8-15-91, cert. ef. 8-16-91; PE 4-1993, f. & cert. ef. 7-19-93; PE

1-1996, f. & cert. ef. 6-25-96; BPE 2-2002, f. & cert. ef. 2-27-02; BPE 4-2002, f. & cert. ef. 10-11-02; BPE 1-2008, f. & cert. ef. 3-26-08; BPE 1-2010, f. & cert. ef. 1-8-10

## 858-010-0037

### Supervised Work Experience – Psychologist Associate

(1) Applicants must complete a one year full-time internship or one year of other supervised learning practicum deemed equivalent by the Board.

(2) Applicants must complete three years of full-time post-masters degree supervised work experience. The guidelines used by the Board to define the three-year supervised work experience requirement for psychologist associate applicants shall conform to those guidelines used in OAR 858-010-0036, except that:

(a) The resident shall be designated at all times by the title "psychologist associate resident" and

(b) A Resident Supervision Contract will be effective for a period not to exceed four years. The Board, in its discretion, may extend the contract beyond four years.

Stat. Auth.: ORS 675.065 & 675.110

Stats. Implemented: ORS 675.065 & 675.110

Hist.: BPE 1-2010, f. & cert. ef. 1-8-10

## 858-010-0038

### Continued Supervision – Licensed Psychologist Associate

Before the initial license is issued, the psychologist associate and the supervising psychologist must submit a "Contract for Continued Supervision of a Licensed Psychologist Associate." Day-to-day supervision of the licensed psychologist associate is the responsibility of the supervisor and includes such face-to-face consultation as is required by the nature of the work of the psychologist associate, and is consistent with accepted professional practices in psychology.

Stat. Auth.: ORS 675.065 & 675.110

Stats. Implemented: ORS 675.065 & 675.110

Hist.: BPE 1-2010, f. & cert. ef. 1-8-10

## 858-010-0039

### Application for Independent Status – Psychologist Associate

A licensed psychologist associate may apply to the Board for approval to function as an independent psychologist associate. Independent status will be granted only after at least three years of work as a licensed psychologist associate at a demonstrated high level of professional proficiency.

Stat. Auth.: ORS 675.065 & 675.110

Stats. Implemented: ORS 675.065 & 675.110

Hist.: BPE 1-2010, f. & cert. ef. 1-8-10

## 858-010-0041

### License Renewals

(1) Before the Board will issue a license or approve a request for active or semi-active status under ORS 675.110, a licensee must:

(a) Submit a signed Renewal Notice and Affidavit attesting to meeting the continuing education requirements of OAR 585-040-0015 and reporting any history of felony convictions, pending criminal charges or history of discipline;

(b) Pay the appropriate fee; and

(c) Pay the delinquent fee (if any).

(2) Semi-Active License.

(a) Continuing education requirements shall be the same as for active licensees as described in OAR 858-040-0015.

(b) Before the Board will approve a request for semi-active status a licensee must:

(A) Be at least 62 years of age; and

(B) Not engage in the practice of psychology as defined in ORS 675.020 for more than twenty client contact hours per week.

(3) A Renewal Notice and Affidavit and the correct fee must be post-marked by the stated due date to be considered timely. Licensee holds the burden of proof of mailing.

(4) Delinquent Fees.

(a) A delinquent fee must be paid for a license renewed after the stated due date. The Board shall have discretion to waive this fee in documented hardship cases.

(b) If license renewal and delinquent fees are not paid within 30 days immediately following the due date defined in section (3), the license shall lapse.

(c) To renew a license that has lapsed for nonpayment of the renewal or delinquent fees, an individual must:

(A) Submit a completed Application for Reinstatement postmarked within sixty days of the stated due date on the Renewal Notice and Affidavit; and

(B) Attest that the individual has not engaged in the unlicensed practice of psychology during the lapsed period; and

(C) Pay the required fee.

(5) Failure to receive a courtesy renewal reminder from the Board shall not relieve a licensee of renewal requirements and consequences.

Stat. Auth.: ORS 675.010 - 675.110

Stats. Implemented: ORS 675.110

Hist.: BPE 2-2002, f. & cert. ef. 2-27-02; BPE 2-2004, f. & cert. ef. 8-30-04; BPE 1-2008, f. & cert. ef. 3-26-08; BPE 1-2010, f. & cert. ef. 1-8-10

# ADMINISTRATIVE RULES

## 858-010-0050

### Inactive Status

Inactive status may be granted to licensees who have made a request in writing to the Board.

(1) To reactivate a license from inactive status to active or semi-active status the licensee shall request in writing and report professional and continuing education activities covering the period since the inactive license was granted.

(2) Reactivation Request. If the written request to reactivate a licensee from inactive status to active or semi-active status occurs within five years the Board may, at its discretion, reactivate the license.

(3) If the Board determines that the licensee has not engaged in professional and continuing education activities sufficient to maintain professional competence, or if the written request to reactivate the license is not received within five years, the licensee must re-take the Oregon jurisprudence examination and obtain a passing score.

(4) If the inactive licensee does not pass the Oregon jurisprudence examination, the Board may require the submission of a study plan designed to correct deficiencies in the licensee's examination performance and/or require that the licensee establish a Board approved consultation relationship as described in OAR 858-010-0036 the duration of which may be specified by the Board.

(5) The Board may reactivate the license upon receipt of documentation that the proposed study plan and/or period of consultation has been successfully completed and the deficiencies rectified, or at its discretion, may require the re-take and successful passing of the Oregon jurisprudence examination.

Stat. Auth.: ORS 675.110

Stats. Implemented: ORS 675.110

Hist.: PE 6, f. 12-19-73, ef. 1-11-74; PE 1-1979, f. & cert. ef. 9-5-79; PE 3-1980, f. & cert. ef. 12-12-80; PE 1-1982, f. 4-13-82, ef. 6-1-82; PE 2-1982, f. & cert. ef. 7-23-82; PE 2-1988, f. & cert. ef. 10-7-88; PE 1-1990, f. & cert. ef. 2-16-90; PE 1-1992, f. & cert. ef. 1-16-92; PE 3-1992, f. & cert. ef. 7-14-92; PE 3-1993, f. & cert. ef. 4-13-93; Renumbered to 858-040-0010; PE 1-1996, f. & cert. ef. 6-25-96; BPE 2-2004, f. & cert. ef. 8-30-04; BPE 1-2008, f. & cert. ef. 3-26-08; BPE 1-2010, f. & cert. ef. 1-8-10

## 858-010-0055

### Limited Permits

(1) The Board may grant a limited permit to practice psychology in the State of Oregon to individuals who possess and have maintained an active license as a psychologist in another jurisdiction in good standing. Applicants must:

(a) Submit a Visitor's Permit Application or a Temporary Permit Application;

(b) Submit proof of licensure in good standing from other jurisdictions;

(c) Pay the limited permit fee;

(d) Submit a statement certifying that the applicant has read and understands Oregon laws relating to the practice of psychology.

(2) Limited Permit Types.

(a) Visitor's Permit. A visitor's permit may be issued to psychologists that do not intend to seek full licensure in Oregon, and are providing psychological services for a limited, time-specific period only.

(A) A statement of work must be submitted with the Visitor's Permit Application, and whenever the psychologist re-enters Oregon.

(B) The statement of work must include purpose, location, and the specific dates of service.

(C) A visitor's permit shall be effective for no more than 30 days in a 12 month period.

(b) Temporary Permit. The Board may grant a temporary permit to an approved applicant for full licensure in Oregon.

(A) Individuals applying for a temporary permit that do not have a minimum of five years of licensure must consult with an Oregon licensed psychologist at least one hour per week on matters pertaining to Oregon laws. The consultant must agree and be named on the Limited Permit Application.

(B) A temporary permit shall be effective for no more than 180 calendar days. Applicants granted a temporary permit must take the jurisprudence examination within 180 days from the date the permit is approved.

(C) Failure to pass the jurisprudence examination shall result in cancellation of the temporary permit. The Board has discretion to extend the temporary permit for an additional 30 days in order to allow the applicant time to transition clients to another provider.

(D) Applicants whose temporary permit is cancelled may submit a Consultation Contract for Board approval to continue providing services after the cancellation date.

Stat. Auth.: ORS 675.063

Stats. Implemented: ORS 675.063

Hist.: PE 6, f. 12-19-73, ef. 1-11-74; PE 2-1989, f. & cert. ef. 5-24-89; PE 1-1990, f. & cert. ef. 2-16-90; PE 3-1992, f. & cert. ef. 7-14-92; PE 1-1995, f. & cert. ef. 2-16-95; PE 1-1996, f. & cert. ef. 6-25-96; BPE 1-1999(Temp), f. & cert. ef. 3-2-99 thru 7-1-99; BPE 2-1999, f. & cert. ef. 7-6-99; BPE 2-2002, f. & cert. ef. 2-27-02; BPE 2-2004, f. & cert. ef. 8-30-04; BPE 1-2008, f. & cert. ef. 3-26-08; BPE 1-2010, f. & cert. ef. 1-8-10

## 858-010-0060

### Psychological Records

(1) Maintenance and retention of records. The psychologist or psychologist associate rendering professional services to an individual client or services billed to a third party payer, shall maintain professional records for a

client for a minimum of seven years from the date of last service. The records shall include:

(a) The name of the client and other identifying information;

(b) The presenting problem(s) or purpose or diagnosis;

(c) The fee arrangement;

(d) The date and substance of each billed or service-count contact or service;

(e) Any test results or other evaluative results obtained and any basic test data from which they were derived;

(f) Notation and results of formal consults with other providers;

(g) A copy of all test or other evaluative reports prepared as part of the professional relationship;

(h) Any releases executed by the client;

(i) Any signed informed consents.

(2) Disposition in case of death or incapacity of the licensee. Psychologists and psychologist associates shall make necessary arrangements for maintenance of and access to client records to ensure confidentiality in case of death or incapacity of the licensee.

(3) Oregon licensees shall name a Qualified Person to intercede for client welfare and to make necessary referrals, when appropriate, and shall keep the Board notified of the name of the qualified person. The Board shall not release the name of the qualified person except in the case of the death or incapacity of the licensee or if the licensee is inactive or has resigned and the former client is unable to locate the licensee.

(4) Qualified Person. A qualified person under this rule is an active or semi-active Oregon licensed psychologist.

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 1-1996, f. & cert. ef. 6-25-96; BPE 4-2002, f. & cert. ef. 10-11-02; BPE 1-2010, f. & cert. ef. 1-8-10

## 858-010-0065

### Resignation of License Holder

A person holding a valid Oregon license to practice psychology may voluntarily resign their license by:

(1) Submitting a written resignation with the Board's Administrator.

(2) Submission of a voluntary resignation shall not affect investigations or disciplinary actions.

Stat. Auth.: ORS 675.070

Stats. Implemented: ORS 675.070(2)(d)

Hist.: PE 6, f. 12-19-73, ef. 1-11-74; PE 1-1996, f. & cert. ef. 6-25-96; BPE 1-1999(Temp), f. & cert. ef. 3-2-99 thru 7-1-99; BPE 2-1999, f. & cert. ef. 7-6-99; BPE 2-2004, f. & cert. ef. 8-30-04; BPE 1-2010, f. & cert. ef. 1-8-10

## 858-020-0015

### Management of Complaints

(1) Consumer Protection Committee. The Board Chair may appoint a Consumer Protection Sub-Committee comprised of one public member and two professional members.

(2) The Consumer Protection Committee shall:

(a) Provide direction and consultation to the Board's investigator and the Board's Administrator; and

(b) Make recommendations to the Board when necessary.

(3) Any Board member or Board staff member who has a conflict of interest with respect to any complaint shall declare the conflict and shall not participate in the investigation, disposition, or any other activity concerning the complaint.

Stat. Auth.: ORS 675.020 & 675.110

Stats. Implemented: ORS 675.110(8)

Hist.: BPE 2-1999, f. & cert. ef. 7-16-99; BPE 2-2004, f. & cert. ef. 8-30-04; BPE 1-2008, f. & cert. ef. 3-26-08; BPE 1-2010, f. & cert. ef. 1-8-10

## 858-020-0025

### Complaints on Which the Board Can Act

Any complaint submitted to the Board must be specific as to the conduct upon which the complaint is based and why this conduct is cause for a complaint. The Board will review and accept for consideration complaints which might affect the licensure of psychologists and psychologist associates who are already licensed or are candidates for licensure, or which concern the possible practice of psychology by non-psychologists or unlicensed psychologists. A complaint concerning a licensed psychologist associate or psychologist resident may be regarded as a complaint against the supervisor. Other types of complaints will be rejected, or, if authorized by ORS 676.160 to 676.180, may be referred to appropriate individuals or groups with the consent of the complainant.

Stat. Auth.: ORS 675.070

Stats. Implemented: ORS 675.070(2)

Hist.: BPE 3-1999, f. & cert. ef. 7-6-99; BPE 1-2010, f. & cert. ef. 1-8-10

## 858-020-0035

### Form of Complaints

(1) If the complaint is first made in verbal form, is tentative, or undocumented, the Board shall require a statement in writing, accompanied by documentation and a signed complaint form. The Board will advise a complainant about the nature and form of documentation required. The Board

# ADMINISTRATIVE RULES

shall provide all complainants with copy of ORS 676.160, Processing of Complaints Against Health Professionals.

(2) If the complainant is a client or former client of the respondent, the complainant must sign a waiver of confidentiality allowing the Board and its counsel access to records and other materials which are the ethical and legal responsibility of the respondent. Refusal by a complainant to comply with this requirement may result in dismissal of the complaint.

(3) If a Board member becomes a complainant or a respondent, the same procedures will apply as in any other case. The Board member will abstain from any participation in discussion and deliberations of the Board regarding the complaint.

Stats. Auth.: ORS 675.020 & 675.110  
Stats. Implemented: ORS 675.110  
Hist.: BPE 2-1999, f. & cert. ef. 7-6-99; BPE 1-2010, f. & cert. ef. 1-8-10

## 858-020-0045

### Notice and Investigation Process

(1) Notice to Respondent. The Board's Administrator shall notify the respondent by letter when a complaint is filed, or an investigation has been initiated, into respondent's conduct or practice. The notice letter shall provide respondent with a citation to the laws and regulations that apply to the investigation. The notice letter shall also set out the general allegations to be investigated. The investigator may modify the scope of the investigation as needed. The Board Administrator may delegate this notification procedure to the Board's investigator.

(2) Notice to Supervisors. When a complaint is filed against an individual acting under the supervision of a licensed psychologist, the supervising psychologist(s) shall be notified that any investigation into the conduct of the supervisee may affect the licensure of the supervisor(s). The Board may open a companion investigation naming the supervisor(s).

(3) Purpose of Investigation. The purpose of the investigation shall be to determine whether sufficient credible evidence exists of violation of rules or laws administered by the Board to justify issuance of a Notice of Intent to Impose sanctions against a person licensed by the Board or such other action as the circumstances may warrant.

(4) Scope of Investigation. The investigator shall seek guidance as appropriate and necessary from individual Board members, the full Board, agency legal counsel, and the Board's administrator. Should the Board decide to operate with a Consumer Protection Committee structure, that committee shall serve as the primary source of guidance for the investigator.

(5) Cooperation. Failure by Respondent to cooperate with a board investigation constitutes unprofessional conduct per ORS 675.070(2). Cooperation by respondent includes:

(a) Making a diligent and documented good faith effort to obtain all necessary information releases for a full investigation of the allegations presented in the notice letter;

(b) Sending a complete case file to the Board's investigator;

(c) Being available for a personal interview with the Board's investigator; and

(d) Responding to questions presented by the Board's investigator.

(6) Duty of the Investigator. The investigator shall collect evidence, interview witnesses and make a written report to the Board.

Stat. Auth.: ORS 675.020 & 675.110  
Stats. Implemented: ORS 675.110  
Hist.: BPE 3-1999, f. & cert. ef. 7-6-99; BPE 2-2004, f. & cert. ef. 8-30-04; BPE 1-2008, f. & cert. ef. 3-26-08; BPE 1-2010, f. & cert. ef. 1-8-10

## 858-020-0055

### Investigator's Report to the Board

(1) When the investigation is complete, the investigator will make an investigation report to the Board, in accordance with the timeline and procedures outlined in ORS 183.310 to 183.500 and 676.160 to 676.180, and shall clearly set forth the issues on which the Board should consider possible action.

(2) The Board shall consider the investigator's report and the standards for disciplinary actions under its statutes and OAR 858-010-0075. The Board may:

(a) Dismiss the Complaint;

(b) Continue the investigation; or

(c) Issue a Thirty-Day Letter. The Board administrator shall notify the respondent of the specific allegations of conduct that may constitute violations of APA Ethical Principles or Oregon statutes and administrative rules in the view of the Board. The letter shall require a response from the respondent within 30 days from the date of mailing and provide warning that failure to respond may result in Board disposition of the complaint without the response.

Stats. Auth.: ORS 675.110  
Stats. Implemented: ORS 675.110  
Hist.: BPE 2-1999, f. & cert. ef. 7-6-99; BPE 2-2004, f. & cert. ef. 8-30-04; BPE 1-2010, f. & cert. ef. 1-8-10

## 858-020-0065

### Board Action

(1) Upon consideration of the Respondent's response to the specific allegations in the Thirty-Day letter, the Board may:

(a) Dismiss the complaint; or

(b) Institute disciplinary action under ORS 675.070; 675.085; and 675.100 by contested case notice pursuant to the provisions of ORS 183.310 to 183.550.

(2) The Board shall give notice of its action to all parties involved. The Board's administrator shall provide notice when a complaint is dismissed.

Stat. Auth.: ORS 675.110  
Stats. Implemented: ORS 675.110  
Hist.: BPE 3-1999, f. & cert. ef. 7-6-99; BPE 1-2010, f. & cert. ef. 1-8-10

## 858-020-0085

### Board Records

If the Board determines to take disciplinary action in accordance with ORS 675.070 to restrict, suspend, or revoke a license, notice to this effect will be published in a Board publication and published on the Board's website. Final disciplinary actions will also be reported to the National Practitioner Databank (NPDB-NIPDB), the Association of State and Provincial Psychology Boards' Disciplinary Databank.

Stat. Auth.: ORS 675.110  
Stats. Implemented: ORS 675.110  
Hist.: BPE 2-1999, f. & cert. ef. 7-6-99; BPE 2-2004, f. & cert. ef. 8-30-04; BPE 1-2010, f. & cert. ef. 1-8-10

## 858-030-0005

### Application, Examination and Licensing Fees

1) Application: \$300

(2) Jurisprudence Examination: \$150

(3) License Fees

(a) The license renewal fee for an Active psychologist and psychologist associate shall be calculated on an annual amount of \$375.

(b) The license renewal fee for a Semi-Active psychologist and psychologist associate shall be calculated on an annual amount of \$187.50.

(c) The license renewal fee for Inactive psychologist and psychologist associate shall be \$50 and paid on a biennial amount of \$100.

(d) Effective for the renewal periods beginning January 1, 2010, the Board will phase in the implementation of two year license on a birth month renewal schedule.

(e) The Board shall impose a Delinquency Fee of \$200 for licenses renewed within thirty days after the stated due date.

(f) The Board shall have discretion to waive the delinquency fee in hardship cases.

(4) Limited Permit: \$100

(5) Miscellaneous Fees. Most materials and information are available through the Board website at [www.oregon.gov/obpe](http://www.oregon.gov/obpe) or may be purchased in accordance with ORS 192.440(2).

(a) Certified Verification of Licensure: \$5

(b) Certified Transfer of Application Information: \$20

(c) Student Loan Deferment Letter: \$5

(d) Duplicating Request: \$2.50 for the first five copies; \$.25 for each copy thereafter

(e) Laws and Administrative Rules: \$5

(f) Electronic File of Mailing Labels: \$35

(g) Application Packet, including Laws and Administrative Rules: \$10

(h) Duplicate Wall Display Certificate of Licensure: \$12.00

(i) Certified Duplicate License: \$10 and

(j) Cumulative Disciplinary Report: \$7.50

Stat. Auth.: ORS 675.110 & 675.115  
Stats. Implemented: ORS 675.110 & 675.115  
Hist.: PE 6, f. 12-19-73, ef. 1-11-74; PE 7, f. 10-21-74, ef. 11-11-74; PE 9, f. 2-3-75, ef. 2-25-75; PE 1-1978, f. & ef. 9-5-78; PE 1-1979, f. & ef. 9-5-79; PE 2-1980, f. & ef. 9-23-80; PE 1-1982, f. 4-13-82, ef. 6-1-82; PE 2-1982, f. & ef. 7-23-82; PE 1-1983, f. & ef. 11-1-83; PE 2-1989, f. & cert. ef. 5-24-89; PE 3-1992, f. & cert. ef. 7-14-92; PE 2-1993(Temp), f. & cert. ef. 3-18-93; PE 4-1993, f. & cert. ef. 7-19-93; Renumbered from 858-010-0060; PE 5-1993, f. & cert. ef. 10-6-93; PE 1-1996, f. & cert. ef. 6-25-96; BPE 1-1999(Temp), f. & cert. ef. 3-2-99 thru 7-1-99; BPE 2-1999, f. & cert. ef. 7-6-99; BPE 2-2000, f. 9-7-00, cert. ef. 10-15-00; BPE 2-2001(Temp), f. 8-31-01, cert. ef. 10-12-01 thru 2-27-02; BPE 3-2001(Temp), f. & cert. ef. 10-12-01 thru 2-27-02; BPE 2-2002, f. & cert. ef. 2-27-02; BPE 2-2004, f. & cert. ef. 8-30-04; BPE 1-2008, f. & cert. ef. 3-26-08; BPE 1-2009(Temp), f. 9-29-09, cert. ef. 10-1-09 thru 12-31-09; BPE 1-2010, f. & cert. ef. 1-8-10

## 858-040-0015

### Basic Requirements

(1) Licensees must earn at least 50 continuing education credits during the period between license renewals. Continuing education credit must be reported as follows:

(a) Licensees must submit a Renewal Notice and Reporting Affidavit to the Board office with the fee on or before the due date printed on the notice.

(b) An unsigned or incomplete Renewal Notice and Reporting Affidavit shall be returned to the licensee.

(2) New Licensees. There is no continuing education reporting required for individuals licensed less than twelve months on their first renewal date. Continuing education shall be pro-rated for individuals licensed less than twenty-four months on their first renewal date.

(3) All active and semi-active licensees must complete four hours of professional ethics in each reporting period.



# ADMINISTRATIVE RULES

(4) All active and semi-active licensees must complete a minimum of seven hours of continuing education dedicated to the topic of pain management

(a) One hour must be a course provided by the Oregon Pain Management Commission.

(b) The pain management requirement must be reported within twenty-four months of the first Renewal Notice and Affidavit.

(5) No continuing education reporting is required for licensees requesting a change from active or semi-active to inactive status.

(6) No continuing education reporting is required for inactive licensees.

(7) The Board may grant exemptions in whole or in part from continuing education requirements, including extension of deadlines, in documented hardship cases.

Stat. Auth.: ORS 675.110

Stats. Implemented: ORS 675.110(14)

Hist.: BPE 2-1999, f. & cert. ef. 7-6-99; BPE 2-2002, f. & cert. ef. 2-27-02; BPE 2-2004, f. & cert. ef. 8-30-04; BPE 1-2008, f. & cert. ef. 3-26-08; BPE 1-2010, f. & cert. ef. 1-8-10

## 858-040-0020

### Failure to Comply

(1) A Renewal Notice and Reporting Affidavit shall be deemed timely if it is postmarked by the stated due date of the reporting year. Burden of proof of mailing is on the licensee.

(2) A licensee whose Renewal Notice and Reporting Affidavit is not postmarked by stated due date shall pay a delinquent fee.

(3) An individual whose license has lapsed for failure to submit a Renewal Notice and Reporting Affidavit and delinquent fee within 30 days after the due date must submit re-apply for licensure according to OAR 858-010-0010.

(4) An individual whose license has been revoked for noncompliance of continuing education requirements must re-apply for licensure.

Stat. Auth.: ORS 675.110

Stats. Implemented: ORS 675.110(3)(14)

Hist.: BPE 1-2010, f. & cert. ef. 1-8-10

## 858-040-0025

### Continuing Education Reporting

(1) Before a license will be renewed under ORS 675.110 a licensee must a Renewal Notice and Reporting Affidavit.

(a) A copy of the Renewal Notice and Reporting Affidavit is available on the Board's website at [www.obpe.state.or.us](http://www.obpe.state.or.us).

(b) A paper copy of the form may be obtained by sending a stamped, self-addressed envelope to the Board's office with a request for the form.

(2) Renewal Notice and Reporting Affidavits must be postmarked by the due date printed on the notice to be timely. Burden of proof of mailing is on the licensee.

Stat. Auth.: ORS 675.110

Stats. Implemented: ORS 675.110(14)

Hist.: BPE 2-1999, f. & cert. ef. 7-6-99; BPE 2-2002, f. & cert. ef. 2-27-02; BPE 1-2008, f. & cert. ef. 3-26-08; BPE 1-2010, f. & cert. ef. 1-8-10

## 858-040-0026

### Continuing Education Random Audit

(1) The Board will conduct a random audit of continuing education compliance each year.

(2) Unless the licensee is contacted for an audit, certificates of attendance or other proof of continuing education activities should not be sent to the Board, but must be retained by the licensee for two years after the reporting period.

(3) To obtain credit during an audit, the following information must be typed or printed provided in legible form on the Board's Continuing Education Audit Report:

(a) Activity Title For multi-session or multi-day activities, titles of separate sessions attended;

(b) Dates attended, including month, day, and year;

(c) Organization sponsoring the program;

(d) Full name and degree of qualified instructor;

(e) Hours claimed according to OAR 858-040-0055.

(f) To obtain credit for writing published articles and books, the following information must be provided on the Continuing Education Audit Report as follows:

(A) Publisher;

(B) Title of publication;

(C) Dates of publication; and

(D) Hours claimed according to OAR 858-040-0055.

(4) Responsibility for documenting the acceptability of the program and the validity of credit rests with the licensee.

(5) The following shall constitute evidence of completion:

(a) For courses taken for academic credit from accredited universities and colleges: a copy of a transcript showing satisfactory completion of the course;

(b) For non-academic courses taken, a certificate of attendance;

(c) For formal individual home study programs, written evidence of completion from the sponsor;

(d) For formally organized study groups, a copy of the study group syllabus, and the recorder's study group meeting minutes;

(e) For consultation or supervision, copies of cancelled checks, or signed verification by the psychologist providing services; and

(f) For published material, a copy of pages of the material showing title, author, and date of publication.

(6) If a CE report or documentation is not approved, the licensee shall be so notified and shall be granted a period of time by the Board in which to correct the deficiencies noted.

Stat. Auth.: ORS 675.110

Stats. Implemented: ORS 675.110(14)

Hist.: BPE 1-2010, f. & cert. ef. 1-8-10

## 858-040-0035

### Programs Which Qualify for Continuing Education Credit

Policy. Acceptable continuing education must be a learning activity which contributes directly to the professional competence of the licensee.

(1) Program Prerequisites. Continuing Education programs shall qualify for credit if:

(a) The subject matter deals primarily with substantive psychological issues, skills or laws, rules and ethical standards related to one's role as a psychologist or psychologist associate.

(b) The program is conducted by a qualified instructor or discussion leader. A qualified instructor or discussion leader is a person whose background, training, education, or experience makes it appropriate for the person to make a presentation or lead a discussion on the subject matter; and

(c) A record of attendance, such a certificate of completion, is obtained.

(2) Qualifying Programs. The following shall qualify for continuing education credit provided they comply with all other CE requirements:

(a) Substantive professional development programs of recognized mental health organizations;

(b) University or college courses. Each classroom hour shall equal one qualifying hour;

(c) Formally organized work place educational programs;

(d) Formally organized study groups that comply with the following;

(A) At least two other mental health professionals attend;

(B) The study group prepares and preserves a syllabus of meeting dates and study topics in advance;

(C) A record is kept of each study group meeting. The record must include the names of the participants present, the subject matter and references which relate to any written material utilized; and

(e) Supervision or Consultation Received for a fee from an Oregon licensed Psychologist.

(A) Credit shall be given only to the licensee receiving supervision or consultation, not to the licensee providing supervision or consultation.

(B) No credit shall be given to licensees receiving supervision to fulfill licensure or discipline requirements.

(f) Home Study including non-interactive internet and tele-courses.

(g) Published articles and books on substantive psychological issues.

(h) Service as Lecturer, Discussion Leader, or Speaker on substantive psychological issues.

(A) Credit as a lecturer, discussion leader, or speaker may be claimed for work that is either paid or unpaid.

(B) Credit shall be allowed for the first time a course is taught. No credit shall be allowed for repeat presentations unless an instructor can demonstrate that the program content was substantially changed and such change required significant additional study or research.

(i) Ethics.

(j) Oregon Board of Psychologist Examiners committee volunteer.

(k) Ethics Committee meetings of professional associations.

(l) Pain Management.

(m) Office records organization; records maintenance and security procedures; office procedures; office staff training related to records maintenance and security procedures; billing software instruction.

Stat. Auth.: ORS 675.110

Stats. Implemented: ORS 675.110(14)

Hist.: BPE 2-1999, f. & cert. ef. 7-6-99; BPE 2-2002, f. & cert. ef. 2-27-02, 858-040-0035(2) Renumbered from 858-040-0045; BPE 4-2002, f. & cert. ef. 10-11-02; BPE 1-2008, f. & cert. ef. 3-26-08; BPE 1-2010, f. & cert. ef. 1-8-10

## 858-040-0036

### Programs Which Do Not Qualify for Continuing Education Credit

(1) Marketing; investments; and practice building strategies.

(2) Yoga; therapeutic massage;

(3) Non-Clinical administrative staffing meetings;

(4) Word processing computer skills;

(5) Therapies which are not widely recognized as within the scope of practice of psychology, through research or scientifically demonstrated clinical effectiveness.

Stat. Auth.: ORS 675.110

Stats. Implemented: ORS 675.110(14)

Hist.: BPE 2-2002, f. & cert. ef. 2-27-02; Renumbered from 858-040-0035(5); BPE 1-2008, f. & cert. ef. 3-26-08; BPE 1-2010, f. & cert. ef. 1-8-10





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Hist.: CCB 1-1998, f. & cert. ef. 2-6-98; CCB 4-1999, f. & cert. ef. 6-29-99; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; CCB 3-2006, f. & cert. ef. 3-2-06; CCB 8-2009, f. 12-28-09, cert. ef. 1-1-10

## Department of Administrative Services Chapter 125

### 812-012-0110

#### Terms of Written Contract

(1) If a contractor is required to have a written contract under ORS 701.305, the written contract or attached addendum to the written contract must contain the following:

(a) A statement that the contractor is licensed by the Construction Contractors Board.

(b) The contractor's name, address, phone number and license number issued by the board as shown on board records.

(c) Effective July 1, 2008, an acknowledgment of a written offer of a warranty, if an offer is required by ORS 701.320, and indication of the acceptance or rejection of the offered warranty;

(d) A list of the notices required under ORS 87.093, 701.330 or under rules adopted under ORS 701.335(2).

(e) Effective July 1, 2008, acknowledgment of the receipt of the maintenance information required by the board under ORS 701.335;

(f) An explanation of the property owner's rights under the contract, including, but not limited to, the ability to file a complaint with the board and the existence of any mediation or arbitration provision in the contract, set forth in a conspicuous manner as defined by the board by rule.

(g) Customer's name and address;

(h) Address where the work is to be performed;

(i) A description of the work to be performed;

(j) Price and payment terms;

(2) The information described in section (1) of this rule must be legible and in dark ink.

Stat. Auth.: ORS 670.310, 701.235, 701.305, 701.315, 701.320, 701.330 & 701.335

Stats. Implemented: ORS 701.305, 701.330 & 701.335

Hist.: CCB 7-2007, f. 12-13-07, cert. ef. 1-1-08; CCB 9-2008, f. 6-11-08, cert. ef. 7-1-08; CCB 8-2009, f. 12-28-09, cert. ef. 1-1-10

### 812-021-0025

#### Provider Approval, Standards, Fees and Renewal for Core — Continuing Education for Residential Contractors

(1) The agency will review and approve providers offering core continuing education.

(2) Providers will apply for approval on a form prescribed by the agency. Providers may, but need not, apply for approval at the same time they apply for course approval.

(3) Providers seeking approval to offer training in BEST, building codes or "green" or sustainable building practices must submit the following to the agency:

(a) Name, address and contact information of the provider;

(b) Business entity type of the provider and, if applicable, the Corporation Division business registry number;

(c) Description of provider business plan;

(d) Description of the core subject area(s) provider intends to offer; and

(e) Such other information or documentation as the agency may request.

(4) Providers must remit to the agency together with their application:

(a) A non-refundable fee of \$2,000 if applying to offer BEST;

(b) A non-refundable fee of \$500 if applying to offer building codes or "green" or sustainable building practices; or

(c) A non-refundable fee of \$2,500 if applying to offer both BEST and building codes or "green" or sustainable building practices.

(5) To qualify for approval, providers must:

(a) Certify the programs offered meet the minimum standards and content objectives established by the Board;

(b) Employ or contract with educators who have at least two years work experience or two years of education, or any combination of both, in the subject that they instruct;

(c) Be capable of entering and transmitting electronic data to the agency;

(d) Describe a process for prompt resolution of complaints by registrants;

(e) Describe a process for cancellations and refunding registrant payments; and

(f) Provide a surety bond in an amount of \$20,000 obligating the surety to pay registrants to whom the provider owes money for cancellation or other refunds that the provider fails to pay. The bond must be in the form adopted by the board as the "Continuing Education Provider Surety Bond" dated December 1, 2009.

(6) Provider approval will be valid for two (2) years from the date the provider is approved by the agency.

(7) Providers must re-submit application and fees required under sections (3) and (4) of this rule for renewal of approval. Renewal of approval will be subject to the same requirements as initial approval.

Stat. Auth.: ORS 670.310, 701.126 & 701.235

Stats. Implemented: ORS 701.126

Hist.: CCB 5-2009, f. 6-25-09, cert. ef. 7-1-09; CCB 8-2009, f. 12-28-09, cert. ef. 1-1-10

**Rule Caption:** DAS Public Contracting Rules.

**Adm. Order No.:** DAS 11-2009

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**Rules Adopted:** 125-246-0165, 125-246-0312, 125-246-0314, 125-246-0621, 125-247-0110, 125-249-0145

**Rules Amended:** 125-246-0110, 125-246-0130, 125-246-0150, 125-246-0170, 125-246-0200, 125-246-0210, 125-246-0220, 125-246-0310, 125-246-0330, 125-246-0333, 125-246-0335, 125-246-0345, 125-246-0351, 125-246-0360, 125-246-0365, 125-246-0560, 125-246-0570, 125-246-0576, 125-246-0635, 125-247-0200, 125-247-0255, 125-247-0260, 125-247-0270, 125-247-0275, 125-247-0280, 125-247-0287, 125-247-0288, 125-247-0296, 125-247-0305, 125-247-0310, 125-247-0320, 125-247-0340, 125-247-0470, 125-247-0500, 125-247-0550, 125-247-0600, 125-247-0610, 125-247-0630, 125-247-0640, 125-247-0660, 125-247-0691, 125-247-0700, 125-247-0710, 125-247-0720, 125-247-0740, 125-247-0750, 125-248-0130, 125-248-0200, 125-248-0210, 125-248-0220, 125-248-0230, 125-248-0240, 125-248-0260, 125-248-0300, 125-248-0310, 125-248-0330, 125-248-0340, 125-249-0120, 125-249-0130, 125-249-0200, 125-249-0230, 125-249-0260, 125-249-0270, 125-249-0280, 125-249-0300, 125-249-0330, 125-249-0350, 125-249-0360, 125-249-0370, 125-249-0390, 125-249-0420, 125-249-0430, 125-249-0440, 125-249-0450, 125-249-0620, 125-249-0640, 125-249-0645, 125-249-0650, 125-249-0660, 125-249-0680, 125-249-0800, 125-249-0810, 125-249-0815, 125-249-0820, 125-249-0860, 125-249-0870, 125-249-0900

**Rules Repealed:** 125-246-0352, 125-246-0550, 125-246-0575, 125-247-0005, 125-247-0256, 125-247-0261, 125-247-0770, 125-247-0800

**Subject:** Since 2005, the Department of Administrative Services (DAS) has developed and amended rules (Rules) to put into practice the Public Contracting Code ORS 279 ABC (Code). The Rules apply to state agencies subject to DAS procurement authority (Agencies). In 2009, the Legislature changed the Code. Also, Agencies requested Rule changes. Now, in response to the Legislature changes to the Code ad requests for change from shareholders, DAS needs to adopt a few new Rules, amend select Rules and repeal select Rules.

**Rules Coordinator:** Yvonne Hanna—(503) 378-2349, ext. 325

### 125-246-0110

#### Definitions

The following terms are a compilation of definitions, including those found in the Public Contracting Code, in other statutes referenced by the Public Contracting Code, and elsewhere in these Rules. Partial definitions of the Public Contracting Code are for the use of the Agencies only. The following terms, when capitalized in these Rules, have the meaning given below:

(1) "Addendum" or "Addenda" means an addition to, deletion from, a material change in, or general interest explanation of a Solicitation Document.

(2) "Adequate" is defined in ORS 279C.305 and means sufficient to control the performance of the Work and to ensure satisfactory quality of construction by the contracting agency personnel.

(3) "Advantageous" means a judgmental assessment by the Agency of the Agency's best interests.

(4) "Advocate for Minority, Women and Emerging Small Business" means the individual appointed by the Governor to advise the Governor, Legislature and Director's Office on issues related to the integration of minority, women and emerging small business into the mainstream of the Oregon economy and business sector. The Advocate oversees the resolution of business concerns with Agencies impacting certified disadvantaged, minority, women and emerging small businesses (DMWESB). The Advocate is also charged with maintaining the Oregon Opportunity Register and Clearinghouse to facilitate the timely notice of business and contract opportunities to DMWESB firms certified by the Office of Minority, Women and Emerging Small Businesses according to ORS 200.025.

(5) An "Administrator" or "Administering Agency" is defined in OAR 125-246-0400(3)(a).

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(6) "Affected Person" or "Affected Offeror" means a Person whose ability to participate in a Procurement is adversely affected by an Agency decision.

(7) "Affirmative Action" is defined in ORS 279A.100 and means a program designed to ensure equal opportunity in employment and business for persons otherwise disadvantaged by reason of race, color, religion, sex, national origin, age or physical or mental disability.

(8) "Agency" means those agencies of the State of Oregon that are subject to the procurement authority of the Director of the Department according to ORS 279A.050 and 279A.140. This term includes the Department when the Department is engaged in Public Contracting. Under these Rules, an Agency is authorized only through a delegation of authority according to OAR 125-246-0170.

(9) "Agreement to Agree" means a Price Agreement as defined in Subsection (110).

(10) "Amendment" means a Written modification to the terms and conditions of a Public Contract, other than Changes to the Work as defined in OAR 125-249-0910, that meets the requirements of OAR 125-246-0560. For the purposes of these Rules, Amendments are included within the definitions of "Procurements" and "Contract Administration."

(11) "Architect" is defined in ORS 279C.100 and means a person who is registered and holds a valid certificate in the practice of architecture in the State of Oregon, as provided under ORS 671.010 to 671.220, and includes without limitation the terms "architect," "licensed architect" and "registered architect."

(12) "Architectural, Engineering and Land Surveying Services" is defined in ORS 279C.100 and collectively means professional services that are required to be performed by an architect, engineer or land surveyor. "Architectural, Engineering and Land Surveying Services" includes "Architectural, Engineering or Land Surveying Services," separately or any combination thereof, as appropriate within the context of a Rule.

(13) "Architectural, Engineering and Land Surveying Services, and Related Services" is defined in ORS 279C.100(2) and 279C.100(6) and collectively means professional services that are required to be performed by an architect, engineer or land surveyor and Related Services. "Related Services" means services that are related to the planning, design, engineering or oversight of Public Improvement projects or components thereof, including but not limited to landscape architectural services, facilities planning services, energy planning services, space planning services, environmental impact studies, hazardous substances or hazardous waste or toxic substances testing services, wetland delineation studies, wetland mitigation studies, Native American studies, historical research services, endangered species studies, rare plant studies, biological services, archaeological services, cost estimating services, appraising services, material testing services, mechanical system balancing services, commissioning services, project management services, construction management services and owner's representative services or land-use planning services. "Architectural, Engineering and Land Surveying Services, and Related Services" includes "Architectural, Engineering or Land Surveying Services, or Related Services, separately or in any combination thereof, as appropriate within the context of a Rule."

(14) "As-Is, Where-Is" applies to the sale of Goods and means that the Goods are of the kind, quality, and locale represented, even though they are in a damaged condition. It implies that the buyer takes the entire risk as to the quality of the Goods involved, based upon the buyer's own inspection. Implied and express warranties are excluded in sales of Goods "As-Is, Where-Is."

(15) "Authorized Agency" means any Person authorized according to OAR 125-246-0170 to conduct a Procurement or take other actions on an Agency's behalf. This term, including its use in the Rules, does not convey authority to an Agency. For the authority of Agencies under the Code and these Rules, see OAR 125-246-0170 only.

(16) "Award" means the Agency's identification of the Person(s) with whom the Agency intends to enter into a Contract.

(17) "Bid" means a Written response to an Invitation to Bid.

(18) "Bidder" means a Person who submits a Bid in response to an Invitation to Bid.

(19) "Brand Name or Equal Specification" is defined in ORS 279B.200(1) and means a Specification that uses one or more manufacturers' names, makes, catalog numbers or similar identifying characteristics to describe the standard of quality, performance, functionality or other characteristics needed to meet the Agency's requirements and that authorizes Offerors to offer Supplies and Services that are equivalent or superior to those named or described in the Specification.

(20) "Brand Name Specification" is defined in ORS 279B.200(2) and means a Specification limited to one or more products, brand names, makes, manufacturer's names, catalog numbers or similar identifying characteristics.

(21) "Business Day" means 8:00 a.m. to 5:00 p.m., Pacific time, Monday through Friday, excluding State of Oregon holidays.

(22) "Chief Procurement Officer" means the individual designated and authorized by the Director of the Department to perform certain procurement functions described in these Rules.

(23) "Class Special Procurement" is defined in ORS 279B.085 and means a contracting procedure that differs from the procedures described in

ORS 279B.055, 279B.060, 279B.065 and 279B.070 and is for the purpose of entering into a series of contracts over time for the acquisition of a specified class of goods or services.

(24) "Client" means any individual, family or Provider:

(a) For whom an Agency must provide Services and incidental or specialized Goods, in any combination thereof ("Services and Incidental Supplies"), according to state, federal law, rule, and policy. Those Services and Incidental Supplies include but are not limited to treatment, care, protection, and support without regard to the proximity of the services being provided;

(b) Who in fact receives and utilizes services provided by an Agency primarily for that individual's or family's benefit;

(c) Who is under the custody, care, or both of the Agency; or

(d) Who provides direct care or Services and is a proxy or representative of the non-Provider Client.

(25) "Client Services" means any Services that directly or primarily support a Client, whether the Client is the recipient through the provision of voluntary or mandatory Services. Client Services also means any Goods that are incidental or specialized in relation to any Services defined in this Subsection. Client Services may include but are not limited to (where these terms are used in another statute, they must have that meaning):

(a) Housing, including utilities, rent or mortgage or assistance to pay rent, mortgage or utilities;

(b) Sustenance, including clothing;

(c) Employment training or Skills training to improve employability;

(d) Services for people with disabilities;

(e) Foster care or foster care facilities;

(f) Residential care or residential care facilities;

(g) Community housing;

(h) In-home care including home delivered meals;

(i) Medical care, services and treatment, including but not limited to:

(A) Medical, Dental, Hospital, Psychological, Psychiatric, Therapy, Vision;

(B) Alcohol and drug treatment;

(C) Smoking cessation;

(D) Drugs, prescriptions and non-prescription;

(E) Nursing services and facilities;

(j) Transportation or relocation;

(k) Quality of life, living skills training; or

(l) Personal care; or

(m) Legal services and expert witnesses services;

(n) Religious practices, traditions and services, separately or in any combination thereof; and

(o) Educational services. The term "Client Services" does not include benefits or services provided as a condition of employment with an Agency.

(26) "Closing" means the date and time specified in a Solicitation Document as the deadline for submitting Offers.

(27) "Code" is the "Public Contracting Code," defined in ORS 279A.010(1)(bb), and "Code" means ORS Chapters 279A, 279B and 279C.

(28) "Competitive Quotes" means the sourcing method according to OAR 125-249-0160.

(29) "Competitive Range" means the Proposers with whom the Agency will conduct Discussions or Negotiations if the Agency intends to conduct Discussions or Negotiations in accordance with OAR 125-247-0260 or 125-249-0650.

(30) "Competitive Sealed Bidding" means the sourcing method according to ORS 279B.055.

(31) "Competitive Sealed Proposals" means the sourcing method according to ORS 279B.060.

(32) "Consultant" means the Person with whom an Agency enters into a Contract for the purposes of consulting, conferring, or deliberating on one or more subjects, and this Person provides advice or opinion; e.g., Consultants for Architectural, Engineering and Land Surveying Services, and Related Services as defined in ORS 279C.115 and information technology Consultants.

(33) "Contract" means an agreement between two or more Persons which creates an obligation to do or not to do a particular thing. Its essentials are competent parties, subject matter, a legal consideration, mutuality of agreement, and mutuality of obligation. For the purposes of these Rules, "Contract" means Public Contract.

(34) "Contract Administration" means all functions related to a given Contract, including Amendments, between an Agency and a Contractor from:

(a) The time the Contract is signed by all parties until;

(b) The Work is completed and accepted or the Contract is terminated, final payment has been made, and any disputes have been resolved.

(35) "Contract Administrator" means the officer, employee, or other individual designated in Writing by an Authorized Agency, by name or position description, to conduct the Contract Administration of a Contract or class of Contracts.

(36) "Contractor" means the Person with whom an Agency enters into a Contract and has the same meaning as "Consultant" or "Provider."

(37) "Contract Price" means, as the context requires, the maximum monetary obligation that an Agency either will or may incur under a Contract,

# ADMINISTRATIVE RULES

including bonuses, incentives and contingency amounts, if the Contractor fully performs under the Contract.

(38) "Contract Review Authority" means the Director of the Department and the Director's delegatee, unless specified by statute as the Director of the Oregon Department of Transportation.

(39) "Contract-Specific Special Procurement" is defined in ORS 279B.085 and means a contracting procedure that differs from the procedures described in ORS 279B.055, 279B.060, 279B.065 and 279B.070 and is for the purpose of entering into a single Contract or a number of related Contracts for the acquisition of specified Supplies and Services on a one-time basis or for a single project.

(40) "Contracting Agency."

(a) "Contracting Agency" is defined in ORS 279A.010(1)(b) and, for Agencies operating under these Rules and the Code, means the Director of the Oregon Department of Administrative Services, authorized to act on their behalf according to ORS 279A.140.

(b) The definition of "Contracting Agency" in ORS 279A.010(1)(b) does not give Agencies procurement authority. For procurement authority of Agencies, see OAR 125-246-0170.

(41) "Cooperative Procurement" is defined in OAR 125-246-0400(3)(c).

(42) "Cooperative Procurement Group" is defined in OAR 125-246-0400(3)(d).

(43) "Days" means calendar days.

(44) "Disqualification" means a disqualification, suspension or debarment of a Person according to ORS 200.065, 200.075, and 279A.110 and OAR 125-246-0210(4).

(45) "Department" means the Oregon Department of Administrative Services.

(46) "Department Price Agreement" means a Price Agreement issued by the Department's State Procurement Office on behalf of all Agencies. Such Agreements may be mandatory for use by Agencies or voluntary for use by Agencies. Such Agreements may result from a Cooperative Procurement. According to OAR 125-246-0360 (Purchases through Federal Programs), an Authorized Agency may not purchase Supplies and Services through Federal Programs if a Department Price Agreement for those authorized Supplies and Services exists.

(47) "Designated Procurement Officer" means the individual designated and authorized by the head of an Authorized Agency to perform certain Procurement functions described in these Rules. If any head of an Authorized Agency does not designate and authorize an individual as a Designated Procurement Officer, "Designated Procurement Officer" also means that head of the Authorized Agency, who then acts in the place of the Designated Procurement Officer.

(48) "Descriptive Literature" means Written information submitted with the Offer that addresses the Supplies and Services included in the Offer.

(49) "Director" is defined in ORS 279A.010(1)(e) and means the Director of the Department or a person designated by the Director to carry out the authority of the Director under the Public Contracting Code and these Rules.

(50) "Discussions" means to exchange information, compare views, take counsel, and communicate with another for the purposes of achieving clarification and mutual understanding of an Offer.

(51) "Donee" is defined in ORS 279A.250(1) and means an entity eligible to acquire federal donation property based upon federal regulations or eligible to acquire Surplus Property in accordance with rules adopted by the Department. Entities eligible to acquire federal donation property may also acquire Surplus Property other than federal donation property.

(52) "Electronic Advertisement" means an Agency's Solicitation Document, Request for Quotes, request for information or other document inviting participation in the Agency's Procurements made available over the Internet via:

(a) The World Wide Web;

(b) ORPIN; or

(c) An Electronic Procurement System other than ORPIN approved by the State Procurement Office. An Electronic Advertisement may or may not include a Solicitation Document.

(53) "Electronic Offer" means a response to an Agency's Solicitation Document or request for Quotes submitted to an Agency via

(a) The World Wide Web or some other Internet protocol; or

(b) ORPIN.

(54) "Electronic Procurement System" means ORPIN or other system approved by the State Procurement Office, constituting an information system that Persons may access through the Internet, using the World Wide Web or some other Internet protocol, or that Persons may otherwise remotely access using a computer, that enables Persons to send Electronic Offers and an Agency to post Electronic Advertisements, receive Electronic Offers, and conduct any activities related to a Procurement.

(55) "Electronic Goods" means Goods which are dependent on electric currents or electromagnetic fields in order to Work properly and Goods for the generation, transfer and measurement of such currents and fields.

(56) "Emergency" means circumstances that:

(a) Could not have been reasonably foreseen;

(b) Create a substantial risk of loss, damage or interruption of services or a substantial threat to property, public health, welfare or safety; and

(c) Require prompt execution of a Contract to remedy the condition. An "Emergency Procurement" means a sourcing method according to ORS 279B.080, 279C.335(5), 125-248-0200, or related Rules.

(57) "Energy Savings Performance Contract" means a Public Contract between an Agency and a qualified energy service company for the identification, evaluation, recommendation, design and construction of energy conservation measures, including a design-build contract, that guarantee energy savings or performance.

(58) "Engineer" is defined in ORS 279C.100 and means a Person who is registered and holds a valid certificate in the practice of engineering in the State of Oregon, as provided under ORS 672.002 to 672.325, and includes all terms listed in ORS 672.002(2).

(59) "Established Catalog Price" means the price included in a catalog, price list, schedule or other form that:

(a) Is regularly maintained by a manufacturer or Contractor;

(b) Is either published or otherwise available for inspection by customers; and

(c) States prices at which sales are currently or were last made to a significant number of any category of buyers or to buyers constituting the general market, including public bodies, for the Supplies and Services involved.

(60) "Executive Department" is defined in ORS 174.112.

(a) Subject to ORS 174.108, "Executive Department" means: all statewide elected officers other than judges, and all boards, commissions, departments, divisions and other entities, without regard to the designation given to those entities, that are within the Executive Department of government as described in Section 1, Article III of the Oregon Constitution, and that are not:

(A) In the judicial department or the legislative department;

(B) Local governments; or

(C) Special government bodies.

(b) Subject to ORS 174.108, as used in the statutes of this State, "Executive Department" includes:

(A) An entity created by statute for the purpose of giving advice only to the Executive Department and that does not have members who are officers or employees of the judicial department or Legislative Department;

(B) An entity created by the Executive Department for the purpose of giving advice to the Executive Department, if the document creating the entity indicates that the entity is a public body; and

(C) Any entity created by the Executive Department other than an entity described in Subsection (B), unless the document creating the entity indicates that the entity is not a governmental entity or the entity is not subject to any substantial control by the Executive Department.

(61) "Findings" is defined in ORS 279C.330 and means the justification for an Agency's conclusion that includes, but is not limited to, information regarding:

(a) Operational, budget and financial data;

(b) Public benefits;

(c) Value engineering;

(d) Specialized expertise required;

(e) Public safety;

(f) Market conditions;

(g) Technical complexity; and

(h) Funding sources.

(62) "Fire Protection Equipment" is defined in ORS 476.005 and means any apparatus, machinery or appliance intended for use by a fire service unit in fire prevention or suppression activities, excepting forest fire protection equipment.

(63) "Flagger" means a person who controls the movement of vehicular traffic through construction projects using sign, hand or flag signals.

(64) "Formal Selection Procedure" means the procedure according to OAR 125-248-0220.

(65) "Fringe Benefits" is defined in ORS 279C.800 and means the amount of:

(a) The rate of contribution irrevocably made by a Contractor or subcontractor to a trustee or to a third person under a plan, fund or program; and

(b) The rate of costs to the Contractor or subcontractor that may be reasonably anticipated in providing benefits to Workers according to an enforceable commitment to carry out a financially responsible plan or program that is committed in Writing to the Workers affected, for medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing, for unemployment benefits, life insurance, disability and sickness insurance or accident insurance, for vacation and holiday pay, for defraying costs of apprenticeship or other similar programs or for other bona fide fringe benefits, but only when the Contractor or subcontractor is not required by other federal, state or local law to provide any of these benefits.

(66) "Good Cause" is defined in ORS 279C.585, and the Oregon Construction Contractors Board must define "Good Cause" by rule. "Good Cause" includes, but is not limited to, the financial instability of a subcontractor. The definition of "Good Cause" must reflect the least-cost policy for

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Public Improvements established in ORS 279C.305. This definition does not apply to OAR 125-247-0255 and 125-247-0260.

(67) "Good Faith Dispute" is defined in ORS 279C.580(5)(b) and means a documented dispute concerning:

- (a) Unsatisfactory job progress;
- (b) Defective work not remedied;
- (c) Third-party claims filed or reasonable evidence that claims will be filed;
- (d) Failure to make timely payments for labor, equipment and materials;

(e) Damage to the prime Contractor or subcontractor; or  
(f) Reasonable evidence that the subcontract cannot be completed for the unpaid balance of the subcontract sum.

(68) "Goods" means supplies, equipment, or materials, and any personal property, including any tangible, intangible and intellectual property and rights and licenses in relation thereto, that an Agency is authorized by law to procure.

(69) "Goods and Services" or "Goods or Services" is defined in ORS 279B.005 and for purposes of these Rules falls within the meaning of "Supplies and Services" (see the definition of "Supplies of Services" in this Rule). "Goods and Services" or "Goods or Services" does not include Personal Services. "Supplies and Services" includes Personal Services.

(70) "Grant" is defined in ORS 279A.010(1)(k)(A) and means:

(a) An agreement under which an Agency receives money, property or other assistance, including but not limited to federal assistance that is characterized as a Grant by federal law or regulations, loans, loan guarantees, credit enhancements, gifts, bequests, commodities or other assets, from a grantor for the purpose of supporting or stimulating a program or activity of the Agency and in which no substantial involvement by the grantor is anticipated in the program or activity other than involvement associated with monitoring compliance with the Grant conditions; or

(b) An agreement under which an Agency provides money, property or other assistance, including but not limited to federal assistance that is characterized as a grant by federal law or regulations, loans, loan guarantees, credit enhancements, gifts, bequests, commodities or other assets, to a recipient for the purpose of supporting or stimulating a program or activity of the recipient and in which no substantial involvement by the Agency is anticipated in the program or activity other than involvement associated with monitoring compliance with the grant conditions.

(c) "Grant" does not include a Public Contract:

(A) For a Public Improvement for Public Works, as defined in ORS 279C.800; or

(B) For emergency Work, minor alterations or ordinary repair or maintenance necessary to preserve a Public Improvement, when under the Public Contract:

(i) An Agency pays moneys that the Agency has received under a Grant; and

(ii) Such payment is made in consideration for Contract performance intended to realize or to support the realization of the purposes for which Grant funds were provided to the Agency.

(71) "Industrial Oil" means any compressor, turbine or bearing oil, hydraulic oil, metal-working oil or refrigeration oil.

(72) "Informal Selection" means the procedure according to OAR 125-248-0210.

(73) "Intermediate Procurement" means a sourcing method according to ORS 279B.070 or OAR 125-249-0160.

(74) "Interstate Cooperative Procurement" is defined in OAR 125-246-0400(3)(e).

(75) "Invitation to Bid" or "ITB" is defined in ORS 279B.005 and 279C.400 and means all documents, whether attached or incorporated by reference, used for soliciting Bids in accordance with ORS 279B.055, 279B.070 or 279C.335.

(76) "Joint Cooperative Procurement" is defined in OAR 125-246-0400(3)(f).

(77) "Judicial Department" is defined in ORS 174.113 and means the Supreme Court, the Court of Appeals, the Oregon Tax Court, the circuit courts and all administrative divisions of those courts, whether denominated as boards, commissions, committees or departments or by any other designation. The Judicial Department includes:

(a) An entity created by statute for the purpose of giving advice only to the Judicial Department and that does not have members who are officers or employees of the Executive Department or Legislative Department;

(b) An entity created by the Judicial Department for the purpose of giving advice to the judicial department, if the document creating the entity indicates that the entity is a public body; and

(c) Any entity created by the Judicial Department other than an entity described in paragraph (b) of this Subsection, unless the document creating the entity indicates that the entity is not a governmental entity or the entity is not subject to any substantial control by the Judicial Department.

(78) "Labor Dispute" is defined in ORS 662.010 and includes any controversy concerning terms or conditions of employment, or concerning the association or representation of Persons in negotiating, fixing, maintaining, changing or seeking to arrange terms or conditions of employment, regard-

less of whether or not the disputants stand in the proximate relation of employer and employee.

(79) "Land Surveyor" is defined in ORS 279C.100(4) and means a Person who is registered and holds a valid certificate in the practice of land surveying in the State of Oregon, as provided under ORS 672.002 to 672.325, and includes all terms listed in ORS 672.002(5).

(80) "Legally Flawed" is defined in ORS 279B.405(1)(b) and means that a Solicitation Document contains terms or conditions that are contrary to law.

(81) "Legislative Department" is defined in ORS 174.114 and, subject to ORS 174.108, means the Legislative Assembly, the committees of the Legislative Assembly and all administrative divisions of the Legislative Assembly and its committees, whether denominated as boards, commissions or departments or by any other designation. The Legislative Department includes:

(a) An entity created by statute for the purpose of giving advice only to the Legislative Department and that does not have members who are officers or employees of the executive department or judicial department;

(b) An entity created by the Legislative Department for the purpose of giving advice to the legislative department, but that is not created by statute, if the document creating the entity indicates that the entity is a public body; and

(c) Any entity created by the Legislative Department by a document other than a statute and that is not an entity described in paragraph (b) of this Subsection, unless the document creating the entity indicates that the entity is not a governmental entity or the entity is not subject to any substantial control by the Legislative Department.

(82) "Locality" is defined in ORS 279C.800(3) and means the following district in which the Public Works, or the major portion thereof, is to be performed:

(a) District 1, composed of Clatsop, Columbia and Tillamook Counties;  
(b) District 2, composed of Clackamas, Multnomah and Washington Counties;

(c) District 3, composed of Marion, Polk and Yamhill Counties;

(d) District 4, composed of Benton, Lincoln and Linn Counties;

(e) District 5, composed of Lane County;

(f) District 6, composed of Douglas County;

(g) District 7, composed of Coos and Curry Counties;

(h) District 8, composed of Jackson and Josephine Counties;

(i) District 9, composed of Hood River, Sherman and Wasco Counties;

(j) District 10, composed of Crook, Deschutes and Jefferson Counties;

(k) District 11, composed of Klamath and Lake Counties;

(l) District 12, composed of Gilliam, Grant, Morrow, Umatilla and Wheeler Counties;

(m) District 13, composed of Baker, Union and Wallowa Counties; and

(n) District 14, composed of Harney and Malheur Counties.

(83) "Lowest Responsible Bidder" is defined in ORS 279A.010(1)(r) and means the lowest Bidder who:

(a) Has substantially complied with all prescribed Public Contracting procedures and requirements;

(b) Has met the standards of responsibility set forth in ORS 279B.110(2) or 279C.375;

(c) Has not been debarred or disqualified by the Agency under ORS 279B.130 or 279C.440; and

(d) Is not on the list created by the Oregon Construction Contractors Board under ORS 701.227, if the advertised contract is a Public Improvement Contract.

(84) "Lubricating Oil" means any oil intended for use in an internal combustion crankcase, transmission, gearbox or differential or an automobile, bus, truck, vessel, plane, train, heavy equipment or machinery powered by an internal combustion engine.

(85) "Mandatory Use Contract" means a Public Contract, Department Price Agreement, or other agreement that an Agency is required to use for the Procurement of Supplies and Services.

(86) "Multistep" means more than one step, phase, tier, or round in a process used in Competitive Sealed Bidding or Competitive Sealed Proposals according to ORS 279B and OAR Division 247.

(87) "Negotiations" means to compare views, take counsel, and communicate with another so as to arrive at a voluntary, mutual agreement about a matter.

(88) "Nonprofit Organization" is defined in ORS 279C.810 and means an organization or group of organizations described in Section 501(c)(3) of the Internal Revenue Code that is exempt from income tax under Section 501(a) of the Internal Revenue Code.

(89) "Nonresident Offeror" means an Offeror who is not a resident Offeror. For the meaning of residency, see the definition of "Resident Offeror."

(90) "Not-for-Profit Organization" means a Nonprofit Corporation as defined in ORS 307.130(1)(c).

(91) "OAR" means the Oregon Administrative Rules.

(92) "Offer" means a response to a Solicitation, including: a Bid, Proposal, Quote or similar response to a Solicitation.

(93) "Offeror" means a Person who submits an Offer

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(94) "Offering" means a Bid, Proposal, or Quote.

(95) "Office of Minority, Women, and Emerging Small Business" or "OMWESB" is defined in ORS 200.025 and 200.055 and means the office that administers the certification process for the Disadvantaged Business Enterprise (DBE), Minority Business Enterprise/Women Business Enterprise (MBE/WBE), and Emerging Small Business (ESB) Programs. OMWESB is the sole authority providing certification in Oregon for disadvantaged, minority, and woman-owned businesses, and emerging small businesses.

(96) "Old Contracts" means all Public Contracts entered into before March 1, 2005. See OAR 125-246-0100(6).

(97) "OPB Certified Professional" means an individual holding an active Oregon Procurement Basic Certification, issued by the State Procurement Office.

(98) "Opening" means the date, time and place specified in the Solicitation Document for the public opening of Written sealed Offers.

(99) "Ordering Instrument" or "Order" means a document used by an Authorized Agency in compliance with the Public Contracting Code, these Rules, and Department policies, for the general purpose of ordering Supplies and Services from one or more Providers.

(a) An Ordering Instrument or Order may also be known as a Purchase Order, Work Order, or other name assigned by an Agency.

(b) A Price Agreement may specify the use of Ordering Instruments.

(c) Absent a Price Agreement and subject to the Public Contracting Code, Rules, and Department policies, an Authorized Agency's appropriate use of an Ordering Instrument is an Offer to purchase Supplies and Services from one or more Providers, and a Provider's responsive and appropriate acceptance of the Offer creates a Public Contract.

(100) "Ordinary Construction Services" means those services that are not Public Improvements, are procured under ORS Chapter 279B, and are otherwise under ORS Chapter 279C, in accordance with OAR 125-249-0100(1) and 125-249-0140.

(101) "Original Contract" means the initial Contract or Price Agreement signed by the State Procurement Office or an Authorized Agency. See OAR 125-246-0400(3)(h) for the definition of "Original Contract" that the Public Contracting Code and Rules use for Cooperative Procurements only.

(102) "ORPIN" means the on-line electronic Oregon Procurement Information Network administered by the State Procurement Office, as further described in OAR 125-246-0500.

(103) "ORS" means the Oregon Revised Statutes.

(104) "Participant," is defined in OAR 125-246-0400(3)(i).

(105) "Permissive Cooperative Procurement" is defined in OAR 125-246-0400(3)(j).

(106) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, governmental agency, public corporation or any other legal or commercial entity. "Person" is also defined in ORS 279C.500 and means the State Accident Insurance Fund Corporation and the Department of Revenue. "Person" is defined in ORS 279C.815 and means any employer, labor organization or any official representative of an employee or employer association.

(107) "Personal Services" means the services of an Architect, Engineer, Land Surveyor or Provider of Related Services as defined in ORS 279C.100, which primary purpose is to acquire specialized skills, knowledge and resources in the application of technical or scientific expertise, or the exercise of professional, artistic or management discretion or judgment, including, without limitation, a Contract for the services of an accountant, physician or dentist, educator, information technology professional, Consultant, broadcaster, or artist (including a photographer, filmmaker, painter, weaver or sculptor). "Personal Services" is also defined in ORS 279C.100, and that definition applies only to ORS 279C.100 to 279C.125, for Architectural, Engineering, Land Surveying Services or Related Services.

(108) "Personal Services Contract" means a Contract or a member of a class of Contracts for Personal Services, other than a Contract for the services of an Architect, Engineer, Land Surveyor or Provider of Related Services as defined in ORS 279C.100. Contracts for Architectural, Engineering and Land Surveying Services, and Related Services are a special class of Personal Services Contracts, defined in ORS 279C.100(5), and Providers under such Contracts are Consultants, as defined in OAR 125-248-0110(1).

(109) "Prevailing Rate of Wage" is defined in ORS 279C.800 and means the rate of hourly wage, including all fringe benefits, paid in the Locality to the majority of Workers employed on projects of similar character in the same trade or occupation, as determined by the Commissioner of the Bureau of Labor and Industries.

(110) "Price Agreement"

(a) "Price Agreement" is defined in ORS 279A.010(1)(v) and means a Public Contract for the Procurement of Supplies and Services at a set price with:

(A) No guarantee of a minimum or maximum purchase; or

(B) An initial order or minimum purchase combined with a continuing Contractor obligation to provide Supplies and Services in which the Authorized Agency does not guarantee a minimum or maximum additional purchase.

(b) The set price may exist at the outset or be determined later by an Ordering Instrument.

(c) A "Price Agreement" as a Public Contract may collectively consist of an initial agreement, together with later Ordering Instruments, if any.

(A) The initial agreement may be known as an agreement to agree, a master agreement, a Price Agreement for any Supplies and Services, a services agreement, or a retainer agreement, if such agreement meets the requirements of this Rule's definition.

(B) The Ordering Instrument may be known as a work order, purchase order, or task order, or by another name for ordering purposes and related to the initial agreement.

(111) "Procurement" means the act of purchasing, leasing, renting or otherwise acquiring or selling: Supplies and Services; Architectural, Engineering and Land Surveying Services, and Related Services; and Public Improvements. Procurement includes each function and procedure undertaken or required to be undertaken by an Authorized Agency to enter into a Public Contract, administer a Public Contract and obtain the performance of a Public Contract under the Public Contracting Code and these Rules. Procurement includes Contract Administration, and Contract Administration includes Amendments.

(112) "Procurement Document" collectively means the inclusive Solicitation Document and all documents either attached or incorporated by reference, and any changes thereto, used for any of the methods according to ORS 279A.200 through 279A.220, 279B.055 through 279B.085, 279C.100 through 279C.125, or 279C.300 through 2729C.450.

(113) "Procurement File" means any of the following files maintained by an Authorized Agency: a solicitation, Contract, Amendment, Work Order, or contract administration file, separately or collectively.

(114) "Procurement Process" means the process related to these acts, functions, and procedures of Procurement.

(115) "Product Sample" means the exact Goods or a representative portion of the Goods offered in an Offer, or the Goods requested in the Solicitation Document as a sample.

(116) "Property" is defined in ORS 279A.250 and means personal property.

(117) "Proposal" means a Written response to a Request for Proposals.

(118) "Proposer" means a Person who submits a proposal in response to a Request for Proposals, except for Architectural, Engineering and Land Surveying Services, and Related Services according to OAR 125-248-0110(4), whereby "Proposer" means a Consultant who submits a proposal to an Authorized Agency in response to a Request for Proposals.

(119) "Provider" means collectively or in the alternative: the supplier, Contractor or Consultant, providing Supplies and Services or Public Improvements.

(120) "Post-consumer Waste" means a finished material that would normally be disposed of as solid waste, having completed its life cycle as a consumer item. "Post-consumer waste" does not include manufacturing waste.

(121) "Public Agency" is defined in ORS 279C.800 and means the State of Oregon or any political subdivision thereof or any county, city, district, authority, public corporation or entity and any of their instrumentalities organized and existing under law or charter.

(122) "Public Body" is defined in ORS 174.109, subject to ORS 174.108, and means state government bodies, local government bodies and special government bodies.

(123) "Public Contract" is defined in ORS 279A.010(1)(z) and means a sale or other disposal, or a purchase, lease, rental or other acquisition, by an Authorized Agency of Supplies and Services, Public Improvements, Public Works, minor alterations, or ordinary repair or maintenance necessary to preserve a Public Improvement. "Public Contract" does not include Grants. For the purposes of these Rules, "Public Contract" means Contract.

(124) "Public Contracting" is defined in ORS 279A.010(1)(aa) and means Procurement activities described in the Public Contracting Code relating to obtaining, modifying or administering Public Contracts or Price Agreements.

(125) "Public Contracting Code" or "Code" is defined in ORS 279A.010(1)(bb) and means 279A, 279B and 279C.

(126) "Public Improvement Contract" means a Public Contract for a Public Improvement. "Public Improvement Contract" does not include a Public Contract for emergency Work, minor alterations, or ordinary repair or maintenance necessary to preserve a Public Improvement.

(127) "Public Improvement" is defined in ORS 279A.010(1)(cc) and means a project for construction, reconstruction or major renovation on real property by or for an Authorized Agency. "Public Improvement" does not include:

(a) Projects for which no funds of an Authorized Agency are directly or indirectly used, except for participation that is incidental or related primarily to project design or inspection; or

(b) Emergency Work, minor alteration, ordinary repair or maintenance necessary to preserve a Public Improvement.

(128) "Public Works" is defined in ORS 279C.800 and includes, but is not limited to: roads, highways, buildings, structures and improvements of all types, the construction, reconstruction, major renovation or painting of which is carried on or contracted for or by any public agency, to serve the public



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interest, but does not include the reconstruction or renovation of privately owned property that is leased by a Public Agency.

(129) "Purchase Order" means an Ordering Instrument or Order, as defined in this Rule.

(130) "Qualifications Based Selection (QBS)" means the qualifications based selection process mandated by ORS 279C.110 for Architectural, Engineering and Land Surveying Services, and Related Services Contracts.

(131) "Quote" means a verbal or Written Offer obtained through an Intermediate Procurement according to either OAR 125-247-0270 or 125-249-0160.

(132) "Recycled Material" means any material that would otherwise be a useless, unwanted or discarded material except for the fact that the material still has useful physical or chemical properties after serving a specific purpose and can, therefore, be reused or recycled.

(133) "Recycled Oil" means used oil that has been prepared for reuse as a petroleum product by refining, re-refining, reclaiming, reprocessing or other means, provided that the preparation or use is operationally safe, environmentally sound and complies with all laws and regulations.

(134) "Recycled Paper" means a paper product with not less than:

(a) Fifty percent of its fiber weight consisting of secondary waste materials; or

(b) Twenty-five percent of its fiber weight consisting of post-consumer waste.

(135) "Recycled PETE" means post-consumer polyethylene terephthalate material.

(136) "Recycled Product" means all materials, goods and supplies, not less than 50 percent of the total weight of which consists of secondary and post-consumer waste with not less than 10 percent of its total weight consisting of post-consumer waste. "Recycled Product" includes any product that could have been disposed of as solid waste, having completed its life cycle as a consumer item, but otherwise is refurbished for reuse without substantial alteration of the product's form.

(137) "Related Services" is defined in ORS 279C.100(6) and means personal services, other than architectural, engineering and land surveying services, that are related to the planning, design, engineering or oversight of Public Improvement projects or components thereof, including but not limited to landscape architectural services, facilities planning services, energy planning services, space planning services, environmental impact studies, hazardous substances or hazardous waste or toxic substances testing services, wetland delineation studies, wetland mitigation studies, Native American studies, historical research services, endangered species studies, rare plant studies, biological services, archaeological services, cost estimating services, appraising services, material testing services, mechanical system balancing services, commissioning services, project management services, construction management services and owner's representative services or land-use planning services.

(138) "Request for Proposals" or "RFP" is defined in ORS 279B.005 and means all documents, either attached or incorporated by reference, and any Addenda thereto, used for soliciting Proposals in accordance with either ORS 279B.060 or 279C.405 and related rules.

(139) "Request for Qualifications" or "RFQ" means a Written document issued by an Authorized Agency and describing: the Authorized Agency's circumstances; the type of service(s) or Work desired; significant evaluation factors; their relative importance; if appropriate, price; and competitive qualifications. Contractors respond in Writing to the Authorized Agency by describing their experience and qualifications. The RFQ will not result in a Contract. It establishes a list of qualified Contractors in accordance with OAR 125-247-0550, 125-248-0220 or 125-249-0645.

(140) "Request for Quotes" means a Written or oral request for prices, rates or other conditions under which a potential Contractor would provide Supplies and Services or Public Improvements described in the request.

(141) "Resident Bidder" is defined in ORS 279A.120 and means a Bidder that has paid unemployment taxes or income taxes in this state during the 12 calendar months immediately preceding submission of the Bid, has a business address in this State, and has stated in the Bid whether the Bidder is a "resident Bidder."

(142) "Resident Offeror" means an Offeror that has paid unemployment taxes or income taxes in this state during the 12 calendar months immediately preceding submission of the Offer, has a business address in this State, and has stated in the Offer whether the Offeror is a "resident Offeror."

(143) "Responsible" means meeting the standards set forth in OAR 125-247-0640 or 125-249-0390(2), and not debarred or disqualified by the Authorized Agency under OAR 125-247-0575 or 125-249-0370.

(144) "Responsible Bidder" or "Responsible Proposer" is defined in ORS 279A.105 and 279B.005 and means a person who meets the standards of responsibility as described in ORS 279B.110.

(145) "Responsible Offeror" means, as the context requires, a Responsible Bidder, Responsible Proposer or a Person who has submitted an Offer and meets the standards set forth in OAR 125-247-0640 or 125-249-0390(2), and who has not been debarred or disqualified by the Agency under OAR 125-247-0575 or 125-249-0370, respectively.

(146) "Responsible Proposer" or "Responsible Bidder" is defined in ORS 279B.005 and means a Person who meets the standards of responsibility described in ORS 279B.110.

(147) "Responsive" means having the characteristic of substantial compliance in all material respects with applicable solicitation requirements.

(148) "Responsive Bid" or "Responsive Proposal" is defined in ORS 279B.005 and means a Bid or Proposal that substantially complies with the Invitation to Bid or Request for Proposals, respectively, and all prescribed Procurement procedures and requirements.

(149) "Responsive Offer" means, as the context requires, a Responsive Bid, Responsive Proposal or other Offer that substantially complies in all material respects with applicable solicitation requirements.

(150) "Responsive Proposal" or "Responsive Bid" is defined in ORS 279B.005 and means a bid or proposal that substantially complies with the Invitation to Bid or Request for Proposals and all prescribed procurement procedures and requirements.

(151) "Retainage" is defined in ORS 279C.550 and means the difference between the amount earned by a Contractor on a Public Contract and the amount paid on the contract by the Authorized Agency.

(152) "Rules" means these Public Contracting Rules of the Department including Divisions 246 through 249, unless otherwise indicated.

(153) "Scope" means the extent or range of view, outlook, application, operation, or effectiveness. Scope does not include the dollar amount of the Contract.

(154) "Secondary Waste Materials" means fragments of products or finished products of a manufacturing process that has converted a virgin resource into a commodity of real economic value. "Secondary Waste Materials" includes post-consumer waste. "Secondary Waste Materials" does not include excess virgin resources of the manufacturing process. For paper, "Secondary Waste Materials" does not include fibrous waste generated during the manufacturing process such as fibers recovered from waste water or trimmings of paper machine rolls, mill broke, wood slabs, chips, sawdust or other wood residue from a manufacturing process.

(155) "Serial Negotiation" means a Negotiation that is sequential, ongoing, consecutive, alternating, or repetitive.

(156) "Services" or "services," for the purpose of these Rules only, means Trade Services, Personal Services, or any combination thereof.

(157) "Signature" means any Written mark, word or symbol that is made or adopted by a Person with the intent to be bound and that is attached to or logically associated with a Written document to which the Person intends to be bound.

(158) "Signed" means, as the context requires, that a Written document contains a Signature or that the act of making a Signature has occurred.

(159) "Small Procurement" means a sourcing method according to ORS 279B.065.

(160) "Sole-Source Procurement" means a sourcing method by which an Authorized Agency awards a Contract without competition to a single source for Supplies and Services, when Written justification demonstrates no other source is available, in accordance with ORS 279B.075 and OAR 125-247-0275.

(161) "Solicitation" means:

(a) A request by an Authorized Agency for the purpose of soliciting Offers. This request may take the form of an Invitation for Bid, a Request for Proposal, a Request for Quotation, a Request for Qualifications or a similar document; or

(b) The process of notifying prospective Offerors that the Authorized Agency requests such Offers; or

(c) The Solicitation Document itself. A Solicitation and award process uses methods identified in ORS 279A.200 through 279A.220 (Cooperative Procurement); 279B.055 through 279B.060 (bidding and proposals); 279B.070 (intermediate procurements); 279B.085 (special procurements); 279C.100 through 279C.125 (Architectural, Engineering and Land Surveying and Related Services); or 279C.300 through 279C.450 (Public Improvements).

(162) "Solicitation Document," means an Invitation to Bid; a Request for Proposals; a Writing for a Small, Intermediate, Informal Selection, Competitive Quote, or Emergency Procurement; a Special Procurement Solicitation; or other document issued to invite Offers from prospective Contractors in accordance with ORS 279B or 279C. "Solicitation Document" includes related documents, either attached or incorporated by reference, and any changes thereto, issued by an Authorized Agency to establish an Original Contract that forms the basis for an Agency's participation in a Procurement. The following examples are not Solicitation Documents because they do not invite offers from prospective Contractors: Request for Qualifications, a prequalification of Bidders, a request for information, and a request for product prequalification.

(163) "Special Government Body" is defined in ORS 174.117 and

(a) Means any of the following:

(A) A public corporation created under a statute of this State and specifically designated as a public corporation.

(B) A school district.

(C) A public charter school established under ORS Chapter 338.

(D) An education service district.

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(E) A community college district or community college service district established under ORS Chapter 341.

(F) An intergovernmental body formed by two or more public bodies.

(G) Any entity that is created by statute, ordinance or resolution that is not part of state government or local government.

(H) Any entity that is not otherwise described in this Section that is:

(i) Not part of state government or local government;

(ii) Created according to authority granted by a statute, ordinance or resolution, but not directly created by that statute, ordinance or resolution; and

(iii) Identified as a governmental entity by the statute, ordinance or resolution authorizing the creation of the entity, without regard to the specific terms used by the statute, ordinance or resolution.

(b) Subject to ORS 174.117, "Special Government Body" includes:

(A) An entity created by statute for the purpose of giving advice only to a special government body;

(B) An entity created by a Special Government Body for the purpose of giving advice to the special government body, if the document creating the entity indicates that the entity is a public body; and

(C) Any entity created by a Special Government Body described in Subsection (a) of this

Section, other than an entity described in paragraph (B) of this Subsection, unless the document creating the entity indicates that the entity is not a governmental entity or the entity is not subject to any substantial control by the Special Government Body.

(164) "Special Procurement" means a sourcing method may be a class Special Procurement, a contract-specific Special Procurement or both, unless the context requires otherwise in accordance with ORS 279B.085 and OAR 125-247-0287.

(a) "Class Special Procurement" is defined in ORS 279B.085 and means a contracting procedure that differs from the procedures described in ORS 279B.055, 279B.060, 279B.065 and 279B.070 and is for the purpose of entering into a series of Contracts over time for the acquisition of a specified class of Supplies and Services.

(b) "Contract-specific Special Procurement" means a contracting procedure that differs from the procedures described in ORS 279B.055, 279B.060, 279B.065 and 279B.070 and is for the purpose of entering into a single Contract or a number of related contracts for the acquisition of specified Supplies and Services on a one-time basis or for a single project.

(165) "Specification" is defined in ORS 279B.200(3) and means any description of the physical or functional characteristics, or of the nature of the Supplies and Services to be procured by an Agency. "Specification" includes: any requirement for inspecting, testing, or preparing the Supplies and Services for delivery and the quantities or qualities of Supplies and Services to be furnished under the Contract. Specifications generally will state the result to be obtained and occasionally may describe the method and manner of performance.

(166) "State" means the State of Oregon.

(167) "State Government," subject to ORS 174.108, means the Executive Department, the Judicial Department and the Legislative Department.

(168) "State Procurement Office" means that office of the State Services Division of the Department designated by the Director to carry out the authority of the Department under the Public Contracting Code and these Rules. The State Procurement Office provides leadership and services for innovative, responsive, and accountable public Procurement. The authority of the State Procurement Office is described in OAR 125-246-0170, originating with the Director, delegated to the Chief Procurement Officer, and subdelegated in Writing by the Chief Procurement Officer to any subdelegatee within the State Procurement Office. When a Rule refers to the approval of the State Procurement Office, any individual acting on behalf of the State Procurement Office must be authorized to give such approval in accordance with OAR 125-246-0170.

(169) "Substantial Completion" is defined in ORS 12.135 and means the date when the contractee accepts in Writing the construction, alteration or repair of the improvement to real property or any designated portion thereof as having reached that state of completion when it may be used or occupied for its intended purpose or, if there is no such Written acceptance, the date of acceptance of the completed construction, alteration or repair of such improvement by the contractee.

(170) "Supplies and Services" includes "Supplies or Services" and collectively means Goods, Trade Services, Personal Services, and Ordinary Construction Services separately or in any combination of these terms thereof as appropriate within the context of the Rule. "Supplies and Services" includes the terms "goods and services," "goods or services," and "personal services" contained in ORS 279A and 279B. This term does not include Public Improvements or Architectural, Engineering and Land Surveying Services, and Related Services, governed under ORS 279C.

(171) "Surplus Property" means all personal property, vehicles and titled equipment property received by the Department as surplus from federal government units, state agencies, local governments, and special government bodies for sale to state agencies, political subdivisions of the State, and

private not-for-profit organizations or the general public or any combination thereof. See OAR 125-050.

(172) "Sustainability" is defined in ORS 184.421 and means using, developing and protecting resources in a manner that enables people to meet current needs and provides that future generations can also meet future needs, from the joint perspective of environmental, economic and community objectives.

(173) "Threshold" means a specific monetary limitation that distinguishes one Procurement method from another, triggers a requirement, or marks a point of reference or change in Rule. For example, the Thresholds of \$5,000 to \$150,000 distinguish Intermediate Procurements under ORS 279B from other methods.

(174) "Trade Services" means all remaining services that do not meet the definition for Personal Services.

(175) "Transitional Contracts" means all Public Contracts first advertised before March 1, 2005, but not entered into until on or after March 1, 2005. See OAR 125-246-0100(6).

(176) "Unnecessarily Restrictive" is defined in ORS 279B.405(1)(c) and means that Specifications limit competition arbitrarily, without reasonably promoting the fulfillment of the Procurement needs of an Agency.

(177) "Used Oil" is defined in ORS 459A.555 and means a petroleum-based oil which through use, storage or handling has become unsuitable for its original purpose due to the presence of impurities or loss of original properties.

(178) "Virgin Oil" means oil that has been refined from crude oil and that has not been used or contaminated with impurities.

(179) "Work" means the furnishing of all materials, equipment, labor, and incidentals necessary to successfully complete any individual item or the entire Contract and the carrying out and completion of all duties and obligations imposed by the Contract.

(180) "Work Order" means an Ordering Instrument related to Services, including any incidental Supplies.

(181) "Writing" means letters, characters and symbols inscribed on paper by hand, print, type or other method of impression, intend to represent or convey particular ideas or meanings. "Writing" when required or permitted by law, or required or permitted in a Solicitation Document, also means letters, characters and symbols made in electronic form and intended to represent or convey particular ideas or meanings.

(182) "Written" means existing in Writing.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.065, 279A.200, 279B.005 & 279C.110

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 9-2005, f. & cert. ef. 8-3-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10

## 125-246-0130

### Application of the Code and Rules; Exceptions

(1) Code, Rules and Policies. Except as set forth in this Section and ORS 279A.025, an Agency must exercise all rights, powers and authority related to Public Contracting in accordance with the Public Contracting Code, Rules, and applicable Department policies (Policies).

(2) Exceptions for Contracts and Grants. These Rules do not apply to the following:

(a) Contracts between Agencies;

(b) Contracts between Agencies and Public Bodies;

(c) Contracts between Agencies and the federal government;

(d) For Cooperative Procurements, any contractual relationship described in Subsections (2)(a) through (c) of this Rule. The Code, Rules, and policies apply to the contractual relationships between the Agencies and Providers, other states, tribes, other nations, and any of their public entities; and

(e) Grants.

(A) Agency as Recipient. If an Agency is a recipient in an agreement with a grantor, the definition of Grant in ORS 279A.010 and OAR 125-246-0110 determines if the agreement is subject to the Code and these Rules. If the grantor has substantial involvement in the program or activity of the Agency, the agreement is not a Grant. The agreement is subject to the Code and these Rules.

(B) Agency as Grantor. If an Agency is a grantor in an agreement with a recipient, the definition of Grant in ORS 279A.010 and OAR 125-246-0110 determines if the agreement is subject to the Code and these Rules. If the Agency has substantial involvement in the program or activity of the Agency's recipient, the agreement is not a Grant. The agreement is subject to the Code and these Rules.

(3) Exception for a Federal Program. Authorized Agencies otherwise subject to the Code and these Rules may enter into Public Contracts under a federal program described in ORS 279A.180 and according to OAR 125-246-0360, without following the procedures set forth in ORS 279B.050 through 279B.085 and 125-247-0250 through 125-247-0690.

(4) Exception when Procuring from Qualified Rehabilitation Facilities (QRFs). Agencies subject to the Code and these Rules are not subject to the methods set forth in ORS 279A.200 through 279A.225 (Cooperative Purchasing) or 279B.050 through 279B.085 (Sourcing Methods) and related Rules when the Agencies procure Supplies and Services according to ORS

# ADMINISTRATIVE RULES

279.835 through 279.855 and OAR 125-055-0010(1) (Acquisition of Supplies and Services from QRFs). Agencies are subject to the remainder of the Code and these Rules, including but not limited to delegation of authority in accordance with OAR 125-246-0170.

(5) Exception for Correctional Industries. Agencies otherwise subject to the Code and these Rules may enter into Contracts with correctional industries according to the Oregon Constitution, Article I, Subsection 11, without being subject to the source selection procedures set forth in either ORS 279A.200 through 279A.225 (Cooperative Purchasing) or 279B.050 through 279B.085 (Sourcing Methods) and their respective rules.

(6) Exception for Price Agreements. Agencies otherwise subject to the Code and these Rules are not subject to the methods set forth in ORS 279A.200 through 279A.225 (Cooperative Purchasing) or 279B.050 through 279B.085 (Sourcing Methods) and related Rules when the Agencies procure Supplies and Services from a DAS Price Agreement or other Price Agreement. Agencies are subject to the remainder of the Code and these Rules, including but not limited to delegation of authority in accordance with OAR 125-246-0170.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070  
Stats. Implemented: ORS 279A.025, 279A.050, 279A.055 & 279A.180  
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10

## 125-246-0150

### Applicability of These Rules to Agencies

Agencies subject to the authority of the Director of the Department must follow these Rules. If an Agency is partially independent of the authority of the Department and partially subject to the authority of the Department, that Agency is responsible for obtaining any legal determination related to these Rules.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070  
Stats. Implemented: ORS 279A.065  
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10

## 125-246-0165

### Delegation Policy and Procedures

(1) Generally.

(a) Purpose. This Rule describes the policy and procedures related to the delegation of authority under OAR 125-246-0170, including but not limited to:

- (A) Policy of the Code;
- (B) Individual Representation;
- (C) Forms of Delegations and Revocations of Authority;
- (D) Changes in Individual Representation;
- (E) Procedural Requirements;
- (F) Signature; and
- (G) Commitment of Funds.

(b) This Rule applies to all delegations and sub-delegations of Authority (collectively, Delegations), modifications of Delegations, and revocations of Delegations under OAR 125-246-0170. This Rule does not delegate authority. All delegations by authority under the Rules are found solely in OAR 125-246-0170.

(2) Policy of the Code. The policy of the Code is to clarify responsibilities, instill public confidence, promote efficient use of resources, implement socioeconomic programs, allow meaningful competition, and provide a structure that supports evolving procurement methods, according to ORS 279A.015. These Rules support this policy of the Code.

(3) Individual Representation. Public Contracting may be delegated only to an individual, representing the State's interests. Authority under these Rules may be delegated only to individuals acting on behalf of the Agencies and in accordance with this Rule. All individual delegates must hold and use this Authority within the scope of their employment by the Agency and act on behalf of the Agency as the Agency's representative. Sub-delegations may be in whole or in part according to ORS 279A.075. Any individual may decline a sub-delegation in whole or in part. A delegator or delegatee may also be referred to in this Rule as an "Authorized Individual."

(4) Forms of Delegations and Revocations of Authority. ORS 279A.075 provides that the exercise of all authorities in the Code may be delegated and sub-delegated in whole or in part. The form of a Delegation or revocation of Authority by an Authorized Individual may be by:

- (a) OAR 125-246-0170 by the Director of the Department;
- (b) A Written external or internal policy by an authorized delegator or revoker;
- (c) An Interagency Agreement, signed by the Chief Procurement Officer and the Authorized Agency; or
- (d) A letter or memorandum signed by an authorized delegator or revoker.

(5) Changes in Individual Representation. If an Agency determines that an Authorized Individual has ceased to represent that Agency for Procurement (Absent Individual), then:

(a) The Authority of the Absent Individual automatically reverts back to the individual who originally delegated the Authority to the Absent Individual. The Agency must determine who receives the reverted Authority in accordance with this Rule. If the Absent Individual is a head of an Agency

or Designated Procurement Officer, the delegator of authority to that individual must notify the State Procurement Office within thirty (30) days after the change in representation.

(b) Sub-delegations, if any, by an Absent Individual remain in effect unless and until the Authority of any sub-delegatees is modified or revoked by an Authorized Individual.

(6) Procedural Requirements.

(a) Compliance. Authorized Agencies must maintain good contracting procedures in accordance with the Public Contracting Code, related Rules and policies of the Department. Delegation of Authority does not exempt anyone from the requirements of the Public Contracting Code, related Rules, and policies of the Department. Any individual receiving delegated Authority is responsible for following the Public Contracting Code, related Rules, and policies of the Department.

(b) Modifications or Revocations.

(A) Authority. Subject to the conditions of Subsection (ii) below, any Delegation may be modified or revoked by:

- (i) The Director of the Department,
- (ii) The Chief Procurement Officer in accordance with Section 3(d)(F);

(iii) The head of an Agency in accordance with Subsection (2)(a)(B); or  
(iv) The original authorized delegator or successor of this delegator who made this Delegation being modified or revoked.

(B) Conditions.

- (i) This modification or revocation of a Delegation must be Writing;
- (ii) The delegatee must receive reasonable notice of the modification or revocation of the Delegation; and
- (iii) This modification or revocation of a Delegation must be based upon a determination, as set forth in the related policy of the Department.

(c) Maintenance of Documents. The Authorized Agency must maintain copies of letters, memoranda, or agreements granting a Delegation.

(7) Signature. When an Authorized Agency has delegated Authority according to OAR 125-246-0170, the Authorized Agency's signature constitutes both the execution and approval of the Contract, except as described in Subsections (1)(h), (2)(a)(B), and (2)(b)(F).

(8) Commitment of Funds. ORS 291 and 293, together with the policies of the State Controller's Division of the Department, provide for public financial administration, including: appropriations, allotments by the Department, and an individual's authority to commit or encumber funds, financially obligate the Agency, and decide to expend funds. This type of authority may be referred to as commitment, expenditure, obligation, expenditure decision or signature authority (collectively, Commitment of Funds).

(9) Requests for Delegations. Any Agency may submit a delegation request through ORPIN to the State Procurement Office for authority in accordance with the Public Contracting Code, this Rule, and any related policy of the Department. All requested Delegations must be approved in Writing by the Chief Procurement Officer and based upon a consideration of relevant criteria as follows:

- (a) The nature of the Supplies and Services to be provided;
- (b) Resources of the Agency requesting the delegation, including trained and qualified contract officers and staff, the Agency's experience and expertise, staff time available, and the degree of economy and efficiency to be achieved in meeting the state's requirements if authority is delegated;
- (c) The Agency's Procurement and public contracting past performance;
- (d) SPO's resources to exercise the authority if it is not delegated; and
- (e) Value added by the Agency if the authority is delegated.

(10) Revocation of Delegations. The Chief Procurement Officer may revoke any delegation issued under Section (9) of this Rule at any time by written notice to the Designated Procurement Officer of the Agency, as defined in OAR 125-246-0170, based upon, but not limited to any of the following:

- (a) Failure to comply with the requirements of the delegation;
- (b) Deficiencies evidenced by performance audits performed by SPO, the Secretary of State, or the Legislative Assembly.
- (c) Failure to comply with SPO training requirements to obtain an Oregon Basic Procurement Certification, Advanced Certification, or specific training described in the delegation;
- (d) Lack of adequate experience in terms of procurement knowledge and any specialized knowledge pertinent to the authority delegated;
- (e) The available resources of SPO to conduct the purchasing activities if authority is revoked; and
- (f) The degree of economy and efficiency to be achieved in meeting the state's requirements if authority is revoked.

(11) Return of Delegations from Agencies to the Chief Procurement Officer. If an Agency needs assistance, an Agency may request that the Chief Procurement Officer reclaim the authority previously delegated to the Agency. With sole discretion, the Chief Procurement Officer may accept the reclamation request for assistance according to the responsibilities, resources, and needs of the State Procurement Office and the Agency.

Stat. Auth.: ORS 279A.065(5)(a); ORS 279A.070  
Stat. Implemented: ORS 279A.050, ORS 279A.075, and ORS 279A.140  
Hist.: DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10

# ADMINISTRATIVE RULES

## 125-246-0170

### Delegation of Authority

#### (1) Generally.

(a) Purpose. This Rule delegates the procurement authority of the Department (Authority). Only this Rule delegates this Authority.

(b) Authority of Agencies. The Director of the Department delegates Authority to the Designated Procurement Officers of the Authorized Agencies in Section (2) of this Rule.

(c) Authority of the Chief Procurement Officer. The Director of the Department delegates Authority to the Chief Procurement Officer in Section (3) of this Rule.

(d) Authority of the Director. According to ORS 279A.140, the Department must conduct all Procurements, including Contract Administration, for the Agencies. Other Sections of the Code authorize specific actions by the Director of the Department. According to ORS 279A.050(1) and (2), this Authority of the Department vests only in the Director of the Department. The Director is ultimately responsible for the Procurement of the Agencies.

#### (2) Delegation to Individuals in Agencies.

##### (a) Chain of Delegation and Responsibilities.

###### (A) Head and Designated Procurement Officer of the Agency.

(i) Conditional Delegation. The Director delegates Authority, only as set forth in this Section (2), to the heads of Authorized Agencies, on the condition that the heads of Authorized Agencies subdelegate such Authority to their Agencies' Designated Procurement Officers, who may further subdelegate such Authority in accordance with policies of their Agencies (Chain of Delegation). Every Authorized Agency must appoint a Designated Procurement Officer to serve that Authorized Agency; if none is appointed, the head of the Agency is deemed to be the Designated Procurement Officer and assumes the Authority, duties and responsibilities of the Designated Procurement Officer (collectively, "Designated Procurement Officer"). The heads of the Agencies may not subdelegate Authority outside this Chain of Delegation, except as provided in Subsection (2)(a)(B).

(ii) Manner of Appointment. The Authorized Agency determines its procedure for appointing its Designated Procurement Officer, and this Rule does not require or imply any inherent Authority in individual(s) or the Agency in order to make this appointment. The Agency must send a Written notice of its appointment of the Designated Procurement Officer to the State Procurement Office.

###### (B) Exceptions: Head and Other Individuals of the Agency.

(i) Execution of Contracts. Heads of Authorized Agencies may subdelegate the Authority to execute Contracts, as described in Subsection (2)(b)(F), to other individuals within their respective Agency, provided this subdelegation is in accordance with a Written alternative subdelegation plan, maintained on file with the Agency's Designated Procurement Officer.

(ii) Special Procurements of General or Special Counsel Authorized by the Attorney General, according to OAR 125-247-0295. Heads of Authorized Agencies may subdelegate the Authority to procure general or special counsel authorized by the Attorney General, as described in Subsection (2)(d)(Q), to other individuals within their respective Agency, provided the head of the Authorized Agency has determined that the individual receiving the subdelegation has the requisite skills and knowledge to carry out the subdelegation. Such subdelegations may be further subdelegated within that Authorized Agency, provided the subdelegator has determined that each individual receiving the Delegation has the requisite skills and knowledge to carry out the subdelegation.

(iii) Chain of Delegation. Authorized Individuals in accordance with Subsections (2)(a)(B)(i) and (ii) are included in the Chain of Delegation.

(C) Responsibilities. Each individual in the Chain of Delegation remains responsible for the exercise of Authority by that individual's subdelegates, and subdelegation does not waive this responsibility. Each delegator must determine and document that the delegatee is capable and accountable for the Procurement. The Designated Procurement Officer, appointed within each Authorized Agency, is responsible for all delegated procurement activity on behalf of the Authorized Agency, as described in this Section (2), except as provided in Subsection (2)(a)(B).

(b) Duties and Responsibilities of Designated Procurement Officers. The Authority, duties and responsibilities of the Designated Procurement Officer, according to (2)(a)(A), are as follows:

(A) Serve as the exclusive supervisor and manager of the Authorized Agency's Procurement system;

(B) Conduct, supervise and manage the Procurement and the Procurement Process for the Authorized Agency in accordance with the Code and these Rules, except for those Procurements conducted by a delegatee to whom the Designated Procurement Officer has delegated Authority;

(C) Prepare or monitor the use of Specifications or statements of work for all Procurements of the Authorized Agency;

(D) Issue Solicitations and implement other non-Solicitation methods for all Procurements of the Authorized Agency in accordance with the Code and these Rules;

(E) Award Contracts only as authorized in accordance with this Rule;

(F) Execute Contracts, which means causing the signing of Contracts and performance of all necessary formalities to bring the Contracts into their

final, legally enforceable forms. If the Designated Procurement Officer is unable to make a Commitment of Funds as described in Subsection (1)(h), then the head of the Authorized Agency may follow an alternative subdelegation plan in accordance with Subsection (2)(a)(B)(i).

(G) Comply with the reporting requirements of the Code, these Rules, and Department policies;

(H) Monitor sourcing decisions, Procurements, development of Contracts, awarded Contracts, Contract compliance, spend, Delegations, Special Procurements and exemptions. Monitoring Contract development, awards, and compliance applies to all Delegations;

(I) Based upon the monitoring described in Subsection (2)(b)(H), determine opportunities, establish targets, and utilize methods according to ORS 279A.200 through 279A.220 and 279B.055 through 279B.085 to optimize savings consistent with strategic sourcing; and

(J) Conduct Cost Analyses, approve Feasibility Determinations and Exceptions, and otherwise comply with OAR 125-247-0110.

(c) Delegation by Rule Based Upon Thresholds. By this Rule, the Director of the Department delegates authority to the heads of all Authorized Agencies, subject to Section (2)(a)(A) and (B), for the following Procurements, including Contract Administration:

(A) Small Procurements of Supplies and Services up to and including the Threshold of \$5,000, according to ORS 279B.065 and related Rules;

(B) Direct appointments of Architectural, Engineering and Land Surveying Services and Related Services according to OAR 125-248-0200;

(C) Intermediate Procurements of Supplies and Services greater than \$5,000 and not exceeding \$150,000, according to ORS 279B.070, OAR 125-247-0270, and any related policy;

(D) Informal Selection Procedures of Architectural, Engineering and Land Surveying Services and Related Services according to ORS 279C.110 and OAR 125-248-0210, provided that the Authorized Agency follows the requirements as set forth in the policy of the Department;

(E) Competitive Quotes for Public Improvements estimated not to exceed \$100,000, provided that the Authorized Agency follows the requirements as set forth in the policy of the Department;

(F) Competitively Sealed Bidding not exceeding \$150,000 and according to OAR 125-247-0255;

(G) Competitively Sealed Proposals not exceeding \$150,000 and according to OAR 125-247-0260;

(H) Sole-Source Procurements not exceeding \$150,000 and according to ORS 279B.075 and OAR 125-247-0275;

(I) Special Procurements in accordance with OAR 125-247-0287 not exceeding \$150,000.

(J) Purchase of Used Personal Property Special Procurements not exceeding \$150,000 and according to OAR 125-247-0288(9);

(K) Reverse Auctions Special Procurements not exceeding \$150,000 and according to OAR 125-247-0288(10); and

(L) Contract Administration as follows:

(i) For Contracts and Ordering Instruments authorized according to this Section (2)(c) and (d), the Contract Administration of these Public Contracts and Ordering Instruments, including but not limited to: appropriate payment approvals, ordering in accordance with the terms of Department Price Agreements, and the oversight of the Provider(s); but excluding the Contract Administration described in Subsection (v) below;

(ii) The daily or routine Contract Administration of Ordering Instruments placed against Department Price Agreements and Contracts procured by the State Procurement Office on behalf of Agencies. This daily or routine Contract Administration includes but is not limited to: appropriate payment approvals, ordering in accordance with the terms of Department Price Agreements, and the oversight of the Provider(s);

(iii) Activities specified in Writing by the Chief Procurement Officer or delegatee;

(iv) Activities specified in a related policy of the Department; and

(v) Despite Subsection (2)(c)(K)(i) through (iv) above, this Delegation by Subsection (2)(c)(K) does not include:

(I) The Contract Administration of Department Price Agreements; or

(II) For Contracts procured by the State Procurement Office on behalf of Agencies, Amendments when the amended value of Contract exceeds \$150,000; and terminations of such Contracts when the amended value of such Contract exceeds \$150,000.

(d) Delegation by Rule Based Upon Type. By this Rule, the Director of the Department delegates authority to the heads of all Authorized Agencies, subject to Section (2)(a)(A) and (B), for the following Procurements, including Contract Administration:

(A) Emergency Procurements, in accordance with ORS 279B.080, 279C.335(5), OAR 125-248-0200, or related Rules;

(B) One-time, nonrepetitive Joint Cooperative Procurements in accordance with OAR 125-246-0430, provided that:

(i) No such Procurement results in a Permissive Cooperative Procurement that is open to any Agency outside of those Agencies jointly named in the original Procurement;

(ii) No such Procurement of Supplies and Services exceeds the Threshold of \$150,000, including all Amendments, according to OAR 125-246-0560;

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(iii) No such Procurement of Public Improvements exceeds \$100,000, including Amendments according to OAR 125-246-0560; and

(iv) The Authorized Agency must follow any related policy of the Department.

(C) Federal program Procurements not exceeding \$150,000 or according to a delegation agreement with the State Procurement Office, and in accordance with ORS 279A.180 and related Rules;

(D) Client Services Special Procurements according to OAR 125-247-0288(1) and (2);

(E) Client Services procured under ORS 279B.055 through 279B.085 and related Rules, including all amendments according to OAR 125-246-0560;

(F) Renegotiations of Existing Contracts with Incumbent Contractors Special Procurements according to OAR 125-247-0288(3) and as follows: the Authorized Agency is limited to the same authority delegated to that Agency with regard to the Original Contract and any Amendments and may not collectively exceed any Threshold related to its authority to procure the Original Contract, except this limit may be exceeded with the prior Written approval of the Chief Procurement Officer or delegatee of the State Procurement Office;

(G) Advertising Contracts Special Procurements according to OAR 125-247-0288(4);

(H) Equipment Repair and Overhaul Special Procurements according to OAR 125-247-0288(5);

(I) Contracts for Price Regulated Items Special Procurements according to OAR 125-247-0288(6);

(J) Investment Contracts Special Procurements according to OAR 125-247-0288(7);

(K) Food Contracts Special Procurements according to OAR 125-247-0288(8);

(L) Special Procurements of General or Special Counsel Authorized by the Attorney General, according to OAR 125-247-0295;

(M) Special Procurement(s) related to disaster response, according to OAR 125-247-0287;

(N) Architectural, Engineering and Land Surveying and Related Services (A&E) Procurement according to OAR 125-248-0200 through 125-248-0340;

(O) Brand Name Specification Determinations for Solicitations in accordance with OAR 125-247-0691; and

(P) Brand Name Specification Determinations for Sole Source Procurements not exceeding \$150,000 and according to OAR 125-247-0691.

(3) Delegation to the Chief Procurement Officer.

(a) Powers and Authorities. The Director of the Department delegates to the Chief Procurement Officer the rights, powers and authority vested in the Director of the Department to:

(A) Delegate and subdelegate these authorities in whole or in part according to ORS 279A.075;

(B) Approve Special Procurement requests, according to ORS 279B.085 and related Rules, and receive filed protests of approvals of Special Procurements, according to ORS 279B.400(1);

(C) Conduct hearings, approve Agency findings, approve exemption requests, and issue exemption orders, according to ORS 279C.335, ORS 279C.345, 279C.390, and related Rules;

(D) Create all procedures and Specifications required by the Public Contracting Code and these Rules;

(E) Receive, maintain, and act upon information contained in reports, including but not limited to ORS 279A.140(h) and 279C.355, as required by the Public Contracting Code and these Rules;

(F) Receive and resolve protests according to ORS 279B.400 to 279B.420 and Division 247 Rules, except for appeals from a decision of the Chief Procurement Officer or delegatee;

(G) Receive notices, conduct hearings, and make decisions regarding prequalifications, debarments, and Disqualifications according to ORS 279A.110, 279B.425, ORS 279C.450, ORS 200.065(5), and ORS 200.075(1), except for appeals from a decision of the Chief Procurement Officer or delegatee;

(H) Approve Unanticipated Amendments according to OAR 125-246-0560(2);

(I) Approve expedited notices for Sole-Source Procurements according to OAR 125-247-0275;

(J) Procure and administer Cooperative Procurements and receive, hear, and resolve related protests and disputes, according to ORS 279A.200 through 279A.225 and OAR 125-246-0400 through 125-246-0460;

(K) Approve General Service Administration federal programs or federal Contracts in accordance with OAR 125-246-0360;

(L) Authorize public notice of bids, proposals, and public improvement Contracts to be published electronically and according to ORS 279B.055(4)(c) and 279C.360(1);

(M) Approve the manner and character of retainage according to ORS 279C.560(1) and (5);

(N) Approve exemptions waiving or reducing the bid security or bonds for Public Improvement projects in accordance with ORS 279C.390(1);

(O) Approve electronic-filing (e-filing) in accordance with ORS 84.049, 84.052 and 84.064;

(P) Approve procurement-related activities required by other law;

(Q) Conduct Cost Analyses, approve Feasibility Determinations and Exceptions, and otherwise comply with OAR 125-247-0110; and

(R) Other actions of the State Procurement Office specifically required by these Rules.

(b) Duties and Responsibilities of the Chief Procurement Officer. The authority, duties and responsibilities of the Chief Procurement Officer are as follows:

(A) Conduct Procurements, including administration of Contracts, for Agencies.

(B) Develop and maintain State-wide Procurement rules, policies, procedures and standard contract terms and conditions as necessary to carry out the Public Contracting Code.

(C) Subdelegate authority in whole or part, based upon consideration and documentation of one or more of the following factors in making this decision:

(i) The procurement expertise, specialized knowledge and past experience of the individual;

(ii) The impact of the subdelegation of the Procurement on efficiency and effectiveness;

(iii) The individual's adherence to the Code, these Rules, standards, procedures and manuals;

(iv) The ability and assent of the individual to be accountable for the delegated Procurement; or

(v) The short-term demands upon the staff and resources of the State Procurement Office, arising from unusual circumstances;

(D) Revoke authority delegated by the Chief Procurement Officer or in accordance with (3)(d)(F), in whole or part, based upon consideration and documentation of one or more of the following factors in making this decision:

(i) The procurement expertise, specialized knowledge and past experience of the individual;

(ii) The impact of the subdelegation of the Procurement on efficiency and effectiveness;

(iii) The individual's adherence to the Code, these Rules, standards, procedures and manuals; or

(iv) The ability and assent of the individual to be accountable for the delegated Procurement;

(E) Maintain a file of Written subdelegation authority granted and revoked under these Rules in accordance with the law;

(F) Provide guidance and leadership on Procurement matters to Agencies and their employees;

(G) Provide training and instruction opportunities to assure SPO staff and Agency staff are equipped with necessary knowledge and skills to comply with requirements of the Public Contracting Code, Rules, and Department policy related to Procurement;

(H) Monitor sourcing decisions, Procurements, development of Contracts, awarded Contract, Contract compliance, spend, Delegations, Special Procurements and exemptions. Report these matters to the Authorized Agency and Director as appropriate. Monitoring Contract development, awards, and compliance applies to all Delegations;

(I) Based upon monitoring described in Subsection (3)(b)(H), determine opportunities, establish targets, and utilize methods according to ORS 279A.200 through 279A.220 and 279B.055 through 279B.085 to optimize savings consistent with strategic sourcing.

(J) Appoint procurement advisory committees to assist with Specifications, procurement decisions, and structural change that can take full advantage of evolving procurement methods as they emerge within various industries, while preserving competition according to ORS 279A.015.

(c) Delegation by Rule Based Upon Threshold. By this Rule, the Director of the Department delegates authority to the Chief Procurement Officer for the following Procurements, including Contract Administration:

(A) Small Procurements of Supplies and Services on behalf of Agencies and according to ORS 279B.065;

(B) Intermediate Procurements of Supplies and Services greater than \$5,000 and not exceeding \$150,000, on behalf of Agencies and according to ORS 279B.070 and OAR 125-247-0270;

(C) Informal Selection procedures of Architectural, Engineering and Land Surveying Services and Related Services, on behalf of Agencies and according to ORS 279C.110 and OAR 125-248-0210;

(D) Competitive Quotes of Public Improvements estimated not to exceed \$100,000, according to ORS 279C.410 notes and OAR 125-249-0160; and

(E) All Procurements exceeding the Thresholds for Intermediate Procurements, Informal Procurements, or Competitive Quotes, according to ORS 279B.070 and OAR-125-247-0270 (Supplies and Services); ORS 279C.110 and OAR 125-248-0210 (Architectural, Engineering and Land Surveying and Related Services); and ORS 279C.410 and OAR 125-249-0210 (Public Improvements), respectively.

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(d) Delegation by Rule Based Upon Type. By this Rule, the Director of the Department delegates authority to the Chief Procurement Officer for the following Procurements, including Contract Administration:

(A) Cooperative Procurements in accordance with ORS 279A.200 through 279A.225 and OAR 125-246-0400 through 125-246-0460, except as provided in Section (7)(a)(C) of this Rule; and the State Procurement Office may delegate this authority by agreement to an Authorized Agency, provided this Delegation to an Authorized Agency meets the following criteria:

(i) There is no pre-existing Department Price Agreement or Mandatory Use Agreement;

(ii) The proposed Procurement does not negatively impact DAS Price Agreements or other Contracts identified by the State Procurement Office;

(iii) A competitive process was used for the original agreement; and

(iv) The initial Solicitation was or will be advertised in Oregon.

(B) Special Procurements according to ORS 279B.085 and related Rules;

(C) Sole-Source Procurements in accordance with ORS 279B.075 and OAR 125-247-0275;

(D) Emergency Procurements in accordance with ORS 279B.080, 279C.335(5), OAR 125-248-0200, or related Rules;

(E) Federal program Procurements in accordance with ORS 279A.180 and OAR 125-246-0360;

(F) Architectural, Engineering and Land Surveying and Related Services (A&E) Procurement according to OAR 125-248-0200 through 125-248-0340;

(G) Brand Name Specification Determinations for Solicitations in accordance with OAR 125-247-0691;

(H) Brand Name Specification Determinations for Sole Source Procurements according to OAR 125-247-0691; and

(I) All Procurements otherwise delegated to an Authorized Agency according to Section (2) if the Chief Procurement Officer, at her or his own discretion, revokes and assumes this delegated authority, based upon a determination that any Authorized Agency refuses or fails to comply with any Delegation described in Section (2).

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.050, 279A.075 & 279A.140

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 9-2005, f. & cert. ef. 8-3-05; DAS 15-2005(Temp), f. & cert. ef. 12-22-05 thru 5-21-06; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10

## 125-246-0200

### Affirmative Action; Limited Competition Permitted

According to ORS 279A.100, an Authorized Agency may limit competition on Public Contracts for Supplies and Services, or on other Public Contracts with an estimated cost of \$50,000 or less to carry out affirmative action policies, including but not limited to OAR 125-246-0314 (disabled veterans), and in accordance with any policies and procedures established by the Department.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.100

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10

## 125-246-0210

### Subcontracting to and Contracting with Emerging Small Businesses; Disqualification

(1) As set forth in ORS 279A.105, an Authorized Agency may require a Contractor to subcontract some part of a Contract to, or to obtain materials to be used in performing the Contract from:

(a) A business enterprise that is certified under ORS 200.055 as an emerging small business; or

(b) A business enterprise that is:

(A) Certified under ORS 200.055 as an emerging small business; and

(B) Is located in or draws its Workforce from economically distressed areas, as designated by the Oregon Business Development Department.

(2) For purposes of ORS 279A.105, a subcontractor certified under ORS 200.055 as an emerging small business is located in or draws its Workforce from economically distressed areas if:

(a) Its principal place of business is located in an area designated as economically distressed by the Oregon Business Development Department according to administrative rules adopted by the Oregon Economic and Community Development Department; or

(b) The Contractor certifies in Writing to the Authorized Agency that a substantial number of the subcontractor's employees, or subcontractors that will manufacture or provide the Goods or perform the Services under the Contract, reside in an area designated as economically distressed by the Oregon Business Development Department according to administrative rules adopted by the Oregon Business Development Department. For the purposes of making the foregoing determination, the Authorized Agency must determine in each particular instance what proportion of a Contractor's subcontractor's employees or subcontractors constitutes a substantial number.

(3) Discrimination in Subcontracting Prohibited.

(a) Prohibition. An Offeror who competes for or is awarded a Public Contract may not discriminate against a subcontractor in the awarding of a subcontract because the subcontractor is a minority, woman, emerging small

business enterprise certified under ORS 200.055 or against a business enterprise that is owned or controlled by or that employs a disabled veteran, as defined in ORS 408.225.

(b) Certification. Authorized Agencies must include in each Solicitation Document a requirement that Offerors certify in their Offers that the Offeror has not and will not discriminate, in violation of Subsection (3)(a), against a subcontractor in the awarding of a subcontract because the subcontractor is a minority, woman or emerging small business enterprise certified under ORS 200.055 or against a business enterprise that is owned or controlled by or that employs a disabled veteran, as defined in ORS 408.225.

(4) Disqualification

(a) An Authorized Agency may disqualify a Person from consideration of award of the Authorized Agency's Contracts under ORS 200.065(5), or suspend a Person's right to bid on or participate in any Public Contract according to ORS 200.075(1) after providing the Person with notice and a reasonable opportunity to be heard in accordance with Subsections (d) and (e) of this Section.

(b) As provided in ORS 200.065 and 200.075 an Authorized Agency may disqualify or suspend a Person's right to submit an Offer or to participate in a Contract (e.g., act as a subcontractor) as follows:

(A) For a Disqualification under ORS 200.065, the Authorized Agency may disqualify a Person upon finding that the Person engaged in any of the activities made unlawful by ORS 200.065(1) or (2), or if the Person has been disqualified by another Authorized Agency according to ORS 200.065.

(B) For a Disqualification under ORS 200.075, the Authorized Agency may suspend a Person upon finding that the Person engaged in any of the acts prohibited by ORS 200.075(a) through (c).

(c) An Authorized Agency may disqualify or suspend a Person's right to submit Offers or participate in Public Contracts only for the length of time permitted by ORS 200.065 or 200.075, as applicable.

(d) The Authorized Agency must provide Written notice to the Person of a proposed Disqualification. The Agency must deliver the Written notice by personal service or by registered or certified mail, return receipt requested. This notice must:

(A) State that the Authorized Agency intends to disqualify or suspend the Person;

(B) Set forth the reasons for the Disqualification;

(C) Include a statement of the Person's right to a hearing if requested in Writing within the time stated in the notice and that if the Authorized Agency does not receive the Person's Written request for a hearing within the time stated, the Person must have waived the right to a hearing;

(D) Include a statement of the authority and jurisdiction under which the hearing will be held;

(E) Include a reference to the particular Sections of the statutes and rules involved;

(F) State the proposed Disqualification period; and (G) State that the Person may be represented by legal counsel.

(e) Hearing. Upon the Authorized Agency's receipt of the Person's timely request, the Authorized Agency must promptly deliver written notification and this request to the Chief Procurement Officer. The State Procurement Office must schedule a hearing upon its receipt of the Person's timely request. The State Procurement Office must notify the Person of the time and place of the hearing and provide information on the procedures, right of representation and other rights related to the conduct of the hearing before the hearing. The Chief Procurement Officer has the discretion to delegate authority under OAR 125-246-0170(3)(a)(G) and specify how the delegatee must review and hear Disqualifications.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.200.065, 200.075, 105 & 279A.110

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10

## 125-246-0220

### Advocate's Office and OMWESB

(1) The "Governor's Advocate's Office for Minority, Women and Emerging Small Business (Advocate's Office)" was created in the Office of the Governor, and the "Advocate for Minority, Women and Emerging Small Business" is the individual appointed by the Governor to advise the Governor, Legislature and Director's Office on issues related to the integration of minority, women and emerging small business into the mainstream of the Oregon economy and business sector. The Advocate oversees the resolution of business concerns with Authorized Agencies impacting certified disadvantaged, minority, women and emerging small businesses (DMWESB). The Advocate is also charged with maintaining the Oregon Opportunity Register and Clearinghouse to facilitate the timely notice of business and contract opportunities to DMWESB firms certified by the Office of Minority, Women and Emerging Small Businesses according to ORS 200.025.

(2) The "Office of Minority, Women and Emerging Small Business" (OMWESB), located in the Oregon Business Development Department, administers the certification process for the Disadvantaged Business Enterprise (DBE), Minority Business Enterprise/Women Business Enterprise (MBEWBE), and Emerging Small Business (ESB) Programs. As the sole certification authority in Oregon for disadvantaged, minority-and woman-owned businesses, and emerging small businesses, the Office of Minority, Women

# ADMINISTRATIVE RULES

and Emerging Small Business (OMWESB) provides certification services for disadvantaged, minority, woman and emerging small businesses, according to ORS 200.025 and 200.055.

(3) A "Disadvantaged Business Enterprise" means a small business concern which is at least 51 percent owned by one or more socially and economically disadvantaged individuals or, in the case of any corporation, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals and whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

(4) An "Emerging Small Business" is a business with its principal place of business located in this State; a business with average annual gross receipts over the last three years not exceeding \$1 million for construction firms and \$300,000 for non-construction firms which has fewer than 20 employees; an independent business (not a subsidiary, affiliate, or successor company of another business whose average gross receipts would exceed the stated limits); and a business properly licensed and legally registered in this State.

(5) A "Minority or Women Business Enterprise" is a small business concern which is at least 51 percent owned by one or more minorities or women, or in the case of a corporation, at least 51 percent of the stock of which is owned by one or more minorities or women, and whose management and daily business operations are controlled by one or more of such individuals, according to ORS 200.005.

(6) The general policy of the Department and these Rules is to expand economic opportunities for Disadvantaged Business Enterprises, Minority Business Enterprises, Women Business Enterprises and Emerging Small Businesses by exposing them to contracting and subcontracting opportunities available through Public Contracts, according to ORS 279A.105 and based upon the Legislative findings set forth in ORS 200.015.

(7) The Agency must support the participation of Minority, Women owned and Emerging Small Businesses in its purchasing processes by notifying the Advocate for Minority, Women and Emerging Small Business as required under ORS 200.035.

(8) When a Public Improvement Contract is less than \$100,000 and the Offerors are being drawn exclusively from a list of Certified Emerging Small Businesses maintained by the Office of Minority, Women and Emerging Small Business, the Authorized Agency may let the Contract without formal competitive sourcing methods after a good faith effort to obtain a minimum of three competitive Quotes from Emerging Small Businesses. To obtain maximum exposure for all firms and guard against favoritism, care must be taken to obtain Quotes from different firms each time the list is used. The Authorized Agency must keep a Written record of the source and amount of the Quotes received and comply with the applicable requirements of this Rule.

(9) In carrying out the policy of affirmative action, an Authorized Agency may rely upon ORS 279A.100 and advice of legal counsel regarding its application.

(10) No Special Procurement according to ORS 279B.085 and no exemption according to 279C.335 approved by the Chief Procurement Officer waives or excepts the requirement of notice to the Governor's Advocate for Minority, Women and Emerging Small Businesses in accordance with 200.035 and any DAS policy. All Agencies must comply with 200.035, notwithstanding the Public Contracting Code.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070  
Stats. Implemented: ORS 279A.100 & 279A.105  
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10

## 125-246-0310

### Reciprocal Preferences

(1) When evaluating Offers according to OAR 125-247-0255 through 125-247-0260, 125-249-0390 or 125-249-0640 through 125-249-0660, Authorized Agencies must add a percentage increase to the Offer of a Nonresident Offeror equal to the percentage, if any, of the preference that would be given to that Offeror in the state in which the Offeror resides. An Authorized Agency may rely on the list maintained by the Department according to ORS 279A.120(4) to determine:

(a) Whether the Nonresident Offeror's state gives preference to in-state Offerors; and if so,

(b) The amount of such preference (Percentage).

(2) Authorized Agencies must add a percentage to the Offer that matches the Percentage described in Section (1) before determining Tie-Offers in accordance with OAR 125-246-0300.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070  
Stats. Implemented: ORS 279A.120  
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10

## 125-246-0312

### Agricultural Preference

Despite provisions of law requiring an Authorized Agency to award a Contract to the lowest responsible Bidder, the responsible Proposer or the Provider of a quotation, an Authorized Agency that uses public funds to procure Goods for a public use may apply a preference for Oregon agricultural

products. This preference allows the Authorized Agency to procure an agricultural product that is produced and transported entirely within Oregon, upon meeting the following condition(s):

(1) The agricultural product costs do not exceed 10 percent (Percentage) over the cost of an agricultural product that is not produced and transported entirely within Oregon; or

(2) An Authorized Agency may set a higher Percentage if the Designated Procurement Officer of the Authorized Agency:

(a) Makes a Written determination;

(b) Finds good cause to set the higher Percentage, and

(c) Explains the reasons and evidence for the finding.

Stat. Auth.: ORS 279A.065(5)(a); ORS 279A.070

Stats. Implemented: HB 2763.

Hist.: DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10

## 125-246-0314

### Disabled Veterans Preference

(1) Generally. The Public Contracting Code and these Rules may not be construed to prohibit an Authorized Agency from engaging in public contracting practices designed to promote affirmative action goals, policies or programs to give a preference in awarding Public Contracts to Disabled Veterans. In carrying out an affirmative action goal, policy or program, an Authorized Agency may limit competition for any Public Contract estimated to not exceed \$50,000 to Disabled Veterans as defined in Section (2) ("Preference").

(2) Definition. "Disabled Veteran" is defined in ORS 408.225. "Disabled Veteran" includes the individual as defined in ORS 408.225 and any business enterprise that one or more such individuals own or control, if the cumulative ownership or control by such individuals is 51% or greater.

(3) Establishing the Preference. The Authorized Agency may use a percentage for the Preference in a competitive procurement process or use the Preference for a direct award to the Disabled Veteran instead. In either case, the process for a Contract may not exceed \$50,000, and the Designated Procurement Officer of the Authorized Agency must make a written determination that supports the Preference.

(4) Subcontracting. An Authorized Agency may require a Contractor to subcontract some part of a Contract not to exceed \$50,000 to, or obtain materials to be used in performing the Contract from, a Disabled Veteran.

(5) Proof. Under Section (3) or (4), an Authorized Agency may require that a Disabled Veteran produce proof of service-connected disability from the United States Department of Veterans Affairs. The proof of service-connected disability may be in the form of an:

(a) Award letter;

(b) Award card; or

(c) Other evidence acceptable to the Authorized Agency from the United States Department of Veterans Affairs.

(6) Discrimination. A Bidder or Proposer who competes for or is awarded a Public Contract may not discriminate against a subcontractor in awarding a subcontract because the subcontractor employs a Disabled Veteran or is a Disabled Veteran.

(7) Debarment or Disqualification.

(a) Finding and Appeal. An Authorized Agency may debar or disqualify a Bidder or Proposer (Offeror) under OAR 125-247-0575 or 125-249-0370, if the Authorized Agency finds that the Offeror has violated Section (6). A debarred or disqualified Offeror may appeal under OAR 125-247-0750 or 125-249-0370.

(b) Limitation. An Authorized Agency may not allege an occurrence of discrimination in subcontracting as a basis for debarring or disqualifying a Bidder or Proposer under Section (6) more than three (3) years after the alleged discriminatory conduct occurred or more than three (3) years after the Authorized Agency, in the exercise of reasonable diligence, should have discovered the conduct, whichever is later.

(8) Certification. An Offeror must certify in the documents accompanying its Offer that the Offeror has not discriminated and will not discriminate against a Disabled Veteran or a subcontractor that employs a Disabled Veteran in obtaining a required subcontract.

(9) Violation. After a Contractor is awarded a Public Contract and if the Contractor violates the certification made under Section (8), the Authorized Agency may regard the violation as a major breach of contract that permits the Authorized Agency to:

(a) Terminate the Contract; or

(b) Exercise any of the remedies for breach of contract that are reserved in the Contract.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070

Stats. Implemented: ORS 279A.100

Hist.: DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10

## 125-246-0330

### Supplier Requirements

(1) Tax Compliance. No Contract or other agreement for more than \$1,000 may be entered into, renewed or extended with any Person unless the Person certifies in Writing, under penalty of perjury, that the Person is not in violation of any tax laws described in ORS 305.385(6) and (7).

(2) Requirements to Transact Business in Oregon.

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(a) A Contractor who is a corporation, partnership, or who has an assumed business name must be registered with the Secretary of State Office in accordance with ORS Chapters 58, 60, 62, 63, 65, 67, 70, and 648. This registration is the obligation of the Contractor, not the Agency.

(b) In addition, for Contracts requiring the services of one or more architects, engineers, and land surveyors, these Consultants must be registered with the appropriate licensing boards under the provisions of ORS 671.020, 672.020, and 672.025.

(c) The statutory requirements for contracting firms to register with the Secretary of State's Office may be subject to a limited number of exceptions under federal law. For example, national banks, when they contract with Authorized Agencies, are not subject to the registration requirement.

(d) The Contractor or Consultant must be registered at the time of the execution of the Contract and thereafter.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070; Sec. 335, Ch. 794, OL 2003 (HB 2341)  
Stats. Implemented: ORS 279A.140, 279C.105(1)  
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10

## 125-246-0333

### Independent Contractors

(1) An Authorized Agency may, within the limits of its delegation under OAR 125-246-0170 and its legislatively approved budget, Contract for Personal Services with Providers who are Independent Contractors.

(2) "Independent Contractor" means a Person who provides services to an Authorized Agency in which the Authorized Agency neither controls nor has the right to control the means or manner by which Work is performed. The Authorized Agency may control the results of the services, but not control the means or manner of Contractor's performance of the Work.

(3) Within the parameters of employment, Workers' compensation, and other relevant state and federal laws, and after determining that the contract will not violate any collective bargaining agreements, an Authorized Agency may contract for Personal Services when:

(a) The Work cannot be done in a reasonable time with the Authorized Agency's own Workforce;

(b) An independent and impartial evaluation is required; or

(c) It will be less expensive to contract for the Work.

(4) The Authorized Agency may not use Personal Services Contracts to obtain and pay for the services of an employee. If a Contractor is not an Independent Contractor, the Authorized Agency may not enter into a Personal Services Contract with the Contractor; instead, the Authorized Agency must follow personnel policies for employment options.

(5) Independent Contractor Status. The Authorized Agency must develop a Statement of Work for Trade or Personal Services, including Architectural, Engineering and Land Surveying Services, and Related Services, that will not result in an employee relationship with the potential Contractor. Contractors must complete the Independent Contractor Certification either as a contract provision or on a form approved by the State Procurement Office (Independent Contractor Certification). If the Contractor cannot certify Independent Contractor status, the Authorized Agency may not contract with the Contractor using a Trade or Personal Services Contract, including Architectural, Engineering and Land Surveying Services, and Related Services, except as otherwise allowed in Subsection (5)(f) of this Rule:

(a) An Independent Contractor Certification must be part of each Contract;

(b) If the Contractor is a corporation, the Independent Contractor Certification is still required.

(c) If the nature of the Services or project is such that an employee/employer relationship will exist, the Authorized Agency must hire the individual through normal personnel procedures.

(d) The Contract must include the Contractor's legal name and address. Either the Contract or a separate cover sheet for the Contract must include the Contractor's Social Security or federal tax identification number.

(e) The Contract must provide that the Contractor is responsible for federal Social Security, except those categories excluded by law, and for any federal or state taxes applicable to the contract payment.

(f) When a Contractor cannot certify that the Contractor meets the definition of "independent contractor," is customarily engaged in an independently established business, and meets at least three of the requirements for such a business in accordance with ORS 670.600, then the Authorized Agency may contract with the Contractor only if the Designated Procurement Officer of the Authorized Agency approves the Contract upon a determination that the Contractor is an Independent Contractor and the Contract will not result in undue risk to the State.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070  
Stats. Implemented: ORS 279A.140  
Hist.: DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10

## 125-246-0335

### Authority and Standards for Personal Services Contracts

(1) Application. For the purposes of this Rule only, "Personal Services" includes Architectural, Engineering and Land Surveying Services and Related Services.

(2) Identification of Personal Services Contracts.

(a) According to ORS 279A.140(2)(h), the State Procurement Office may designate Contracts or classes of Contracts as Personal Services Contracts for the purposes of reporting Personal Services Contracts in accordance with ORS 279A.140 and identifying the appropriate required procedures in accordance with ORS 279A.070 and 270A.140. In the event of uncertainty or disagreement as to the status of any particular Contract or class of Contracts, the State Procurement Office may determine whether a particular contract is a Personal Services Contract.

(b) The Authorized Agency must identify within the Contract that the Authorized Agency is contracting for Personal Services. A failure to adequately describe Personal Services within the Contract will not invalidate the Procurement or Contract if the Authorized Agency properly used a sourcing method according to ORS 279B.055 through 279B.085 or 279C.100 through 279C.125 and substantially followed the related Rules.

(3) Contracting Out for Services Provided by Employees.

(a) Where the Authorized Agency is contemplating contracting for Work performed by Authorized Agency employees represented by a labor organization, the Authorized Agency must review the relevant collective bargaining agreement to ensure the contract complies with the provisions and, if applicable, the requirements of ORS 279A.140.

(b) Whenever the Authorized Agency pays more in a given 12-month period to a Provider under a Personal Services Contract for services historically performed by state employees than would have been paid to the Authorized Agency employee performing the same Work, the Authorized Agency must report that fact, with a justifying statement to the Department. The report must be made at the conclusion of each fiscal year.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070  
Stats. Implemented: ORS 279A.140  
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10

## 125-246-0345

### Procedures for Personal Services Contracts

(1) Contract and Amendment Forms for Architectural, Engineering and Land Surveying Services, and Related Services. Authorized Agencies must comply with OAR 125-248-0300(1).

(2) Other Forms for Personal Services Contracts and Amendments. Authorized Agencies must use one of the forms provided or approved by the State Procurement Office for Personal Services Contracts and Amendments (Forms).

(a) Revised Forms.

(A) Designated Procurement Officer Approval up to \$150,000. For revised Forms up to a cumulative value of \$150,000 and before an Authorized Agency may use a revised Form, it must obtain its Designated Procurement Officer's approval of any revisions to the Form's terms and conditions. The Designated Procurement Officer's approval is not required for revisions to Form exhibits that are unrelated to terms and conditions.

(B) Department of Justice Approval over \$150,000. For revised Forms exceeding a cumulative value of \$150,000 and before an Authorized Agency may use a revised Form, it must obtain Department of Justice approval of any revisions to the revised Form's terms and conditions. The Department of Justice approval is not required for revisions to Form exhibits that are unrelated to terms and conditions. The Department of Justice approval may be delivered by facsimile, email, letter or any other objective means of approval.

(b) Upon an Authorized Agency's request, the Department of Justice may approve a revised Form for repeated use for a specific class or classes of transactions.

(c) The Authorized Agency must review the approved Form at least every two years. If upon review the Authorized Agency revises the Form, the Authorized Agency must obtain Department of Justice approval before using the revised Form.

(3) Screening, Selection, Evaluation and Award Procedures. An Authorized Agency must follow the procedures set forth in Division 248 of these Rules when contracting for Architectural, Engineering and Land Surveying Services, and Related Services. For all other Personal Services Contracts, an Authorized Agency must select a sourcing method from the seven methods available according to ORS 279B.055 through 279B.085 and follow the screening, selection, evaluation and award procedures set forth for the selected sourcing method in division 247 of these Rules.

(4) Amendments and Reinstatements. The procedures for Amendments and reinstatements are found in OAR 125-246-0560 and 125-246-0570, respectively. Procedures for Amendments and reinstatements for Architectural, Engineering and Land Surveying Services, and Related Services are found in OAR 125-248-0340 and 125-248-0310, respectively.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070  
Stats. Implemented: ORS 279A.70 & 279A.140(h)(B)  
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10

## 125-246-0351

### Acquiring Services Before Obtaining Requisite Approvals

(1) Application. For the purposes of this Rule only, "Personal Services" includes Architectural, Engineering and Land Surveying Services and Related Services.



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(2) Personal Services may be performed before all requisite approvals are obtained under a Personal Services Contract if the Personal Services Contract is exempt from the prohibition against services being performed before review for legal sufficiency is obtained under ORS 291.047(6).

(3) The process set forth in this Rule is intended to allow Authorized Agencies to acquire services before obtaining all requisite approvals for those Personal Services Contracts that call for payments of less than the Threshold for legal sufficiency review by the Attorney General.

(4) The State Procurement Office may authorize an Authorized Agency to acquire services before obtaining all requisite approvals when circumstances exist that require prompt action to protect the interests of the State. An Authorized Agency may seek such authorization for a Personal Services Contract or a class of Personal Services Contracts to address specific recurring needs to acquire services on short notice. An Authorized Agency seeking the State Procurement Office's authorization must describe particular circumstances that make it impracticable to obtain all requisite approvals before acquiring services. The State Procurement Office will only authorize an Authorized Agency to acquire services before obtaining all requisite approvals if the Authorized Agency follows the procedures set forth in this Rule. The State Procurement Office's authorization according to this Rule only allows the Authorized Agency to acquire services before obtaining all requisite approvals. It does not authorize the Authorized Agency to make any payments before obtaining all requisite approvals.

(5) The Authorized Agency seeking the State Procurement Office's authorization to acquire services before obtaining all requisite approvals must provide:

(a) Written findings to The State Procurement Office that describe the specific recurring circumstances that require the Authorized Agency to take prompt action to protect the interests of the State because they create substantial risk of loss, damage, interruption of services or threat to public health or safety. The Authorized Agency must also describe why, under these specific circumstances, it will be impracticable to obtain all requisite approvals before acquiring services;

(b) The Personal Services Contract form that the Authorized Agency will use for the Contract entered into after acquiring services, but before making payments.

(c) Documentation demonstrating that the Authorized Agency has established procedures to administer the Contract or class of Contracts, for which it seeks authorization.

(6) The State Procurement Office after review of the material required by Section (5) above, may authorize the Authorized Agency to acquire the specific services under the specific circumstances described in response to Section (5)(a) above before obtaining all requisite approvals. If the State Procurement Office provides authorization, the State Procurement Office will do so in Writing, subject to any conditions or limitations the State Procurement Office deems appropriate, including but not limited to the duration of the authorization, and any other terms and conditions the State Procurement Office may determine are appropriate.

(7) If Authorized Agency acquires services before obtaining all requisite approvals when authorized by the State Procurement Office, the Authorized Agency, as soon as practicable after acquiring the services, must enter into a Written Contract in the form submitted by the Authorized Agency and approved by the State Procurement Office. The Authorized Agency must not revise the terms of the approved Contract form submitted by Authorized Agency without the State Procurement Office's approval.

(8) The Authorized Agency must not make any payments for services before obtaining all requisite approvals.

(9) The State Procurement Office authorization to perform services before obtaining all requisite approvals does not exempt the Authorized Agency from obtaining legal sufficiency review, if required under the provisions of ORS 291.047.

(10) An Authorized Agency authorized to perform services before obtaining all requisite approvals must follow all applicable screening and selection requirements unless otherwise exempt from those requirements.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.140(2)

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10

## 125-246-0360

### Purchases Through Federal Programs

(1) Exemption. An Authorized Agency may purchase certain authorized Supplies and Services through General Service Administration (GSA) federal programs or federal Contracts (Federal Programs) without Competitive Sealed Bidding, Competitive Sealed Proposals or other competition required under ORS 279B.050 to 279B.085, provided that the Authorized Agency has federal authorization to purchase through the Federal Program and follows the procedures set forth in this rule.

(2) Federal Authorization.

(a) The Federal Programs named in ORS 279A.180 are accessible to Authorized Agencies for purchasing Supplies and Services. In addition, by this Rule, the Director of the Department (Director) hereby makes the determination according to ORS 279A.180, that the GSA Order of 2000 and any subsequent revisions or updating of this GSA Order of 2000 (GSA Orders)

describe other Federal Programs that, under federal law, are similar to 10 U.S.C. 381 or Section 211 of the Electronic Government Act of 2002 in effectuating or promoting transfers of property to Authorized Agencies; therefore, Authorized Agencies may purchase through those Federal Programs described in a GSA Order without making individual requests for determination to the Director.

(b) If an Authorized Agency desires to purchase through another Federal Program that is not expressly named in ORS 279A.180 or a GSA Order, the Authorized Agency must request in Writing a determination from the Director or the Director's designated representative. In the request, the Authorized Agency must document that the federal government has authorized states, including the Authorized Agency, to purchase through the proposed Federal Program. The request of the Authorized Agency and the determination by the Director or representative must be limited to those other Federal Programs described in ORS 279A.180 that, under federal law, are similar to 10 U.S.C. 381 or Section 211 of the Electronic Government Act of 2002 in effectuating or promoting transfers of property to Authorized Agencies.

(c) If no federal authorization exists as described in Sections (2)(a) and (b) of the Rule, then an Authorized Agency is not permitted to purchase through any Federal Program.

(3) Procedures. To purchase through a Federal Program, an Authorized Agency must document in its Procurement File that:

(a) The federal authority for the Authorized Agency to purchase through the Federal Program, referring to ORS 279A.180, a GSA Order, or the State Procurement Office's approval of an Authorized Agency's request.

(b) The acquisition meets the Authorized Agency's needs;

(c) The price and other terms of the acquisition are Advantageous to the State;

(d) No Department Price Agreement for the authorized Supplies and Services exists, based upon the Authorized Agency's inquiry through ORPIN;

(e) The Authorized Agency has considered the acquisition's impact upon local business as follows:

(A) If the Procurement is in excess of \$5,000, the Authorized Agency has given timely notice through ORPIN of its needs, reasons, and intent to procure through a Federal Program;

(B) The Authorized Agency has provided a reasonable time period under the circumstances for individuals to respond to the notice and send Written comments to the Authorized Agency; and

(C) The Authorized Agency has considered any comments and replied, if appropriate, before proceeding with its Procurement through a Federal Program. This Rule provides for an informal opportunity to comment to and be considered by the Authorized Agency, instead of the formal notice requirements for Solicitations in excess of \$5,000 according to ORS 200.035.

(f) State and local preference programs, including but not limited to the Inmate Work Program of ORS 279.015, the Products of Disabled Individuals Program of ORS 279.835 to 850, and state requirements Contracts under OAR 125-247-0296, are not waived or otherwise adversely affected by an acquisition through a Federal Program;

(g) The Authorized Agency has complied with OAR 137-045-0010 to 137-045-0090, and if it is required, obtained a legal sufficiency review or exemption from the Department of Justice; and

(h) The Authorized Agency is informed of its Federal Program's Procurement Process, including:

(A) Voluntary and Direct Contract. The Authorized Agency and Contractors participate voluntarily. The Contractors make direct deliveries to the Authorized Agency and retain the right to decline orders on a case-by-case basis, for any reason, within a five-Day period of receipt of that order;

(B) Funding Fee. The price of a Federal Program Contract includes a GSA industrial funding fee to cover GSA administrative costs to operate the Federal Program;

(C) New Contract. When a Contractor accepts an order from an Authorized Agency, a new Contract is formed. The Contract's terms and conditions are incorporated by reference; and

(D) Additional Terms and Conditions. The Authorized Agency may add to its Contract such significant, substantial contract terms and conditions as are required by State statutes or rules, if such additions do not conflict with the Federal Program's Contract terms and conditions. Examples of such terms and conditions include, but are not limited to:

(i) Prompt Payment. The Authorized Agency may apply the terms and conditions of Oregon's prompt payment law to its Contracts, but if the Authorized Agency fails to make this addition, then the Authorized Agency may be subject to the Federal Prompt Payment Act, 31 U.S.C. sec. 3901 et seq., as implemented at subpart 32.9 of the Federal Acquisition Regulation (FAR);

(ii) Commercial Terms. Patent indemnity and other commercial terms and conditions may be added if they do not conflict with the Federal Program's terms and conditions; and

(iii) Conflict Resolution. The Authorized Agency may revise the Contract's dispute resolution provision to use Alternative Dispute Resolution (ADR) to the extent authorized by law.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070 & Sec.335, Ch. 794, OL 2003 (HB 2341)

Stats. Implemented: ORS 279A.180

# ADMINISTRATIVE RULES

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10

## 125-246-0365

### ORS 190 Agreements

(1) Reporting 190 Agreements through ORPIN. A state agency that enters into an agreement under ORS 190.110, 190.420 or 190.485, or an agreement under ORS 190.112 or under 660.342, must submit a summary of the agreement through ORPIN within the 30-day period immediately following the effective date of the agreement. For the purpose of this Rule only, "state agency" is defined in ORS 190. The summary must include the following information:

- (a) Names of the parties to the agreement;
- (b) Date of the agreement;
- (c) Subject matter of the agreement; and
- (d) The agency through which a person may obtain a copy of the agreement.

(2) Interstate and International Agreements. Following ORS 190, each Agency may enter into Interstate and International Agreements through negotiation, direct award, direct appointment, or in any other manner that satisfies the legal requirements for such Agreements.

(3) Tribal Agreements. Following ORS 190, each Agency may enter into Tribal Agreements through negotiation, direct award, direct appointment, or in any other manner that satisfies the legal requirements for such Agreements.

(4) Interagency and Intergovernmental Agreements. Following ORS 190, each Agency may enter into Interagency and Intergovernmental Agreements through negotiation, direct award, direct appointment, or in any other manner that satisfies the legal requirements for such Agreements.

(5) All Interstate, International, Tribal, Interagency and Intergovernmental Agreements, when required, are subject to review and approval by the Attorney General.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070  
Stats. Implemented: ORS 190.110, 190.112, 190.420, 190.485, 279B.085, 660.342  
Hist.: DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10

## 125-246-0560

### Amendments

(1) Generally. This Rule on Amendments sets forth:

(a) Requirements for all Amendments under this Rule, found in Section (2);

(b) A General Rule for Anticipated Amendments, found in Section (3) applicable to Contracts for Supplies and Services;

(c) A General Rule for Unanticipated Amendments, found in Section (4) applicable to Contracts for Supplies and Services;

(d) Special Rules for Amendments in Sections (5) through (10), applicable to different types of Contracts. These Special Rules replace the General Rule, unless expressly stated otherwise.

(2) Requirements for All Amendments under this Rule. An Authorized Agency may make Amendments to Contracts as set forth in this Rule under the following conditions:

(a) Scope. The Amendment must be within the Scope of the original Solicitation Document, if any, and the Original Contract;

(b) Original Contract. The Original Contract was awarded either:

(A) According to ORS 279B.055, 279B.060, 279B.065, 279B.070, 279B.075, 279B.080, 279B.085, or 279A.200-279A.220;

(B) For Transitional or Old Contracts only, as defined in OAR 125-246-0100(6); or

(C) Other statutory law.

(c) Legal Requirements. The Amendment is made consistent with applicable Department of Justice legal sufficiency review according to ORS 291.047;

(d) Writing. All Amendments to Contracts must be in Writing;

(e) Authority. All Amendments to Contracts must be signed by the authorized representatives of the parties to the Contracts, except that Amendments to Ordering Instruments may be accepted by the action of the Provider in accordance with the terms and conditions of the Ordering Instruments. All Amendments must receive all required approvals before the Amendments become binding on the Authorized Agency and before any service may be performed or payment made, including but not limited to the Department of Justice legal sufficiency review according to ORS 291.047.

(3) General Rule for Anticipated Amendments.

(a) "Anticipated Amendment" means:

(A) The Authorized Agency has planned for and stated in the Solicitation Document, if any, and the Original Contract ("Contract") that the Authorized Agency may amend the Contract; and

(B) Required language in the Solicitation Document, if any, and the Contract includes:

(i) The general circumstances that might require an Anticipated Amendment to be issued under the Contract. "General circumstances" means broad or important aspects of the circumstances and not detailed. "Circumstances" means the anticipated conditions, state of affairs, or context that might require the Amendment. "Anticipated" means considered, realized, foreseen, or expected before its time. "Contract" for the purpose of this Rule

means the specific Original Contract or class of Original Contracts being amended (specific Contract). This requirement is not satisfied by boilerplate language. "Boilerplate language" means standard language used commonly in documents without variation based on specific circumstances; and

(ii) A general description of certain or known changes to the requirements of the Contract that may be anticipated or planned for, but not necessarily quantified at the time of Contract execution. These changes may be specifically described in any Solicitation and Contract as: Additional Work; Work to be done if certain situations are encountered; or changes in terms, conditions, price, or type of Work. "General description" means broad or important aspects of the certain or known changes and not detailed. "Certain or known changes" that "may be anticipated or planned for" does not mean all possibilities; it means anticipated changes that might be required by the circumstances, as defined in Subsection (3)(a)(B)(i). This general description of changes must relate to the specific Contract and is not satisfied by boilerplate language, as defined in Subsection (3)(a)(B)(i).

(b) Authority for Anticipated Amendments. An Authorized Agency may make one or more Anticipated Amendments to a Contract without an additional competitive process and for an unlimited amount.

(c) No Designation Required. The Authorized Agency is not required to designate an Amendment in any Solicitation Document and Original Contract as an "Anticipated Amendment."

(4) General Rule for Unanticipated Amendments.

(a) "Unanticipated Amendment" means an Amendment that does not otherwise meet the requirements of being an Anticipated Amendment.

(b) Conditions. An Authorized Agency may make one or more Unanticipated Amendments, without any additional competitive process as set forth in this Rule under the following conditions:

(A) Limited Amount. The cumulative amounts of one or more Unanticipated Amendments to a Contract must not exceed 20% of the Original Contract amount; or

(B) Unlimited Amount. The cumulative amounts of one or more Unanticipated Amendments may be unlimited only if the Authorized Agency's Designated Procurement Officer or the Chief Procurement Officer for the State Procurement Office gives Written approval of the Unanticipated Amendment, based upon a determination that:

(i) The change is legitimate and due to unforeseen circumstances which occurred as Work progressed, and that the reasons for the change were unforeseen at the time the Original Contract was established, as opposed to an effort to evade Procurement requirements;

(ii) The Original Contract contains clauses authorizing modification; and

(iii) The Unanticipated Amendment does not represent a material change that alters the essential identity or main purpose of the Original Contract, or is of such importance as to constitute a new undertaking. The determination and approval must be included in the Procurement File according to OAR 125-246-0556.

(5) Special Rules for Amendments based on Thresholds.

(a) Small Procurements. An Authorized Agency may amend a Contract awarded as a Small Procurement under OAR 125-247-0265, and the cumulative Amendments must not increase the total contract price to exceed \$6,000. The General Rules do not apply to amendments of a Contract awarded as a Small Procurement.

(b) Intermediate Procurements. The General Rules on Amendments apply to a Contract awarded as an Intermediate Procurement under OAR 125-247-0270. If the Contract and all cumulative Amendments would result in an amended contract amount exceeding \$150,000, then the Authorized Agency must request and obtain prior approval of a Special Procurement in accordance with OAR 125-247-0287.

(6) Special Rule for Amendments of Contracts for Emergencies. Despite the General Rules on Amendments, an Authorized Agency may modify a Contract awarded as an Emergency Procurement if the emergency justification for entering into the Contract still exists, and the Amendment is necessary to address the continuing emergency. This modification may be made by change order or Amendment to address the conditions described in the original declaration or an amended declaration that further describes additional Work necessary and appropriate for related Emergency circumstances.

(7) Special Amendment Provisions Located in Other Rules.

(a) Reinstatement of Expired Contracts. Despite the General Rules on Amendments, the Rule for Reinstatement of Expired Contracts is found at OAR 125-246-0570.

(b) Retroactive Approvals and Payment Authorization for Cost Overruns for Services Contracts. Despite the General Rules on Amendments, the Rules for Retroactive Approvals and Payment Authorization for Cost Overruns are found at OAR 125-246-0570 and 125-246-0576, respectively.

(c) Renegotiated Contracts. Despite the General Rules on Amendments, the Special Procurement Rule for Renegotiated Contracts is found at OAR 125-247-0288(3).

(d) Architectural, Engineering and Land Surveying Services, and Related Services. Despite the General Rules on Amendments, the Rule for Amendments of Contracts for Architectural, Engineering and Land Surveying Services, and Related Services is found at OAR 125-248-0340.

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(e) Public Improvements. Despite the General Rules on Amendments, the Rule for Amendments of Contracts for Public Improvements is found at OAR 125-249-0160.

(8) Special Rule for Amendments of Price Agreements. Despite the General Rules on Amendments, the State Procurement Office or its delegatee may amend a Price Agreement as follows:

(a) As permitted by the Price Agreement;

(b) As permitted by any applicable Special Rule for Amendments, Sections (5) through (10); or

(c) As permitted by applicable law.

(9) Special Rule for Amendments of Cooperative Procurements under OAR 125-246-0400 through 125-246-0460.

(a) An Administering Authorized Agency may amend an Original Contract only in accordance with ORS 279A.205 through 279A.225 and in a manner that is substantially equivalent to this Rule.

(b) A Participating Authorized Agency may amend its own Contract resulting from a Cooperative Procurement in a manner that complies with this Rule.

(10) Special Rule for Amendments of Transitional and Old Contracts.

(a) Definition. "Transitional Contracts" and "Old Contracts" are defined in OAR 125-246-0110.

(b) Authority. An Authorized Agency must have authority to amend the Transitional or Old Contract in accordance with OAR 125-246-0170, including but not limited to delegations by rule, agreement, letter and policy.

(c) Processes. An Authorized Agency may amend a Transitional or Old Contract by complying with one of the following four (4) processes:

(A) New Amendment Process. An Authorized Agency may apply Sections (1) through (9) of this Amendment Rule; or

(B) New Special Procurement Process. An Authorized Agency may amend through the Special Procurement Rules for Supplies and Services, as set forth in OAR 125-247-0285 through 125-247-0287; or

(C) Exclusive Amendment Process. This Process is not available for Personal Services Contracts. An Authorized Agency may amend an Original Contract with a Provider without competitive bidding and for additional Work or product which is reasonably related to the Scope of Work under the Original Contract, including Changes to Work, extra Work, field orders, or other change in the original Specifications that increases the Original Contract price, if it meets one or more of the following conditions:

(i) The Original Contract:

(I) Was let by a competitive bidding or alternative Procurement process;

(II) Unit prices or additive alternates were provided that established the cost basis for the additional Work or product; and

(III) A binding obligation exists on the parties covering the terms and conditions of the additional Work; or

(ii) The Original Contract was let pursuant to a declaration of emergency, in accordance with former ORS 279.015(4)(a) and 279.015(5) and former OAR 125-310-0030; or

(iii) The additional Work is required by reason of existing regulations or ordinances of federal, state or local agencies, dealing with the prevention of environmental pollution and the preservation of natural resources, that affect performance of the Original Contract and such regulations or ordinances, as provided in former ORS 279.318, either were not cited in the Original Contract or were enacted or amended after submission of the successful Bid or Proposal; or

(iv) The Original Contract was for the renovation or remodeling of a building.

(v) Except for Amendments entered into pursuant to Subsections (C)(i) to (iv), the aggregate increase resulting from all Amendments to a Contract must not exceed 20 percent of the initial Contract price. Contracts for the renovation or remodeling of buildings may have aggregate Amendments not exceeding 33 percent of the initial Contract price. Provided, however, that Amendments made pursuant to Subsection (C)(i) are not to be applied against either the 20 percent or the 33 percent aggregate limit on Contract Amendments. Provided, further, that Contracts amended pursuant to Subsections (C)(ii) or (iii) are not subject to either the 20 percent or the 33 percent aggregate limit on Contract Amendments.

(vi) If the Original Contract required the Contractor to provide a performance and payment bond, and the Authorized Agency has terminated the Contract and notified the surety of such termination, the Authorized Agency may allow the Contractor's surety an opportunity to provide a substitute Contractor to complete performance of the Original Contract. Such substitute performance, and any Amendment of the Original Contract that makes a substitute Contractor a party to the Contract, and is not an award of a Public Contract for purposes of former ORS 279.015(1), must not be subject to the competitive procurement provisions of former ORS 279.005 through 279.111.

(D) Personal Services Amendment Process. This process is for Personal Services Contracts only.

(i) Contract Amendments must be made in writing.

(ii) Amendments to Contracts must fall within the Scope of the original Solicitation, unless the Original Contract was exempt under former OAR 125-020-0610, including whether the Contract consideration or term limit for performance may be increased (See former OAR 125-020-0310(4)(b)).

Amendments may not be used to circumvent rules establishing approvals at certain monetary levels.

(iii) The State Procurement Office must approve an Amendment to a Contract unless approval of the amended Contract is delegated under OAR 125-246-0170.

(iv) Except for Contracts related to Year 2000 services or Phased Development projects, Amendments to perform additional work related to information technology must not exceed 33% of the amount identified in the original Contract.

(v) The Attorney General must approve an amendment to a Personal Services Contract if the resulting Contract requires legal sufficiency review under ORS 291.047.

(vi) The Authorized Agency must provide justification for any increase in time, compensation or other modification to the State Procurement Office.

(vii) The Contract Amendment form(s) must comply with OAR 125-246-0345.

(viii) For Amendments, the Authorized Agency is required to:

(I) Prepare a Contract Amendment;

(II) Obtain necessary approvals before the Amendment is effective; and

(III) Issue the Award justification on ORPIN for Amendments that do not require State Procurement Office approval.

(ix) For Contract Amendments that require State Procurement Office approval, the Authorized Agency must submit the Contract Amendment package (one original and one copy of the Contract Amendment, a copy of the original Contract, copies of any previous Amendment(s), and the justification statement) to the State Procurement Office.

(x) The State Procurement Office will review and approve the Contract Amendment for compliance with applicable rules.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.050, 279A.065(5), 279A.070 & 279A.140

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 4-2005, f. 4-13-05, cert. ef. 6-6-05; DAS 7-2005, f. & cert. ef. 6-6-05; DAS 9-2005, f. & cert. ef. 8-3-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10

## 125-246-0570

### Reinstatement of Expired Contract; Retroactive Approval of Existing Contract

(1) Application. This Rule applies to the reinstatement of expired or terminated Contracts (expired Contracts) and the retroactive approval of existing Contracts procured by Authorized Agencies for Supplies and Services and for Architectural, Engineering and Land Surveying Services or Related Services ("Contracts"). This Rule does not apply to mistakes that may occur in the solicitation process (see OAR 125-247-0470).

(2) Requirements to Reinstatement an Expired Contract.

(a) Before expiration, the Contract was properly signed by all parties;

(b) Then the signed Contract expired;

(c) The Agency reinstates the Contract:

(A) To fulfill its term, up to the maximum time period provided in the Contract; or

(B) To complete one or more deliverable(s) included within the Contract's Scope at the time of its expiration;

(d) The Agency documents in the Procurement File the deliverable(s) to be completed at the time of the expired Contract's reinstatement; and

(e) If the Contractor has performed work under the Contract, the reinstatement does not apply to payments made for work performed between the expiration of the Contract and the date of any reinstatement.

(3) Requirements to Retroactively Approve an Existing Contract.

(a) The Contract exists and has not expired;

(b) The Contract was signed by all parties except that the required approval of the DPO or CPO was lacking;

(c) If the Contractor has performed work under the Contract, the retroactive approval does not apply to payments made for work performed between the start of the Contract and the date of any retroactive approval.

(4) Process. For either a reinstatement of an expired Contract or retroactive approval of an existing Contract, the requesting Agency must meet the following conditions:

(a) The Agency must submit a Written request to the Agency's Designated Procurement Officer (DPO) if the Agency is authorized under OAR 125-246-0170, or if not, to the Chief Procurement Officer (CPO) with authority under OAR 125-246-0170 (Request). If the Request is submitted to the DPO, the Agency must also follow its internal procedures.

(b) The Request must explain the following:

(A) The proposed reinstatement of the expired Contract or retroactive approval of the existing Contract.

(B) The background facts that led to the Request;

(C) The good faith basis for making the Request;

(D) The need for reinstatement of an expired Contract or retroactive approval of an existing Contract due to unforeseen or unavoidable conditions;

(E) The steps to prevent a reoccurrence. For examples:

(i) Improvement of Agency's internal policies and procedures; and

(ii) Provision of new training or retraining; and

(F) Acknowledgement that the Request is in the best interest of the Agency.

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(c) Obtain all other approvals required for the Contract, including but not limited to: Attorney General's approval of legal sufficiency under ORS 291.047 or ratification under ORS 291.049. The Authorized Agency must obtain all other approvals required for the Contract before any reinstatement, extension of time under Subsection (6), or retroactive approval becomes binding.

(d) The DPO or CPO, as described in Subsection (3)(a), must approve the Request.

(5) Effect of Approval.

(a) An approved reinstatement of an expired Contract makes the Contract in full force and effect, as if it had not expired.

(b) An approved retroactive approval of an existing Contract makes the Contract in full force and effect, as if it had been approved by the DPO or CPO when the Contract was formed.

(c) The DPO or CPO, as appropriate, may create any related Contract documents to implement the reinstatement or retroactive approval.

(d) The Agency may make an approved payment after any related Contract documents are signed by the necessary parties.

(6) Amendments of a Reinstated Contract.

(a) If the Agency requests reinstatement of an expired Contract, the Request of the Agency may also include a request to amend the reinstated Contract for time only. The DPO or CPO, as appropriate, may approve this Request, including the amendment.

(b) The Agency may amend a reinstated or retroactively approved Contract for purposes other than time in accordance with OAR 125-246-0560.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.050, 279A.065(5), 279A.070 & 279A.140

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10

## 125-246-0576

### Payment Authorization for Cost Overruns for Services Contracts

(1) Payments on Contracts for Trade or Personal Services that exceed the maximum contract consideration (Cost Overruns) require approval (Approval). If the aggregated value of the Contract, including Cost Overruns, does not exceed \$150,000, the Designated Procurement Officer of the requesting Authorized Agency may approve the Cost Overruns in accordance with Section (2) of this Rule. If the aggregated value of the Contract, including Cost Overruns, exceeds \$150,000, the State Procurement Office may approve the Cost Overruns in accordance with Section (2) of this Rule. The Cost Overruns may also require approval from the Department of Justice pursuant to OAR 137-045-0010 et seq.

(2) Approval may be provided if:

(a) The Original Contract was duly executed and, if required, approved by the Department and the Attorney General;

(b) Payments relate to Services that were provided during the term of the Contract;

(c) The cost overrun is not associated with any change in the Statement of Work set out in the Original Contract;

(d) The cost overrun arose out of extraordinary circumstances or conditions encountered in the course of contract performance that were reasonably not anticipated at the time the Original Contract, or the most recent Amendment, if any, was signed. Such circumstances include, but are not limited to: emergencies arising in the course of the Contract that require prompt action to protect the Work already completed, compliance with official or judicial commands or directives issued during contract performance or insurance that the purpose of the Contract will be realized;

(e) The cost overrun was incurred in good faith, results from the good faith performance by the Contractor, and is no greater than the prescribed hourly rate or the reasonable value of the additional Work or performance rendered;

(f) The aggregated value of the Contract, including the Cost Overrun, and the Contract's objective are within the procurement authority of the Authorized Agency pursuant to OAR 125-246-0170, and the Authorized Agency currently has funds available for payment under the Contract; and

(g) The Agency must prepare a Written report that describes the Authorized Agency's discovery of the Cost Overrun, the reasons for the Cost Overrun, and the Agency's satisfaction of the conditions set forth in this Section (2) (Report). The Authorized Agency must maintain this Report in its Procurement File and make this Report available to the State Procurement Office upon request.

(h) The Designated Procurement Officer of the Authorized Agency approves in Writing the payment of the overrun, or such portion of the overrun amount as the Designated Procurement Officer of the Authorized Agency determines may be paid consistent with the conditions of this Rule. If the Designated Procurement Officer of the Authorized Agency has signed the Contract, or has immediate supervisory responsibility over performance of the Contract, that Person must designate an alternate delegate to grant or deny Written approval of payment.

(3) The Authorized Agency must obtain any Attorney General's approval of the Contract Amendment, if such approval is required by ORS 291.047, before making any Cost Overrun payment.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070

Stats. Implemented: ORS 279A.050, 279A.065(5), 279A.070, 279A.140

Hist.: DAS 5-2006, f. & cert. ef. 5-31-06; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10

## 125-246-0621

### Anti-Trust Laws

(1) Authorized Agencies must be generally informed about anti-trust laws and their prohibitions, including the prohibition of any Contract or conspiracy in restraint of trade. Violations of anti-trust laws include but are not limited to the attempt of any Person(s) to monopolize or to conspire with any other Person(s) to monopolize any trade of commerce.

(2) Violations of anti-trust laws harm competition and the policies of ORS 279A.015. Also see OAR 125-247-0500, 125-247-0575, 125-249-0370 and 125-249-0390.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070

Stats. Implemented: ORS 646.725 and 646.730

Hist.: DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10

## 125-246-0635

### Authorized Agency and Provider Communications

(1) Research Phase. Authorized Agencies are encouraged to conduct research with Providers who can meet the State's needs. This research includes but is not limited to: meetings, industry presentations, and demonstrations with any Providers that, in the Agency's discretion, may be able to meet an Agency's need. Authorized Agencies must document the items discussed during the research phase of Solicitation development. The research phase ends the day of a Solicitation release or request for a Quote according to an Intermediate Procurement, unless the Solicitation or Intermediate Procurement provides for a different process that permits on-going research.

(2) Solicitation and Contracting Phase. Any communication between an Authorized Agency and Providers regarding a Solicitation, that occurs after the Solicitation release or request for a Quote and before the Award of a Contract, must only be made within the context of the Solicitation Document or Intermediate Procurement requirements (Communication). This Communication may allow for Discussions, Negotiations, Addenda, Providers' questions, and the Agency's answers to Providers' questions about terms and conditions, Specifications, Amendments, or related matters. During this phase, telephone conversations and meetings must be documented in the Procurement File. Written inquiries regarding the Solicitation should be responded to by the Authorized Agency in Writing. A record of all material Communications regarding the Solicitation by interested Providers must be made a part of the Procurement File according to OAR 125-246-0556.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.015, 279A.065(5)(a), 279A.070 & 279A.140

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10

## 125-247-0110

### Feasibility Determination, Cost Analysis and Department Report

(1) The Table of Contents for this Rule is as follows:

Section 2: Generally

Section 3: Feasibility Determination

Section 4: Cost Analysis: Estimation of Agency and Contractor Data

Section 5: Decision: Comparison of Compensation and Other Costs

Section 6: Decision: Comparison of Agency and Contracting Costs

Section 7: Department Evaluation and Report

(2) Generally.

(a) Before conducting a Procurement for Services, an Authorized Agency must, in the absence of a Feasibility Determination under Section (3) of this Rule, conduct a Written Cost Analysis under Sections (4) through (6) of this Rule (Cost Analysis).

(b) Responsibilities for the Conduct of the Cost Analysis.

(A) An Agency with procurement authority must conduct the Cost Analysis for its Agency-specific Procurements;

(B) An Agency without procurement authority must conduct the Cost Analysis for its Agency-specific Procurements to be procured by the State Procurement Office (SPO);

(C) At SPO's request, an Agency must contribute to the Cost Analysis for statewide Price Agreement Procurements; and

(D) SPO must conduct the Cost Analysis for statewide Price Agreement Procurements and SPO-specific Procurements.

(c) This Rule applies to a Procurement for Services that the Authorized Agency estimates will result in one or more Contracts with a value that exceeds \$250,000 for the estimated term of the Contract(s) (Value), including incidental costs related to the Services, and Anticipated Amendments, but not Unanticipated Amendments. Authorized Agencies must not fragment to avoid this threshold (see OAR 125-246-0630).

(d) If a Procurement is conducted in accordance with this Rule, an Award is made, and one or more Unanticipated Amendments then increase the estimated contract's value over \$250,000, a Cost Analysis is not required at that time.

(e) "Services" has the meaning as defined in OAR 125-246-0110, except that for purposes of this Rule only:

(A) "Services" does not include the services of an Architect, Engineer, Land Surveyor or Provider of Related Services as defined in ORS 279C.100; and

(B) "Services" does not include Client Services, defined as of August 4, 2009, in OAR 125-246-0110, as follows:

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(i) "Client" means any individual, family or Provider:

(I) For whom an Agency must provide Services and incidental or specialized Goods, in any combination thereof ("Services and Incidental Supplies"), according to state, federal law, rule, and policy. Those Services and Incidental Supplies include but are not limited to treatment, care, protection, and support without regard to the proximity of the services being provided;

(II) Who in fact receives and utilizes services provided by an Agency primarily for that individual's or family's benefit;

(III) Who is under the custody, care, or both of the Agency; or

(IV) Who provides direct care or Services and is a proxy or representative of the non-Provider Client.

(ii) "Client Services" means any Services that directly or primarily support a Client, whether the Client is the recipient through the provision of voluntary or mandatory Services. Client Services also means any Goods that are incidental or specialized in relation to any Services defined in this Subsection. Client Services may include but are not limited to (where these terms are used in another statute, they must have that meaning):

(I) Housing, including utilities, rent or mortgage or assistance to pay rent, mortgage or utilities;

(II) Sustenance, including clothing;

(III) Employment training or Skills training to improve employability;

(IV) Services for people with disabilities;

(V) Foster care or foster care facilities;

(VI) Residential care or residential care facilities;

(VII) Community housing;

(VIII) In-home care including home delivered meals;

(IX) Medical care, services and treatment, including but not limited to:

(aa) Medical, Dental, Hospital, Psychological, Psychiatric, Therapy,

Vision;

(bb) Alcohol and drug treatment;

(cc) Smoking cessation;

(dd) Drugs, prescriptions and non-prescription;

(ee) Nursing services and facilities;

(ff) Transportation or relocation;

(gg) Quality of life, living skills training; or

(hh) Personal care; or

(ii) Legal services and expert witnesses services;

(jj) Religious practices, traditions and services, separately or in any combination thereof; and

(kk) Educational services. The term "Client Services" does not include benefits or services provided as a condition of employment with an Agency.

(3) Feasibility Determination. An Authorized Agency may proceed with the Procurement of Services without conducting a Cost Analysis if the Authorized Agency makes Written findings that one or more of the Special Circumstances described in Subsection (3)(b) make the Authorized Agency's use of its own personnel and resources to provide the Services not feasible (Feasibility Determination).

(a) Approval of Feasibility Determination.

(A) The Designated Procurement Officer or delegate (DPO) of an Authorized Agency must approve the Feasibility Determination for its Procurement;

(B) The DPO of an Agency without authority must approve the Feasibility Determination for an Agency-specific Procurement to be procured by the State Procurement Office (SPO) on behalf of that Agency;

(C) The Chief Procurement Officer or delegate (CPO) must approve the Feasibility Determination for a statewide Price Agreement Procurement or SPO-specific Procurement. At SPO's request, DPOs must cooperate with SPO to prepare the findings for the Feasibility Determination for a statewide Price Agreement Procurement.

(b) Special Circumstances. Special Circumstances include any circumstances, conditions or occurrences that would make the Services, if performed by the Authorized Agency's employees, incapable of being managed, utilized or dealt with successfully in terms of the quality, timeliness of completion, success in obtaining desired results, or other reasonable needs of the Authorized Agency. Special Circumstances may include, but are not limited to, the following circumstances:

(A) Expertise. The DPO approves a determination that the Authorized Agency lacks the specialized capabilities, experience, or technical or other expertise necessary to perform the Services. In making the finding, the Authorized Agency must compare the Authorized Agency's capability, experience or expertise in the field most closely involved in performing the Services with a potential contractor's capability, experience or expertise in the same or a similar field.

(B) Funding Requirement. The terms under which the Authorized Agency receives a grant or other funds for use in a Procurement require the Authorized Agency to obtain Services through an independent contractor;

(C) Law Requirement. Other state or federal law requires the Authorized Agency to procure Services through an independent contractor;

(D) Real or Personal Property. The Procurement is for Services that are incidental to a contract for purchasing or leasing real or personal property, including service and maintenance agreements for equipment that is leased or rented;

(E) Conflict of Interest; Unbiased Review. The Authorized Agency cannot accomplish policy, administrative or legal goals, including but not limited to avoiding conflicts of interest or ensuring independent or unbiased findings in cases when using the Authorized Agency's existing personnel or persons the Authorized Agency could hire through a regular or ordinary process would not be suitable;

(F) Emergency Procurement. The Procurement is for Services to which the provisions of ORS 279B.080 apply;

(G) Delay. The Procurement is for Services, the need for which is so urgent, temporary or occasional that attempting to perform the Services with the Authorized Agency's own personnel or resources would cause a delay that would frustrate the purpose for obtaining the Services; and

(H) Services Completed within Six Months. The Services that the Authorized Agency intends to procure will be completed within six months after the date on which the contract for the Services is executed.

(c) Procurement File. All written determinations required in this Section (3) must be made a part of the Procurement File in accordance with OAR 125-246-0556.

(4) Cost Analysis: Estimation of Agency and Contractor Data.

(a) Costs of Using Authorized Agency's Own Personnel and Resources. The Authorized Agency must estimate the Authorized Agency's cost of performing the Services and consider cost factors that include:

(A) Salaries or Wages and Benefits. The salary or wage and benefit costs for the employees of the Authorized Agency who would be directly involved in performing the Services, to the extent those costs reflect the proportion of the activity of those employees in the direct provision of the Services. These costs include those salary or wage and benefit costs of the employees who inspect, supervise or monitor the performance of the Services, to the extent those costs reflect the proportion of the activity of those employees in the direct inspection, supervision or monitoring of the performance of the Services.

(B) Material Costs. The material costs necessary to the performance of the Services, including the costs for space, energy, transportation, storage, raw and finished materials, equipment and supplies used or consumed in the provision of the Services.

(C) Related Costs.

(i) Costs incurred in planning for, training for, starting up, implementing, transporting and delivering the Services.

(ii) Any costs related to stopping and dismantling a project or operation because the Authorized Agency intends to procure a limited quantity of Services or to procure the Services within a defined or limited period of time.

(iii) The miscellaneous costs related to performing the Services, including but not limited to reasonably foreseeable fluctuations in the costs for the items identified in this Subsection (4)(a) over the expected duration of the Procurement. These costs exclude the Authorized Agency's indirect overhead costs for existing salaries or wages and benefits for administrators and exclude costs for rent, equipment, utilities and materials, except to the extent the cost items identified in this sentence are attributed solely to performing the Services and would not be incurred unless the Authorized Agency performed the Services.

(D) Other Information. The Authorized Agency's costs described in this Subsection (4)(a)(A) do not constitute an exclusive list of cost information. An Authorized Agency may consider other reliable information that bears on the cost to the Authorized Agency of performing the Services. For example, if the Authorized Agency has accounted for its actual costs of performing the Services under consideration, or reasonably comparable Services, in a relatively recent Services project, the Authorized Agency may consider those actual costs in making its estimate.

(b) Costs a Potential Contractor Would Incur. The Authorized Agency must estimate the cost a potential Contractor would incur in performing the Services and consider cost factors that include:

(A) Salaries or Wages and Benefits. The estimated salary or wage and benefit costs for a potential Contractor and potential Contractor's employees who work in the business or industry most closely involved in performing the Services; and who would be necessary and directly involved in performing the Services or who would inspect, supervise, or monitor the performance of the Services.

(i) The Authorized Agency may, but is not required to, communicate with any actual Contractor for information related to this estimate (see OAR 125-246-0635).

(ii) The Authorized Agency may consider in making this estimate any public source of information, including but not limited to:

(I) Other Contracts of the Authorized Agency or another Agency for reasonably comparable services;

(II) Trade or other marketplace websites;

(III) Industry or professional associations and publications;

(IV) The Oregon Bureau of Labor and Industries or an agency of another jurisdiction that performs comparable functions; and

(V) A survey of Persons who provide reasonably comparable services by means including but not limited to Internet or telephone searches.

(B) Material Costs. The material costs necessary to the performance of the Services, including the costs for space, energy, transportation, storage,

# ADMINISTRATIVE RULES

raw and finished materials, equipment and supplies used or consumed in the provision of the Services.

(C) Related Costs. The miscellaneous costs related to performing the Services. These miscellaneous costs include but are not limited to reasonably foreseeable fluctuations in the costs listed in Subsections (4)(b)(A) through (C) over the expected duration of the Procurement.

(D) Other Information. The potential Contractor's costs described in Subsections (4)(b)(A) through (C) do not constitute an exclusive list of cost information. An Authorized Agency may consider other reliable information that bears on the costs a potential Contractor would incur. For example, if in the recent past, the Authorized Agency conducted a Solicitation that required cost information or permitted negotiation of price based on a cost analysis for Services reasonably comparable to the current Services, the Authorized Agency may use that cost information in estimating the costs of current Services.

(5) Decision: Comparison of Compensation and Other Costs.

(a) The Authorized Agency must compare:

(A) The Authorized Agency's estimated costs under Subsection (4)(a) and

(B) The Contractor's estimated costs under Subsection (4)(b).

(b) Decision. If the Authorized Agency's costs exceed the Contractor's costs under Subsection (5)(a) for the sole reason that the Contractor's costs for salaries or wages and benefits under Subsection (4)(b)(A) are lower than the Authorized Agency's costs for salaries or wages and benefits under Subsection (4)(a)(A), then the Authorized Agency may not conduct the Procurement.

(6) Decision: Comparison of Agency and Contracting Costs.

(a) If Subsection (5)(b) does not apply, the Authorized Agency must compare:

(A) The Authorized Agency's estimated costs under Subsection (4)(a) and

(B) The total estimated costs that the Authorized Agency would incur in procuring the Services from a Contractor (Contracting Costs).

(b) Profit Included. Contracting Costs include the Authorized Agency's estimate of Contractor's profit in addition to the estimate of Contractor's costs under Subsection (4)(b). If the Authorized Agency, in the reasonably near past, received Bids or Proposals for the performance of the Services under consideration, or reasonably comparable services, the Authorized Agency may consider the pricing offered in those Bids or Proposals in making its estimate. Similarly, the Authorized Agency may consider what it actually paid under a Contract for the same or similar services. For the purposes of these examples, the reasonably near past is limited to Contracts, Bids or Proposals entered into or received within the five (5) years preceding the date of the cost estimate. The Authorized Agency must take into account, when considering the pricing offered in previous Bids, Proposals, or Contracts, adjustments to the pricing in light of measures of market price adjustments that apply to the Services, such as the Consumer Price Indexes.

(c) Decision. If the Authorized Agency's Contracting Cost under this Section is lower than the Authorized Agency's cost under Subsection (4)(a), the Authorized Agency may conduct the Procurement. If the Authorized Agency's Contracting Cost is higher than the Authorized Agency's cost under Subsection (4)(a), the Authorized Agency may not conduct the Procurement, unless the Exception of Subsection (6)(d) applies

(d) Exception Based on Lack of Agency Personnel and Resources; Reporting. If the Authorized Agency determines that it would incur less cost in providing the Services with its own personnel and resources, the Authorized Agency may still conduct the Procurement if, at the time the Authorized Agency intends to conduct the Procurement, the Authorized Agency determines that it lacks personnel and resources to perform the Services within the time the Authorized Agency requires the Services (Exception). When an Authorized Agency conducts a Procurement under this Exception, the Authorized Agency must:

(A) Make and keep a Written determination that it lacks personnel and resources to perform the Services within the time the Authorized Agency requires the Services and the basis for the Authorized Agency's decision to conduct the Procurement;

(B) Obtain the Written approval by the DPO of the Authorized Agency of the Exception before conducting an Agency-specific Procurement or the Written approval by the CPO of the Exception before SPO conducts a Procurement.

(C) Provide to the Emergency Board, each calendar quarter, copies of each Cost Analysis, Exception, and any other records described in this Subsection (6)(d);

(D) Prepare a request to the Governor for an appropriation and authority necessary for the Authorized Agency to hire personnel and obtain resources necessary to perform the Services that the Authorized Agency procured under this Subsection (6)(d). The request must include a copy of the records that the Authorized Agency provided to the Emergency Board under Subsection (6)(d)(C).

(7) Department Evaluation and Report.

(a) Application. This Section applies to all public bodies authorized by law to conduct a Procurement, except for the Judicial Department and the Legislative Department (Public Bodies, for this Rule only). Public Bodies

include state and local agencies with contracting authority under ORS 279A.140, 279A.050, and related rules.

(b) Evaluation.

(A) The State Procurement Office, in consultation with other Public Bodies, must evaluate the extent to which Oregon Laws 2009, Chapter 880 and this Rule (Law), aided the Public Bodies in making their determinations as to whether to procure Services or to perform Services with the Public Bodies' own personnel and resources (Determinations).

(B) For the purpose of this Evaluation, Public Bodies must keep and make available to the State Procurement Office, only at its discretion and upon its request, all records and internal evaluations related to whether the Law aided them in making their Determinations.

(c) Report. The State Procurement Office must report the results of the consultation and Evaluation to the Legislative Assembly on January 10, 2011.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070

Stats. Implemented: Oregon Laws 2009, Chapter 880

Hist.: DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10

## 125-247-0200

### Buy Decision and Methods of Source Selection

(1) Buy Decision. The Buy Decision means the decision to buy Supplies and Services through socio-economic programs, agreements, or the open market (Source). The Agencies' authority to select a Source under this Section is outside OAR 125-246-0170. See the specific Statute or Rules for the authority to use each Source.

(2) Priority. Agencies must make their Buy Decision in the priority order set forth in Subsections A through D (Priority). If a higher Priority Source satisfies a Procurement, the Agency must procure through that higher Priority Source and may not elect to procure through a lower Priority Source.

(a) Surplus Property. Procuring from surplus property promotes the efficient use of existing resources (see OAR 125-050-0100 through 125-050-0400).

(b) Qualified Rehabilitation Facilities (QRFs). Assists individuals with disabilities through gainful employment (see ORS 279.835 through 279.855 and OAR 125-055-0005 through 125-055-0045).

(c) Inmate Labor. See the Oregon Constitution, Article I, Section 41.

(d) Statewide DAS Price Agreement. Promotes economy and efficiency through volume and strategic purchases (see OAR 125-247-0296). To determine if a Price Agreement exists go to ORPIN and perform a "Statewide Contract Search" or an "Award Search" for "active" Contracts. Under ORS 279A.140, DAS has the procurement authority to establish and administer statewide Price Agreements, and according to the terms of each Price Agreement, DAS delegates the procurement authority to the Agencies to use these Price Agreements.

(3) ORS 190 Agreement. Section (2) does not apply to ORS 190 Agreements that promote the use of existing state resources, including an Interagency Agreement, Intergovernmental Agreement, Interstate Agreement, International Agreement, or Tribal Agreement (see OAR 125-246-0365). An Agency may elect to use an ORS 190 Agreement at any time.

(4) Open Market. If Sections (2) and (3) do not apply, the Agency may procure Supplies and Services through the open market, using the methods provided under the Public Contracting Code, related Rules, and policies. See ORS 279AB, OAR 125-246 and 247.

(5) Methods of Source Selection. An Authorized Agency must award a Contract for Supplies and Services by one of the following seven sourcing methods in accordance with the Code and related Rules:

(a) Competitive Sealed Bidding according to ORS 279B.055;

(b) Competitive Sealed Proposals according to ORS 279B.060;

(c) Small Procurement according to ORS 279B.065;

(d) Intermediate Procurement according to ORS 279B.070;

(e) Sole-Source Procurement according to ORS 279B.075;

(f) Emergency Procurement according to ORS 279B.080; or

(g) Special Procurement according to ORS 279B.085. A Cooperative Procurement in accordance with OAR 125-246-0400 through 125-246-0470 substantially uses a Competitive Sealed Bidding or Competitive Sealed Proposals method.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279B.050

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10

## 125-247-0255

### Competitive Sealed Bidding

(1) The Table of Contents for this Rule is as follows:

Section 2: Generally

(a) Application

(b) Public Notice

Section 3: Invitation to Bid

(a) General Information

(b) Authorized Agency Need to Purchase

(c) Bidding and Evaluation Process

(d) Applicable Preferences according to ORS 279B.055(6)(b)

(e) Certification if Required

(f) Terms and Conditions

Section 4: Good Cause Finding

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## Section 5: Optional Procedures

### (a) Multistep Invitation to Bid: Phases

#### (b) Revised Rounds of Bidding

## Section 5: Prequalification or Request for Qualifications

### (2) Generally.

(a) Application. An Authorized Agency may procure Supplies and Services by Competitive Sealed Bidding as set forth in ORS 279B.055 and use one or more or any combination of the procedures described in this Rule. An Invitation to Bid is used to initiate a Competitive Sealed Bidding Solicitation and must contain the information required by ORS 279B.055(2) and by this Rule.

(b) Public Notice. The Authorized Agency must provide public notice of the Competitive Sealed Bidding Solicitation as set forth in OAR 125-247-0305.

(3) Invitation to Bid. In addition to the provisions required by ORS 279B.055(2), the Invitation to Bid must include the following:

#### (a) General Information.

(A) Notice of any pre-Offer conference as follows:

(i) The time, date and location of any pre-Offer conference;

(ii) Whether attendance at the conference will be mandatory or voluntary; and

(iii) A provision that provides that statements made by the Authorized Agency's representatives at the conference are not binding upon the Authorized Agency unless confirmed by Written Addendum.

(B) The form and instructions for submission of Bids and any other special information, e.g., whether Bids may be submitted by electronic means (See OAR 125-247-0330 for required provisions of electronic Bids);

(C) The time, date and place of Opening;

(D) The office where the Solicitation Document may be reviewed;

(E) A statement that each Bidder must identify whether the Bidder is a "resident Bidder," as defined in ORS 279A.120(1);

(F) Bidder's certification of nondiscrimination in obtaining required subcontractors in accordance with ORS 279A.110(4). (See OAR 125-246-0210(2));

(G) How the Authorized Agency will notify Bidders of Addenda and how the Authorized Agency will make Addenda available (See OAR 125-247-0430); and

(H) The requirement, if applicable, for the awarded Bidder to obtain or subcontract labor, materials, or labor and materials from a supplier registered as an Emerging Small Business.

(b) Authorized Agency Need to Purchase. The character of the Supplies and Services the Authorized Agency is purchasing including, if applicable, a description of the acquisition, Specifications, delivery or performance schedule, inspection and acceptance requirements. For Services as required by Oregon Laws 2009, Chapter 880, Section 5, the Authorized Agency's description of its need to purchase must:

(A) Identify the scope of the work to be performed under the resulting Contract, if the Authorized Agency awards one;

(B) Outline the anticipated duties of the Contractor under any resulting Contract;

(C) Establish the expectations for the Contractor's performance of any resulting Contract; and

(D) Unless the Authorized Agency for Good Cause specifies otherwise, the scope of work must require the Contractor to meet the highest standards prevalent in the industry or business most closely involved in providing the Supplies or Services that the Authorized Agency is purchasing.

#### (c) Bidding and Evaluation Process.

(A) The anticipated Solicitation schedule, deadlines, protest process, and evaluation process;

(B) The Authorized Agency must set forth objective evaluation criteria in the Solicitation Document; and

(C) If the Authorized Agency intends to award Contracts to more than one Bidder according to OAR 125-247-0600(4)(d), the Authorized Agency must identify in the Solicitation Document the manner in which it will determine the number of Contracts it will Award. This may be left to the Authorized Agency's discretion at the time of the Award, provided it is so described in the Solicitation.

(d) Applicable Preferences according to ORS 279B.055(6)(b).

(A) Preference for Oregon Supplies and Services, according to ORS 279A.120 and OAR 125-246-0300 and 125-246-0310;

(B) Preference for recycled materials, according to ORS 279A.125 and OAR 125-246-0320 through 125-246-0324; and

(C) Performance with the State of public printing, binding and stationery Work, according to ORS 282.210.

(e) Certification if Required. For Authorized Agencies subject to ORS 305.385, Contractor's certification of compliance with the Oregon tax laws in accordance with ORS 305.385.

(f) Terms and Conditions. All contractual terms and conditions in the form of Contract provisions the Authorized Agency determines are applicable to the Procurement. For Services as required by Oregon Laws 2009, Chapter 880, Section 5, the Contract terms and conditions must specify the consequences of the Contractor's failure to perform the scope of work or to

meet the performance standards established by the resulting Contract. Those consequences may include, but are not limited to:

(A) The Authorized Agency's right to reduce or withhold payment under the Contract;

(B) The Authorized Agency's right to require the Contractor to perform, at the Contractor's expense, any additional work necessary to perform the statement of work or to meet the performance standards established by the resulting Contract; and

(C) The Authorized Agency's rights, which the Authorized Agency may assert individually or in combination, to declare a default of the resulting Contract, to terminate the resulting Contract, and to seek damages and other relief available under the resulting Contract or applicable law.

(4) Good Cause Finding. For the purposes of this Rule, "Good Cause" means a reasonable explanation for not requiring Contractor to meet the highest standards, and may include an explanation of circumstances that support a finding that the requirement would unreasonably limit competition or is not in the best interest of the Authorized Agency. The Authorized Agency must document in the Procurement File the basis for the determination of Good Cause to specify otherwise. An Authorized Agency will have Good Cause to specify otherwise under the following circumstances:

(a) The use or purpose to which the Supplies or Services will be used does not justify a requirement that the Contractor meet the highest prevalent standards in performing the Contract;

(b) Imposing express technical, standard, dimensional or mathematical specifications will better ensure that the Supplies or Services will be compatible with or will operate efficiently or effectively with components, equipment, parts, Services or information Technology including hardware, Services or software with which the Supplies or Services will be used, integrated, or coordinated;

(c) The circumstances of the industry or business that provides the Supplies or Services are sufficiently volatile in terms of innovation or evolution of products, performance techniques, scientific developments, that a reliable highest prevalent standard does not exist or has not been developed;

(d) Any other circumstances in which Authorized Agency's interest in achieving economy, efficiency, compatibility or availability in the Procurement of the Supplies or Services reasonably outweighs the Authorized Agency's practical need for the highest prevalent standard in the applicable or closest industry or business that supplies the Supplies or Services to be delivered under the resulting Contract.

(5) Optional Procedures. A step and a round have the same meaning for purposes of putting into practice ORS 279B.055(12). All of the procedures described in ORS 279B.055(12) and this Rule may be collectively referred to in Division 247 as a "Multistep Sealed Bidding."

#### (a) Multistep Invitation to Bid: Phases.

(A) A Multistep Invitation to Bid is a phased procurement process that seeks necessary information or unpriced submittals in Phase One, followed by a Phase Two of competitive sealed bidding, inviting Bidders who submitted eligible Bids in Phase One to submit competitive sealed price Bids on the unpriced submittals in Phase Two. The Authorized Agency initially issues a Multistep Invitation to Bid, requesting the submission of unpriced submittals. This Phase One may include multiple steps, at the discretion of the Authorized Agency, in order to obtain necessary information or unpriced submittals. At the conclusion of Phase One, the Authorized Agency evaluates those unpriced submittals to determine the eligibility of the Bidders to submit priced Bids. After this determination, the Authorized Agency may begin Phase Two by issuing subsequent Invitations to Bid, limited to those Bidders eligible to submit priced Bids. The Contract must be awarded to the lowest Responsible Bidder or to multiple Responsible Bidders in accordance with ORS 279B.055(10).

(B) Public Notice. Whenever an Authorized Agency uses a Multistep Invitation to Bid, the Authorized Agency must give public notice for Phase One in accordance with OAR 125-247-0305. Public notice is not required for subsequent steps in Phase One, unless a step in Phase One expands the number of Bidders, and then public notice is required. Public notice is not required for Phase Two. However, an Authorized Agency must give notice to all Bidders from Phase One (Bidders). If an Authorized Agency elects to provide a protest opportunity for Addenda issued after the Closing of Phase One according to OAR 125-247-0430, then the Authorized Agency must give notice to the Bidders of this right to protest such Addenda. If an Authorized Agency elects to provide an opportunity to protest exclusion from Phase Two according to OAR 125-247-0720, then the Authorized Agency must give notice to the Bidders of this right to protest such exclusion.

(C) General Procedures. In addition to the procedures set forth in OAR 125-247-0300 through 125-247-0490, an Authorized Agency must comply with the following procedures set forth in this Subsection (5)(a):

(i) Solicitation Protest. Before the Closing of Phase One, an Authorized Agency must provide an opportunity to protest the Solicitation under ORS 279B.405 and OAR 125-247-0730.

(ii) Addenda Protest. An Authorized Agency may provide an opportunity to protest any Addenda issued after closing of Phase Two according to OAR 125-247-0430(3)(b).

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(iii) Exclusion Protest. An Authorized Agency may provide an opportunity for a Bidder to protest exclusion from Phase Two as set forth in OAR 125-247-0720.

(iv) Administrative Remedy. Bidders may submit a protest to any Addenda or to any action by the Authorized Agency that has the effect of excluding the Bidder from a Phase Two to the extent such protests are provided for in the Solicitation Document or required by this Section (5). Failure to so protest must be considered the Bidder's failure to pursue an administrative remedy made available to the Bidder by the Authorized Agency.

(v) Award Protest. An Authorized Agency must provide an opportunity to protest its intent to award a Contract according to ORS 279B.410 and OAR 125-247-0740. An Affected Bidder may protest, for any of the bases set forth in OAR 125-247-0720(2), its exclusion from Phase Two or an Addendum issued following Closing of Phase One if the Authorized Agency did not previously provide Bidders the opportunity to protest such exclusion or Addendum.

(D) Procedure for Phase One.

(i) Form. Authorized Agency must initiate a Multistep Invitation to Bid by the issuance of an Invitation to Bid in the form and manner required for Competitive Sealed Bidding, except as hereinafter provided. In addition to the requirements set forth in OAR 125-247-0255(1) and (2), the Invitation to Bid must state:

(I) That unpriced submittals are requested;

(II) Whether price Bids are to be submitted at the same time as unpriced submittals; if they are, that such price Bids must be submitted in a separate sealed envelope;

(III) That the Solicitation is a multistep Invitation to Bid, and priced Bids will be considered only in Phase Two and only from those Bidders whose unpriced submittals are found eligible in Phase One;

(IV) The criteria to be used in the evaluation of unpriced submittals;

(V) That the Authorized Agency, to the extent that it finds necessary, may conduct oral or Written Discussions for the purposes of clarification of the unpriced submittals;

(VI) That the Supplies and Services being procured must be furnished generally in accordance with the Bidder's unpriced submittal as found to be finally eligible and must meet the requirements of the Invitation to Bid; and

(VII) Whether Bidders excluded from Phase Two have a right to protest the exclusion before the notice of intent to award. Such information must be included in the Bid Solicitation or changed by Addenda.

(ii) Addenda to the Invitation to Bid. After receipt of unpriced submittals in Phase One, Addenda to the Invitation to Bid must be distributed only to Bidders who submitted unpriced submittals.

(iii) Receipt and Handling of Unpriced Submittals. Unpriced submittals in Phase One do not need to be opened publicly.

(iv) Evaluation of Unpriced Submittals. Unpriced submittals submitted by Bidders in Phase One must be evaluated solely in accordance with the criteria set forth in the Invitation to Bid. Unpriced submittals must be categorized as:

(I) Eligible;

(II) Potentially eligible; that is, reasonably susceptible of being made eligible; or

(III) Ineligible. The Authorized Agency must record in Writing the basis for determining an unpriced submittal ineligible and make it part of the Procurement File in accordance with OAR 125-246-0355. The Authorized Agency may initiate the Phase Two of the procedure if, in the Authorized Agency's opinion, there are sufficient eligible unpriced submittals to assure effective price competition in Phase Two without Discussions. If the Authorized Agency finds that such is not the case, the Authorized Agency may issue an Addendum to the Invitation to Bid or engage in Discussions as set forth in Subsection (2)(e) of this Rule.

(v) Discussion of Unpriced Submittals. The Authorized Agency may seek clarification of an unpriced submittal by any eligible or potentially eligible Bidder. During the course of such Discussions, the Authorized Agency may not disclose any information derived from one unpriced submittal to any other Bidder. Once Discussions have begun, any Bidder who has not been notified that its unpriced submittal has been found ineligible, may submit supplemental information amending its unpriced submittal, at any time until the Closing of the Phase Two. Such submission may be made at the request of the Authorized Agency or upon the Bidder's own initiative.

(vi) Notice of Ineligible Unpriced Submittal. When the Authorized Agency determines a Bidder's unpriced submittal to be ineligible, such Bidder may not be afforded an additional opportunity to supplement its unpriced submittal.

(vii) Mistakes during a Multistep Invitation to Bid. Mistakes may be corrected or unpriced submittals may be withdrawn during Phase One in accordance with OAR 125-247-0470 and:

(I) Before unpriced submittals are considered;

(II) After any Discussions have commenced under Subsection (5)(e); or

(III) When responding to any Addenda of the Invitation to Bid.

(viii) Revisions to Solicitation Specifications. After the Closing of Phase One, the Authorized Agency may issue Addenda that modify the Specifications, references, and other terms and conditions of the Invitation to Bid. The Authorized Agency must provide such Addenda to all Bidders who

initially submitted Unpriced Submittals. The Authorized Agency may then require Bidders to submit revised Unpriced Submittals.

(E) Procedure for Phase Two of Multistep Sealed Bidding.

(i) Initiation. Upon the completion of Phase One, the Authorized Agency must invite each eligible Bidder to submit a price Bid.

(ii) Conduct. An Authorized Agency must conduct Phase Two as any other Competitive Sealed Bidding Procurement except:

(I) As specifically set forth in this Rule; and

(II) Public notice does not need to be given of this invitation to submit price Bids since such notice was previously given.

(b) Revised Rounds of Bidding.

(A) Revised Rounds of Bidding means a process that begins with an initial round of Competitive Sealed Bidding according to OAR 125-247-0255 and may, at the discretion of the Authorized Agency, include successive rounds of Bidding in order for the Authorized Agency to gain the best Offer for purposes of Award. An Authorized Agency may revise the Solicitation's Specifications, terms and conditions, and pricing structure for successive rounds to best meet the State's needs. Bidders will be allowed adequate time to revise and resubmit their Bids in accordance with the requirements set forth in the newly revised Solicitation Document. At each successive round, Authorized Agency may disregard its scoring of prior Bids and commence new scoring for the new Bids. The Authorized Agency must comply with the following procedures for this type of Solicitation:

(B) Revisions. An Authorized Agency may reject any Bid, after any round, because the Bid did not meet a minimum score or minimum set of requirements. An Authorized Agency may then proceed with a subsequent round that requires additional Bids to be submitted, based on different Specifications, terms and conditions, pricing structure, scoring model, references and set of award criteria, separately or in any combination thereof, in order to best meet the State's interests (Revisions). If any Revision is made by an Authorized Agency in any subsequent round, the Authorized Agency has the right, in its sole discretion, to permit any Bidder whose Bid was previously rejected to submit a new Bid, if the reason(s) for the rejection of the prior Bid by that Bidder no longer applies.

(C) Public Notice. An Authorized Agency must give public notice according to OAR 125-247-0305. The initial Solicitation Document must disclose that a Revised Rounds of Bidding process will or may be used. An Authorized Agency must give notice to all initial Bidders of any Revision(s) in the Specifications, terms and conditions, pricing structure, scoring model, and set of award criteria, separately or in any combination thereof. If an Authorized Agency discloses any prices, terms or conditions offered by other Bidders, the Authorized Agency will give notice of these disclosures to the initial Bidders. At the end of the process, the Authorized Agency must give a Notice of Intent to award at least seven (7) calendar Days before making the Award. Following clarifications and additional investigations, an Offeror may be reinstated or disqualified at any stage of the evaluation process.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279B.055, as amended by OL 2009, Chapter 880, Section 5

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10

## 125-247-0260

### Competitive Sealed Proposals

(1) The Table of Contents for this Rule is as follows:

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(b) Public Notice

Section 3: Request for Proposals

(a) General Information

(b) Authorized Agency Need

(c) Time Date and Place for Prequalification

(d) Contractual Terms and Conditions

(e) Proposal Evaluation and Selection Process

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(a) Competitive Range

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(c) Negotiations

(d) Revised Rounds of Negotiations

(e) Best and Final Offers

(f) Multistep Sealed Proposals: Phases

Section 5: Prequalification or Request for Qualifications

(2) Generally.

(a) Application. An Authorized Agency may procure Supplies and Services by Competitive Sealed Proposals as set forth in ORS 279B.060 and use one or more or any combination of the procedures described in this Rule. A Request for Proposals is a Solicitation Document used to initiate Competitive Sealed Proposals.



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(b) Public Notice. The Authorized Agency must provide public notice of the Request for Proposals as set forth in OAR 125-247-0305.

(3) Request for Proposals. The Request for Proposals must include the following:

(a) General Information.

(A) Notice of any pre-Proposal conference as follows:

(i) The time, date and location of any pre-Proposal conference; and

(ii) Whether attendance at the conference will be mandatory or voluntary; and

(iii) A provision that provides that statements made by the Authorized Agency's representatives at the conference are not binding upon the Authorized Agency unless confirmed by Written Addendum.

(B) The form and instructions for submission of Proposals and any other special information, e.g., whether Proposals may be submitted by electronic means (See OAR 125-247-0330 for required provisions of electronic Proposals), the name and title of the person designated for receipt of Proposals and the person designated by the Authorized Agency as the contact person for the procurement, if different;

(C) The time and date by which sealed Proposals must be received, and a place at which the Proposals must be submitted, and may, in the sole discretion of the Authorized Agency, direct or permit the submission and receipt of Proposals by electronic means (see also (ORS 279B.060(5)(a)));

(D) Proposer's certification of nondiscrimination in obtaining required subcontractors in accordance with ORS 279A.110(4). (See OAR 125-246-0210(2)); and

(E) How the Authorized Agency will notify Proposers of Addenda and how the Authorized Agency will make Addenda available. (See OAR 125-247-0430).

(b) Authorized Agency Need to Purchase. The character of the Supplies and Services the Authorized Agency is purchasing, including if applicable, a description of the procurement process, Specifications, scope of work, delivery or performance schedule, inspection and acceptance requirements. For Services as required by Oregon Laws 2009, Chapter 880, Section 6, the Authorized Agency's description of its need to purchase must:

(A) Identify the scope of the work to be performed under the resulting Contract, if the Authorized Agency awards one;

(B) Outline the anticipated duties of the Contractor under any resulting Contract;

(C) Establish the expectations for the Contractor's performance of any resulting Contract; and

(D) Unless the Contractor under any resulting Contract will provide Architectural, Engineering and Land Surveying Services or Related Services that are subject to ORS 279C.100 to 279C.125, or the Authorized Agency for Good Cause specifies otherwise, the scope of work must require the Contractor to meet the highest standards prevalent in the industry or business most closely involved in providing the Supplies or Services that the Authorized Agency is purchasing.

(c) The time, date and location that responsibility prequalification applications, if any, must be filed and the classes of work, if any, for which Proposers must be prequalified in accordance with ORS 279B.120;

(d) All contractual terms and conditions in the form of Contract provisions the Authorized Agency determines are applicable to the Procurement. For Services as required by Oregon Laws 2009, Chapter 880, Section 6, the Contract terms and conditions must specify the consequences of the Contractor's failure to perform the scope of work or to meet the performance standards established by the resulting Contract. Those consequences may include, but are not limited to:

(A) The Authorized Agency's right to reduce or withhold payment under the Contract;

(B) The Authorized Agency's right to require the Contractor to perform, at the Contractor's expense, any additional work necessary to perform the statement of work or to meet the performance standards established by the resulting Contract; and

(C) The Authorized Agency's rights, which the Authorized Agency may assert individually or in combination, to declare a default of the resulting Contract, to terminate the resulting Contract, and to seek damages and other relief available under the resulting Contract or applicable law.

(e) The Authorized Agency may include the applicable contractual terms and conditions in the form of Contract provisions, or legal concepts to be included in the resulting Contract. Further, the Authorized Agency may specify that it will include or use Proposer's terms and conditions that have been pre-negotiated under OAR 125-247-0550, but the Authorized Agency may only include or use a Proposer's pre-negotiated terms and conditions in the resulting Contract to the extent those terms and conditions do not materially conflict with the applicable Contract terms and conditions. The Authorized Agency must not agree to any Proposer's terms and conditions that were expressly rejected in a solicitation protest under OAR 125-247-0730.

(f) For multiple Award Contracts, the Authorized Agency may enter into Contracts with different terms and conditions with each Contractor to the extent those terms and conditions do not materially conflict with the applicable contractual terms and conditions. The Authorized Agency must not agree

to any Proposer's terms and conditions that were expressly rejected in a solicitation protest under OAR 125-247-0730.

(g) Identification of those contractual terms or conditions, if any, the Authorized Agency reserves for negotiation with Proposers; Authorized Agency may also request that Proposers propose, for negotiation, contractual terms and conditions that relate to subject matter reasonably identified in the Request for Proposals.

(h) Proposal Evaluation and Contractor Selection Process.

(A) The anticipated Solicitation schedule, deadlines, protest process, and evaluation process;

(B) Solicitation, multi-tiered and multi-step protest requirements (Refer to OAR 125-247-0720 and 125-247-0730);

(C) Any optional procedure as described in 125-247-0260(4);

(D) If the Authorized Agency intends to award Contracts to more than one Proposer according to OAR 125-247-0600(4)(d), the Authorized Agency must identify in the Solicitation Document the manner in which it will determine the number of Contracts it will award. This may be left to the Authorized Agency's discretion at the time of the Award, provided it is so described in the Solicitation; and

(E) If the Authorized Agency's solicitation process provides for the possibility of Proposer interviews, the evaluation committee may elect to interview Proposers if the evaluation committee considers it necessary or desirable. If the evaluation committee conducts interviews, it must award weights, points or other classifications indicated in the Request for Proposals for the anticipated interview.

(i) The Authorized Agency must set forth the selection methodology and criteria in the Solicitation Document.

(A) The selection methodology may include, but is not limited to, negotiation with the highest ranked Proposer, competitive negotiations, multiple-tiered competition designed to identify a class of Proposers that fall within a competitive range or to otherwise eliminate from consideration a class of lower ranked Proposers, or any one or more or combination of procedures described in Rule;

(B) Criteria used to evaluate Proposals must include, but is not limited to, the relative importance of price and any other evaluation factors used to rate the Proposals in the first tier of competition, and if more than one tier of competitive evaluation may be used, a description of the process under which the Proposals will be evaluated in the subsequent tiers.

(i) Evaluation criteria need not be precise predictors of actual future costs and performance, but to the extent possible, such factors must be reasonable estimates of actual future costs based on information available to the Authorized Agency;

(ii) If the Authorized Agency intends to award Contracts to more than one Proposer according to OAR 125-247-0600(4)(d), the Authorized Agency must identify in the Solicitation Document the manner in which it will determine the number of Contracts it will award. This may be left to the Authorized Agency's discretion at the time of the Award, provided it is so described in the Solicitation.

(iii) The Authorized Agency may require Proposal security in any form it deems prudent. Proposal security shall serve the same function with respect to Requests for Proposals as bid security serves with respect to Invitations to Bid under ORS 279B.055.

(j) Applicable Preferences.

(A) Preference for Oregon Supplies and Services, according to ORS 279A.120 and OAR 125-246-0300 and 125-246-0310;

(B) Preference for recycled materials, according to ORS 279A.125 and OAR 125-246-0320 through 125-246-0324; and

(C) Performance with the State of public printing, binding and stationery Work, according to ORS 282.210.

(D) Agricultural Preference, according to OAR 125-246-0312.

(E) Disabled Veterans Preference, according to OAR 125-246-0314.

(k) Certification if Requested. For Authorized Agencies subject to ORS 305.385, Contractor's certification of compliance with the Oregon tax laws in accordance with ORS 305.385.

(l) Required Statements or Information. Requests for Proposals must include:

(A) A statement that "Contractors shall use recyclable products to the maximum extent economically feasible in the performance of the contract work set forth in this document." If the Request for Proposals is issued by an Authorized Agency;

(B) A statement that the Authorized Agency may cancel the procurement or reject any or all Proposals in accordance with ORS 279B.100;

(C) A statement that requires the contractor or subcontractor to possess an asbestos abatement license, if required under ORS 468A.710;

(m) Expectations and Standards. Authorized Agencies must comply with ORS 279B.060, as revised by Oregon Laws 2009, Chapter 880.

(n) Terms and Conditions. All contractual terms and conditions applicable to the Procurement, including a provision indicating whether the Contractor can assign the Contract, delegate its duties, or subcontract the delivery of the Supplies and Services without prior Written approval from the Authorized Agency.

(4) Good Cause Finding. For the purposes of this Rule, "Good Cause" means a reasonable explanation for not requiring Contractor to meet the high-

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est standards, and may include an explanation of circumstances that support a finding that the requirement would unreasonably limit competition or is not in the best interest of the Authorized Agency. The Authorized Agency must document in the Procurement File the basis for the determination of Good Cause to specify otherwise. An Authorized Agency will have Good Cause to specify otherwise under the following circumstances:

(a) The use or purpose to which the Supplies or Services will be put does not justify a requirement that the Contractor meet the highest prevalent standards in performing the Contract;

(b) Imposing express technical, standard, dimensional or mathematical specifications will better ensure that the Supplies or Services will be compatible with or will operate efficiently or effectively with, associated information technology hardware, software, components, equipment, parts, or ongoing Services with which the Supplies or Services will be used, integrated, or coordinated;

(c) The circumstances of the industry or business that provides the Supplies or Services are sufficiently volatile in terms of innovation or evolution of products, performance techniques, scientific developments, that a reliable highest prevalent standard does not exist or has not been developed;

(d) Any other circumstances in which Authorized Agency's interest in achieving economy, efficiency, compatibility or availability in the Procurement of the Supplies or Services reasonably outweighs the Authorized Agency's practical need for the highest standard prevalent in the applicable or closest industry or business that supplies the Supplies or Services to be delivered under the resulting Contract.

(5) Optional Procedures. All of the optional procedures described in this Section may be alternatively referred to as "Multistep Sealed Proposals." A "step," "tier" and "round" have the same meaning for purposes of implementing ORS 279B.060. An Authorized Agency may use any one or more or combination of the procedures described below including:

(a) Competitive Range. When an Authorized Agency elects to use a Competitive Range at any stage in the procurement process, the Authorized Agency must comply with the following procedures:

(A) Determining Competitive Range.

(i) The Authorized Agency must establish a Competitive Range after evaluating all Responsive Proposals in accordance with the evaluation criteria set forth in the Request for Proposals. After evaluation of all Proposals in accordance with the criteria set forth in the Request for Proposals, the Authorized Agency must determine and rank the Proposers in the Competitive Range. Notwithstanding the foregoing, an Authorized Agency may establish a Competitive Range of all Proposers to enter into Discussions with Proposers for the purpose of correcting deficiencies in Proposals under this Subsection.

(ii) The Authorized Agency may increase the number of Proposers in the Competitive Range if the Authorized Agency's evaluation of Proposals establishes a natural break in the scores of Proposers indicating a number of Proposers greater than the initial Competitive Range are closely competitive, or have a reasonable chance of being determined the most Advantageous Proposer. The Authorized Agency may decrease the number of Proposers in the initial Competitive Range only if the excluded Proposers have no reasonable chance to be the most Advantageous Proposer.

(B) Notice and Protests. The Authorized Agency may provide Written notice to all Proposers identifying Proposers in the Competitive Range. An Authorized Agency may provide an opportunity for Proposers excluded from the Competitive Range to protest the Authorized Agency's evaluation and determination of the Competitive Range in accordance with OAR 125-247-0720.

(C) Intent to Award; Discuss or Negotiate. After determination of the Competitive Range and after any protest period expires, or after the Authorized Agency has provided a final response to any protest, whichever date is later, the Authorized Agency may either:

(i) Intent to Award. Provide Written notice to all Proposers in the Competitive Range of its intent to award the Contract to the highest-ranked Proposer in the Competitive Range:

(I) An unsuccessful Proposer may protest the Authorized Agency's intent to award in accordance with OAR 125-247-0740 and ORS 279B.410.

(II) After the protest period provided in accordance with OAR 125-247-0740 expires, or after the Authorized Agency has provided a final response to any protest, whichever date is later, the Authorized Agency must commence Negotiations in accordance with this Rule with Proposers in the Competitive Range; or

(ii) Discussions and Revised Proposals. An Authorized Agency may engage in Discussions with Proposers in the Competitive Range and accept revised Proposals, evaluate the revised Proposals, and conduct Negotiations with the Proposers in the Competitive Range.

(b) Discussions and Revised Proposals. If Discussions and revised Proposals are conducted, an Authorized Agency must proceed as follows:

(A) Initiating Discussions. An Authorized Agency may conduct Discussions with Proposers to exchange information, compare views, take counsel, and communicate with another for the purposes of achieving clarification and mutual understanding of a Proposal. If the Authorized Agency initiates any Discussion, the Authorized Agency must provide the opportunity for oral or Written Discussions with all Proposers submitting Responsive

Proposals or all Proposers in the Competitive Range (collectively "eligible Proposers"). The Authorized Agency may conduct Discussions for the following purposes:

(i) Informing eligible Proposers of deficiencies in their initial Proposals;

(ii) Notifying eligible Proposers of parts of their Proposals for which the Authorized Agency would like additional information; or

(iii) Otherwise allowing eligible Proposers to develop revised Proposals that will allow the Authorized Agency to obtain the best Proposal based on the requirements and evaluation criteria set forth in the Request for Proposals.

(B) Conducting Discussions. The Authorized Agency may conduct Discussions with each eligible Proposer necessary to fulfill the purposes of this Section, but need not conduct the same amount of Discussions with each eligible Proposer. The Authorized Agency may terminate Discussions with any eligible Proposer at any time. However, if the Authorized Agency elects to use the best and final Offer procedure, then the Authorized Agency must offer all eligible Proposers the same opportunity to discuss their Proposals with the Authorized Agency before the Authorized Agency notifies eligible Proposers of the date and time that best and final Offers will be due.

(i) In conducting Discussions, the Authorized Agency:

(I) Must treat all eligible Proposers fairly and may not favor any eligible Proposer over another;

(II) Must follow ORS 279B.060(6)(a)(B) and (C) regarding disclosure of other eligible Proposer's Proposals or Discussions;

(III) May adjust the evaluation of a Proposal as a result of a Discussion under this Section. The conditions, terms, or price of the Proposal may be altered or otherwise changed during the course of the Discussions provided the changes are within the Scope of the Request for Proposals.

(ii) At any time during the time allowed for Discussions, the Authorized Agency may:

(I) Continue Discussions with a particular eligible Proposer;

(II) Terminate Discussions with a particular eligible Proposer and continue Discussions with other eligible Proposers; or

(III) Conclude Discussions with all remaining eligible Proposers and provide notice according to this Rule to the eligible Proposers.

(c) Negotiations

(A) Conducting Negotiations. The Authorized Agency may negotiate serially with the highest-ranked eligible Proposer or simultaneously with all eligible Proposers.

(B) Scope. The Authorized Agency may negotiate:

(i) The statement of work;

(ii) The Contract Price as it is affected by negotiating the statement of work; and

(iii) Any other terms and conditions reasonably related to those expressly authorized for Negotiation in the Request for Proposals or Addenda thereto. Accordingly, the Proposers must not submit, and the Authorized Agency must not accept, for Negotiation any alternative terms and conditions that are not reasonably related to those expressly authorized for Negotiation in the Request for Proposals or Addenda thereto.

(C) Terminating Negotiations. At any time during Discussions or Negotiations that the Authorized Agency conducts in accordance with this Rule, the Authorized Agency may terminate Discussions or Negotiations with the highest-ranked Proposer, or the Proposer with whom it is currently discussing or negotiating, if the Authorized Agency reasonably believes that:

(i) The eligible Proposer is not discussing or negotiating in good faith; or

(ii) Further Discussions or Negotiations with the eligible Proposer will not result in the parties agreeing to the terms and conditions of a final Contract in a timely manner.

(D) Continuing Serial Negotiations. If the Authorized Agency is conducting serial Negotiations and the Authorized Agency terminates Negotiations with an eligible Proposer in accordance with this Rule, the Authorized Agency may then commence Negotiations with the next highest scoring eligible Proposer, and continue the process described in this Rule until the Authorized Agency has determined either:

(i) To award the Contract to the eligible Proposer with whom it is currently discussing or negotiating; or

(ii) Has completed one step of Discussions or Negotiations with all eligible Proposers, (or with all Proposers in the Competitive Range, if a Competitive Range is established) unless the Authorized Agency provided for more than one round of Discussions or Negotiations in the Request for Proposals.

(E) Competitive Simultaneous Negotiations. If the Authorized Agency chooses to conduct competitive Negotiations, the Authorized Agency may negotiate simultaneously with competing eligible Proposers. The Authorized Agency:

(i) Must treat all eligible Proposers fairly and must not favor any Proposer over another;

(ii) May only disclose other eligible Proposer's Proposals or the substance of Negotiations with other eligible Proposers if the Authorized Agency notifies all of the eligible Proposers with whom the Authorized Agency will engage in Negotiations before engaging in Negotiations with any eligible Proposer; and

## ADMINISTRATIVE RULES

(iii) Any oral modification of a Proposal resulting from Negotiations under this Section must be reduced to Writing.

(d) Revised Rounds of Negotiations. This procedure begins with the standard Solicitation procedures for a Request for Proposals and may include successive rounds of Proposals achieved through Negotiations to gain the best Proposal for purposes of Award. These Negotiations may concern the price, Specifications, and final terms and conditions, separately or in any combination thereof. The Authorized Agency must treat all Proposers fairly. Before the start of each round of Negotiations, the Authorized Agency must disclose the parameters of that round of Negotiations. At that time, the Authorized Agency may revise the Solicitation's Specifications, terms and conditions, evaluation criteria and weight, and pricing structure in order to best meet the State's interests (Revisions). At each successive round, the Authorized Agency may disregard its scoring of prior Proposals and commence new scoring for the new Proposals. The Authorized Agency may eliminate any Proposal after a round because the Proposal did not meet a minimum score, or the Proposal was not susceptible to award, and then proceed with a subsequent round that requires additional Proposals based on the Revision(s). If any Revision is made by the Authorized Agency in any subsequent round, the Authorized Agency reserves the right, in its sole discretion, to permit any Proposer whose Proposal was previously eliminated to submit a new Proposal, if the reason(s) for the elimination of the prior Proposal by that Proposer no longer applies. For each Solicitation, on a case-by-case basis, the Authorized Agency may determine whether prequalification of suppliers is needed. If prequalification is used, the Authorized Agency must prequalify suppliers and provide an appeal process in accordance with ORS 279B.120 and related rules.

(e) Best and Final Offers. The procedure for best and final Offers requires an Authorized Agency to establish a common date and time by which eligible Proposers must submit best and final Offers. Best and final Offers must be submitted only once; provided, however, the Authorized Agency may make a Written determination that it is in the Authorized Agency's best interest to conduct additional Discussions and Negotiations or change the Authorized Agency's requirements and require another submission of best and final Offers. Otherwise, no Discussion of or changes in the best and final Offers may be allowed before award. All eligible Proposers must also be informed if they do not submit notice of withdrawal or another best and final Offers, their immediately previous Proposal will be construed as their best and final Offer. The Authorized Agency must evaluate Proposals as modified by the best and final Offers. The Authorized Agency must conduct evaluations conducted as described in OAR 125-247-0600. The Authorized Agency may not modify evaluation factors or their relative importance after the date and time that best and final Offers are due.

(f) Multistep Sealed Proposals: Phases.

(A) Process. The Multistep Sealed Proposals process is a phased procurement process that seeks necessary information or unpriced submittals in Phase One and invites Proposers who submitted qualified unpriced submittals in Phase One to submit competitive sealed price Proposals in Phase Two. The Contract must be awarded to the Responsible Proposer, or in the case of multiple awards, the Responsible Proposers according to ORS 279B.060(10), submitting the most Advantageous Proposal in accordance with the terms of the Solicitation Document applicable to Phase Two. A "Phase" may include one or more "steps"

(B) Public Notice. Whenever an Authorized Agency uses Multistep Proposals, the Authorized Agency must give Public Notice in accordance with OAR 125-247-0305. Public Notice is not required for Phase Two. However, an Authorized Agency must give notice to all Proposers from Phase One (Proposers). If an Authorized Agency elects to provide a protest opportunity for Addenda issued after the Closing of Phase One according to OAR 125-247-0430, then the Authorized Agency must give notice to the Proposers of this right to protest such Addenda. If an Authorized Agency elects to provide an opportunity to protest exclusion from Phase Two according to OAR 125-247-0720, then the Authorized Agency must give notice to the Proposers of this right to protest such exclusion.

(C) Procedures Generally. In addition to the procedures set forth in OAR 125-247-0300 through 125-247-0490, an Authorized Agency must employ the following procedures set forth in this Section for Multistep Sealed Proposals:

(i) Solicitation Protest. Before the Closing of Phase One, an Authorized Agency must provide an opportunity to protest the Solicitation under ORS 279B.405 and OAR 125-247-0730.

(ii) Addenda Protest. An Authorized Agency may provide an opportunity to protest any Addenda issued after closing of Phase Two according to OAR 125-247-0430(3)(b).

(iii) Exclusion Protest. An Authorized Agency may provide an opportunity for a Proposer to protest exclusion from Phase Two as set forth in OAR 125-247-0720.

(iv) Administrative Remedy. Proposers may submit a protest to any Addenda or to any action by the Authorized Agency that has the effect of excluding the Proposer from a Phase Two to the extent such protests are provided for in the Solicitation Document or required by this Section. Failure to so protest must be considered the Proposer's failure to pursue an administrative remedy made available to the Proposer by the Authorized Agency.

(v) Award Protest. An Authorized Agency must provide an opportunity to protest its intent to award a Contract according to ORS 279B.410 and OAR 125-247-0740. An Affected Proposer may protest, for any of the bases set forth in OAR 125-247-0720(2), its exclusion from Phase Two or an Addendum issued following Closing of Phase One if the Authorized Agency did not previously provide Bidders the opportunity to protest such exclusion or Addendum.

(D) Procedure for Phase One.

(i) The Form of the Request for Proposals. Multistep Proposals must be initiated by the issuance of a Request for Proposal in the form and manner required for Competitive Sealed Proposals in accordance with OAR 125-247-0260, except as provided in this Rule. In addition to the requirements set forth in OAR 125-247-0260(2), this Request for Proposal must state:

(I) That unpriced submittals are requested;

(II) That the Solicitation is a unpriced submittal Procurement, and priced Proposals will be considered only in Phase Two and only from those Proposers whose unpriced submittals are found acceptable in Phase One;

(III) The criteria to be used in the evaluation of unpriced submittals;

(IV) That the Authorized Agency, to the extent that it finds necessary, may conduct oral or Written Discussions for the purposes of clarification of the unpriced submittals;

(V) That the Supplies and Services being procured must be furnished generally in accordance with the Proposer's unpriced submittals as found to be finally qualified and must meet the requirements of the Request for Proposals;

(VI) Whether Proposers excluded from subsequent steps or Phase Two have a right to protest the exclusion. Such information must be given in the Solicitation or changed by Addenda; and

(VII) If time is a factor, the Authorized Agency may require Proposers to submit a separate sealed price Proposal during Phase One to be opened after the evaluation of unpriced submittals.

(ii) Addenda to the Request for Proposal. After receipt of unpriced submittals in Phase One, Addenda to the Request for Proposal must be distributed only to those Proposers who submitted unpriced submittals.

(iii) Receipt and Handling of Unpriced Proposals. The Authorized Agency is not required to publicly open unpriced submittals.

(iv) Evaluation of Unpriced Proposals. The unpriced submittals submitted by Proposers must be evaluated solely in accordance with the criteria set forth in the Request for Proposals. The unpriced submittals must be categorized as:

(I) Qualified;

(II) Potentially qualified; that is, reasonably susceptible of being made qualified; or

(III) Unqualified. The Authorized Agency must record in Writing the basis for determining a Proposal unqualified and make it part of the Procurement File in accordance with OAR 125-246-0355. The Authorized Agency may initiate Phase Two of the procedure if, in the Authorized Agency's opinion, there are sufficient qualified unpriced submittals to assure effective price competition in Phase Two without Discussions. If the Authorized Agency finds that such is not the case, the Authorized Agency may issue an Addendum to the Request for Proposals or engage in Discussions as set forth in this Rule.

(v) Discussion of Unpriced Submittals. The Authorized Agency may seek clarification of any Proposal of any Proposer who submits a qualified, or potentially qualified unpriced submittal. During the course of such Discussions, the Authorized Agency may not disclose any information derived from one unpriced submittal to any other Proposer. Once Discussions begin, any Proposer may submit supplemental information amending the unpriced submittal at any time until the Closing of Phase Two set by the Authorized Agency. A submission may be in response to a request of the Authorized Agency or be initiated by the Proposer.

(vi) Notice of Unqualified Unpriced Submittals. When the Authorized Agency determines a Proposer's unpriced submittal to be unqualified, such Proposer must not be afforded an additional opportunity to supplement its unpriced submittal.

(vii) Mistakes during Multistep Sealed Proposals. Mistakes may be corrected or Proposals may be withdrawn during Phase One:

(I) Before unpriced submittals are considered;

(II) After any Discussions have commenced under this Rule;

(III) When responding to any Addenda of the Request for Proposals; or

(IV) In accordance with OAR 125-247-0470.

(E) Procedure for Phase Two.

(i) Initiation. Upon the completion of Phase One, the Authorized Agency must invite each qualified Proposer to submit price Proposals.

(ii) Conduct. An Authorized Agency must conduct Phase Two as any other Competitive Sealed Proposal according to OAR 125-247-0260, except:

(I) As specifically set forth in this Rule; and

(II) No public notice need be given of the request to submit price Proposals because such notice was previously given.

(6) Prequalification or Request for Qualifications. In addition, an Authorized Agency may also prequalify prospective Offerors or use a Request for Qualifications in accordance with OAR 125-247-0550 and before any of the procedures described in this Rule.

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Stat. Auth.: ORS 279A.065(5)(a) & 279A.070  
Stats. Implemented: ORS 279B.070  
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10

## 125-247-0270

### Intermediate Procurements

(1) Generally. For Procurements of Supplies and Services greater than \$5,000 and less than or equal to \$150,000, an Authorized Agency may award a Contract as an Intermediate Procurement according to ORS 279B.070. Authorized Agencies must procure Intermediate Procurements for Supplies and Services in accordance with ORS 279A and 279B.070.

(a) Informal Solicitation. When conducting an Intermediate Procurement, an Authorized Agency must seek at least three informally solicited competitive price Quotes, Bids or Proposals from prospective Offerors. An Intermediate Procurement may be called an informal request for quotes, informal invitation to bid, or informal request for proposals.

(b) Written Record. The Authorized Agency must keep a written record of the sources of the Quotes, Bids or Proposals received. If three Quotes, Bids or Proposals are not reasonably available, fewer will suffice, but the Authorized Agency must make a written record of the effort made to obtain the Quotes, Bids or Proposals.

(c) Award. If a Contract is awarded, the Authorized Agency must award the Contract to the Offeror whose Quote, Bid or Proposal will best serve the interests of the Authorized Agency, taking into account price as well as considerations including, but not limited to, experience, expertise, product functionality, suitability for a particular purpose and Contractor responsibility under ORS 279B.110.

(2) Written Solicitation. Authorized Agencies are not required to use a Written Solicitation, unless an Agency's Designated Procurement Officer requires a Written Solicitation, and then the requirements of this Section (2) apply. The Written Solicitation must include fair, efficient, competitive Award evaluation criteria. This Written Solicitation may allow revisions to the Solicitation and opportunity for protests, at the discretion of the Agency. The process, potential revisions to the Solicitation, if any, and opportunity for protests, if any, must be disclosed in the Solicitation. Authorized Agencies must document:

(a) The Agency's methodology under this Subsection (2),

(b) The Agency's compliance with legal sufficiency review requirements of the Attorney General under ORS 291.047; and

(c) Communications between the Agency and Providers regarding:

(A) The subject matter of OAR 125-246-0635 and ORS 279B.210;

(B) Offers;

(C) The Award; and

(D) Protests, if a protest opportunity is provided by the Agency, at its discretion.

(3) Borderline Procurements. If an Authorized Agency's Designated Procurement Officer or delegatee (DPO) in good faith estimated that the Procurement would be equal to or less than \$150,000, and learned thereafter that all of the Quotes, Bids, or Proposals were minimally exceeding \$150,000, this Procurement is deemed to have complied with Section (2) of this Rule upon the following conditions:

(a) The DPO must document in the Procurement File the basis for the original estimate under \$150,000 and the process used; and

(b) The Agency must still comply with the remainder of this Rule.

(4) Inclusion of Minority, Women and Emerging Small Businesses (MWESBs). The Solicitations of Agencies must be inclusive, in accordance with Department policy and ORS 200.035.

(5) Notices and ORPIN.

(a) The Agency must post on ORPIN a notice of its verbal or Written Solicitation of at least three Quotes, Bids, or Proposals. In addition, the Agency may informally solicit Quotes, Bids, or Proposals by any other appropriate means (collectively, Notice).

(b) The Notice must provide:

(A) A general description of the Supplies and Services to be acquired; and

(B) A reasonable and sufficient interval between the first date of the Notice and the Closing. A reasonable and sufficient interval provides enough time during the work week for new Providers to obtain information and assistance to compete with any incumbent, established, or highly-resourced competitor in that Procurement (Objectives). Agencies may adjust the interval to account for the type of Procurement and needs of the Agencies, so long as the Objectives are not undermined. See Department policy;

(C) For Intermediate Procurements exceeding \$100,000, the Time Period must be a reasonable interval of at least seven (7) calendar Days;

(D) The name, title and address of the individual authorized by the Agency to receive Offers; and

(E) Any other information the Agency deems to be appropriate.

(c) OAR 125-247-0305 (Public Notice of Solicitation Documents) does not apply to Intermediate Procurements.

(6) Negotiations. An Authorized Agency may negotiate with a Proposer to clarify its Quote, Bid, or Proposal or to effect modifications that will make the Quote, Bid, or Proposal acceptable or make the Quote, Bid, or Proposal more Advantageous to the Authorized Agency.

(7) No Fragmentation. A Procurement may not be artificially divided or fragmented so as to constitute an Intermediate Procurement, according to ORS 279B.070(2).

(8) ORPIN. Agencies must post all Awards over \$5,000 on ORPIN.

(9) Amendments. An Authorized Agency may amend a Contract awarded as an Intermediate Procurement in accordance with OAR 125-246-0560.

(10) Legal Sufficiency Review. The Authorized Agency must comply with legal sufficiency review requirements of the Attorney General under ORS 291.047.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279B.070

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 9-2005, f. & cert. ef. 8-3-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10

## 125-247-0275

### Sole-Source Procurements

(1) Generally. An Authorized Agency with delegated authority according to OAR 125-246-0170 may award a Contract without a competitive process through a Sole-Source Procurement according to the requirements of ORS 279B.075, this Rule, and the policy of the Department. The Authorized Agency must make a determination of a sole source based upon Written findings of fact that the Supplies and Services are available from only one source.

(2) Findings of Fact. Findings of fact required under OAR 125-247-0275(1) may include:

(a) Compatibility. The efficient utilization of existing Supplies and Services requires the acquisition of compatible Supplies and Services from only one source. For example, compatibility may be implicated when: Supplies are required to directly interface with or attach to equipment of the same manufacturer and no other manufacturer's Supplies will correctly interface with existing equipment; or when Services such as maintenance, warranty, project management, or systems integration are required to interface or integrate with existing Supplies and Services.

(b) Exchange of Software or Data. Specific Supplies and Services, which are available from only one source, may be required for the exchange of software or data with other public or private agencies. This finding may be particularly applicable when the Supplies and Services involve assets such as copyrights, patents, trademarks, and trade secrets.

(c) Pilot or Experimental Project. Supplies and Services are for the use in such projects, which may include but are not limited to research and economic development projects.

(d) Other findings that support the conclusion that Supplies and Services are available from only one source may include but are not limited to considerations of: unique design, availability, geographic location, exclusive authorized representative, cost of conversion, and warranty services.

(3) Market Research. ORS 279B.075 requires that the Authorized Agency "determines in writing" that the goods or services are "available from only one source." This means that the Authorized Agency must conduct and document its market research before public notice described in Section (4) or (5).

(4) Contracts up to \$150,000. For all Contracts awarded through Sole-Source Procurements over \$5,000 and not exceeding \$150,000:

(a) The Authorized Agency must place a public notice on ORPIN of its determination that the Supplies and Services or class of Supplies and Services are available from only one source.

(b) The public notice must describe the Supplies and Services to be acquired through a Sole-Source Procurement and identify the prospective Contractor and include the date, time and place that protests are due.

(c) The Authorized Agency must give Affected Persons at least seven calendar (7) Days from the date of the public notice of the determination that the Supplies or Services are available from only one source to protest the determination under OAR 125-247-0710. If the State Procurement Office is conducting the Sole-Source Procurement, then the State Procurement Office is the Authorized Agency for purposes of this Rule.

(d) The Authorized Agency must obtain the Written approval of that Agency's Designated Procurement Officer or delegatee before the Authorized Agency places a public notice on ORPIN in accordance with this Section.

(5) Contracts over \$150,000. For all Contracts exceeding \$150,000:

(a) The Authorized Agency must place a public notice on ORPIN in accordance with Subsections (4)(a)-(c); and if the State Procurement Office is conducting the Sole-Source Procurement, then the State Procurement Office is the Authorized Agency for purposes of this Rule; and

(b) The Authorized Agency must obtain the Written approval of the Chief Procurement Officer or delegatee before the Authorized Agency places a public notice on ORPIN in accordance with this Section.

(6) Negotiation. According to ORS 279B.075 and to the extent reasonably practical, the Authorized Agency must negotiate with the sole source to obtain contract terms advantageous to the Authorized Agency.

(7) Protest. An Affected Person may protest the Authorized Agency's determination that the Supplies and Services or class of Supplies and Services are available from only one source in accordance with OAR 125-247-0710.

(8) Brand Name Requirements. If the findings of fact required under this Rule include a specification of a Brand Name, that specification must be in accordance with ORS 279B.215 and OAR 125-247-0691.

# ADMINISTRATIVE RULES

(9) Legal Sufficiency Review. When legal sufficiency review by the Attorney General is required under ORS 291.047, the Authorized Agency must seek this approval.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070  
Stats. Implemented: ORS 279B.075  
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10

## 125-247-0280

### Emergency Procurements

(1) An Authorized Agency may award a Contract as an Emergency Procurement under ORS 279B.080. An Authorized Agency has delegated authority to enter into an Emergency Contract according to OAR 125-246-0170.

(2) An Authorized Agency may, in its discretion, enter into a Contract without competitive Solicitation if an Emergency exists. Emergency means circumstances that could not have been reasonably foreseen that create a substantial risk of loss, damage, interruption of services or threat to public health or safety that requires prompt execution of a Contract to remedy the condition.

(3) Regardless of the dollar value of the Contract, the Authorized Agency entering into an Emergency Contract must encourage competition that is reasonable and appropriate under the Emergency circumstances. However, for the emergency procurement of construction services that are not Public Improvements, see ORS 279B.080(2).

(4) Regardless of the dollar value of the Contract, the Authorized Agency entering into an Emergency Contract must, either before or promptly after entering into an Emergency Contract, make and retain in its Procurement File documentation of the nature of the Emergency that includes:

(a) A brief description of the Supplies and Services to be provided under the Contract, together with its cost or anticipated cost;

(b) A brief explanation of how the Contract, in terms of duration or Supplies and Services provided under it, was restricted to the Scope reasonably necessary to adequately deal only with the risk created or anticipated to be created by the Emergency circumstances;

(c) A description of the emergency circumstances that require the prompt performance of the Contract, stating the anticipated harm from failure to establish the Contract on an expedited basis; and

(d) Documentation of the measures taken under Section (3) to encourage competition; the amounts of the Bids, Quotes or Proposals obtained, if any; and the reason for selecting the Contractor.

(5) The head of the Authorized Agency, or a person designated under ORS 279A.075, must authorize the conduct of the emergency procurement, and must review and approve the documentation required by Section (4) of this Rule.

(6) Any Contract awarded under this Rule must be awarded no later than sixty (60) days following the approval of the documentation of the emergency unless the head of the Authorized Agency or Person designated has granted an extension.

(7) Agencies must also comply with OAR 137-045-0070, Emergency Public Contract Exemption, if applicable. The Authorized Agency must maintain a copy of any required report in the Authorized Agency's Emergency Procurement File.

(8) For an Emergency Procurement of construction services that are not Public Improvements, the Authorized Agency must insure competition for a contract for the emergency work that is reasonable and appropriate under the emergency circumstances. In conducting the Procurement, the Authorized Agency must set a solicitation time period that the Authorized Agency determines to be reasonable under the emergency circumstances and may issue Written or oral requests for Offers or make direct appointments without competition in cases of extreme necessity.

(9) 2009 "Go Oregon!" Economic Stimulus Package.

(a) Program. The 2009 "Go Oregon!" Economic Stimulus Package, Enrolled Senate Bill 338, House Bill 5562 and related legislative measures (Program), provides funding and direction to identified Authorized Agencies for deferred maintenance, capital construction, capital renewal, code compliance, safety, renovation, and other construction projects (Projects). The Program's objective is to stimulate Oregon's economy through job growth by providing opportunities to local businesses and certified minority, women and emerging small businesses. The Director of the Department has made a determination of emergency circumstances and documented the nature of the Emergency under the Program (Emergency Determination). Most of the Projects are not Public Improvements as defined in OAR 125-246-0110(127). ORS 279C.320 provides that ORS 279B.080 regulates these Projects.

(b) Application. Sections (2) through (6) of this Rule do not apply to Procurements and Contracts under the Program.

(c) Emergency Documentation. The Emergency Determination documents the nature of the Emergency on behalf of the Authorized Agencies to satisfy the requirement of ORS 279B.080. No further documentation that an Emergency exists is required of the Authorized Agencies.

(d) Authorization. The Designated Procurement Officer, or designee, of the Authorized Agency must authorize Procurements under the Program and

may determine whether to excuse the requirement of furnishing a good and sufficient performance bond or payment bond.

(e) Procurement Processes. The Authorized Agencies may conduct expedited Emergency Procurement processes, including but not limited to: informal or formal requests for quotes, invitations to bid, and requests for proposals; special procurements; and direct awards. Any of these processes may be utilized regardless of project value.

(f) Project Documentation. The Authorized Agency must retain in its Procurement File(s) the following documentation of its Emergency Procurements and Contracts under the Program:

(A) Copies of all data requested by the Department;

(B) A brief description of the Project;

(C) A description of how the particular contractor was selected and the measures taken to encourage competition, if reasonable and appropriate under the emergency circumstances.

(D) A statement by the Designated Procurement Officer, or designee, excusing performance and payment bonds for the Project in accordance with ORS 279C.380(4), if applicable.

(g) Timing. The documentation described in Section (9)(f) may occur a reasonable time after the award of the Contract. No documentation is required before the award of the Contract.

(10) Other State Economic Stimulus Programs.

(a) Application. For any other state economic stimulus program that is administered by the Department or an Authorized Agency (State Program), Sections (9)(d) through (g) replace Sections (2) through (6) of this Rule and apply to the State Program on the following condition: the Department or Authorized Agency determines that the State Program is in response to adverse economic circumstances.

(b) Emergency Determination and Documentation. The Director of the Department may make an emergency determination and document the nature of the Emergency on behalf of Authorized Agencies. Regardless of any determination by the Director of the Department, an Authorized Agency may make an emergency determination and document the nature of the Emergency on that Agency's behalf and in accordance with ORS 279B.080.

(11) Federal Economic Stimulus Programs.

(a) Application. For any federal economic stimulus program that is administered by the Department or an Authorized Agency (Federal Program), Sections (9)(d) through (g) replace Sections (2) through (6) of this Rule and apply to the Federal Program upon the following condition: the Department determines that the Federal Program is in response to adverse economic circumstances.

(b) Emergency Determination and Documentation. The Director of the Department may make an emergency determination and document the nature of the Emergency on behalf of Authorized Agencies. Regardless of any determination by the Director of the Department, an Authorized Agency may make an emergency determination and document the nature of the Emergency on that Agency's behalf and in accordance with ORS 279B.080.

(12) Amendment. An Emergency Procurement may be amended in accordance with OAR 125-246-0560.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279B.080 & 279C.320

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 5-2009(Temp), f. & cert. ef. 2-13-09 thru 8-12-09; DAS 9-2009, f. & cert. ef. 8-11-09; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10

## 125-247-0287

### Special Procurements; Request Procedures

(1) Approval. An Authorized Agency may request approval of its new or amended Special Procurement from the Chief Procurement Officer. The request must describe one or more particular Contracts or class of Contracts and use the designated ORPIN form. A request for a Special Procurement concerns the procurement process only, and the authority to use the Special Procurement is determined under OAR 125-246-0170.

(2) Requests. Special Procurement Requests must contain the following:

(a) Request must include reason(s) why Agency has elected to use Special Procurement and how it will benefit the Agency or the public.

(b) The Request must include findings, market research, or other documentation that the Special Procurement:

(A) Is unlikely to encourage favoritism in the awarding of Public Contracts or to substantially diminish competition for Public Contracts, and

(B) Either:

(i) Is reasonably expected to result in substantial cost savings to the Agency or to the public; or

(ii) Otherwise substantially promotes the public interest in a manner that could not practicably be realized by complying with requirements that are applicable under ORS 279B.055, 279B.060, 279B.065 or 279B.070 or under any related Rules.

(c) The alternative process designed by the Agency must be clear and complete, including a description of the Supplies and Services that are the subject of the Special Procurement, provisions for advertisement, a procurement process, including provisions for Amendment and criteria for selection, and the proposed contract document.

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(d) The State Procurement Office may require any additional information deemed necessary to evaluate the Agency's request for approval of a Special Procurement.

(3) Effect. The Special Procurement approval is effective only after the Chief Procurement Officer's approval of the findings and Request and completion of the Public Notice required under Section (4) of this Rule.

(4) Public Notice. The Public Notice process and requirements are as follows:

(a) General. The requesting Authorized Agency must give public notice of the approval of its Special Procurement as required under ORS 279B.085(4) and in accordance with this Rule, unless otherwise directed by the Chief Procurement Officer (Public Notice). As a Written condition to approval of the Special Procurement, the Chief Procurement Officer may require that the State Procurement Office instead of the requesting Agency give the Public Notice.

(b) Content. The Public Notice must at least describe the Supplies and Services or class of Supplies and Services to be acquired through the Special Procurement.

(c) Time Periods.

(A) If the Special Procurement involves one or more Solicitations, then Public Notice of the approval of the proposed Special Procurement must be given at least seven (7) calendar Days before the Award. The Solicitation Document must either contain the attached request and approval of the Special Procurement or incorporate the request and approval by reference with the documents easily accessible to Affected Persons; or

(B) If the Special Procurement does not involve a Solicitation, then Public Notice of the approval of the Special Procurement must be given at least seven (7) Days before the commencement of the Special Procurement.

(d) An Agency may request certain information to be withheld from the public notice requirement of this Rule in cases where confidentiality or security may be jeopardized only according to an exception under the Public Records Law (ORS 192.410–192.505).

(5) Protest. An Affected Person may protest the approval of a Special Procurement in accordance with ORS 279B.400 and OAR 125-247-0700.

(6) Reference. Any Solicitation or Contract resulting from a Special Procurement approval must contain a reference to the number of the approved Special Procurement.

(7) Conditions. If the Chief Procurement Officer provides Written approval of the proposed Special Procurement (Approval), the Authorized Agency must award any Contract under the Special Procurement in accordance with the conditions of this Approval and any subsequent amendments to the Approval. The Approval may include conditions, including but not limited to expiration, Public Notice and dollar limitations, and may be revoked at any time by the Chief Procurement Officer.

(8) If an Authorized Agency competitively solicits, it must comply with the process described in the Special Procurement or the Rules for that method of Solicitation according to ORS 279B.055 through 279B.075 and 279A.200 et seq.

(9) Nothing in this Rule exempts the Agency from obtaining the approval of the Attorney General for legal sufficiency according to ORS 291.047.

(10) All Agencies must comply with ORS 200.035 and related Department policy, despite this Rule.

(11) If an Authorized Agency intends to award a Contract through a Special Procurement that calls for competition among prospective contractors, the Authorized Agency must award the Contract to the Offeror the Authorized Agency determines to be the most advantageous to the Authorized Agency.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279B.085

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 9-2005, f. & cert. ef. 8-3-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10

## 125-247-0288

### Special Procurements; by Rule

(1) Client Placement and Client Health Care Services.

(a) Authorization and Application. An Authorized Agency with delegated authority under OAR 125-246-0170 may use this Special Procurement by Rule to enter into Written agreements for Client Placement and Client Health Care services, as described in this Rule. When an Authorized Agency determines that a need exists to secure or maintain Client Placement Services or to secure Client Health Care Services, the Authorized Agency may contract subject to the following definitions and conditions of this Section (1).

(A) "Client Placement Services" means securing, enhancing, or continuing the placement of a Client in a structured family-like setting or residential setting operated by a qualified Provider.

(B) "Client Health Care Services" means health care services or provision of incidental or specialized supplies related to the health of a Client. Client Health Care Services include but are not limited to: preventive, diagnostic, therapeutic, behavioral, rehabilitative, maintenance, or palliative care and counseling services, assessment, or procedure with respect to the physical or mental condition, or functional status of a Client, or that affect the

structure or function of the body; and the sale or dispensing of a drug, device, equipment, or other item in accordance with a prescription.

(C) Services that may prevent a placement or placement disruption but that cannot definitively be classified as Client Placement Services by the Authorized Agency are deemed to be Client Placement Services and are subject to the Special Procurement approved under this Rule. This Special Procurement for Client Placement Services may include training only if it is provided directly to the Client, excluding Providers.

(b) Authorized Agencies must execute a Contract or amendment to an existing Contract within 180 days of obtaining the Client Placement Services or Client Health Care Services as defined herein. Should the Authorized Agency fail to execute the Contract within this specified period, then the Authorized Agency may execute the Contract if:

(A) A Written statement of justification that describes the unforeseen or unavoidable circumstances that were reasonably unanticipated and preclude the Authorized Agency from executing the Contract within the initial 180 day period; and

(B) A copy of the Written justification is maintained in the Procurement File.

(c) The Authorized Agency may not make any payments for Client Placement Services or Client Health Care Services before obtaining all requisite approvals of the Contract.

(d) An Authorized Agency may:

(A) Use one of the defined source selection methods as found in OAR 125-247-0200. If an Authorized Agency elects to use one of the defined source selection methods, it must conduct it in accordance with the Code, Rules and Department policies; or

(B) The Authorized Agency may elect to create its own source selection method. If an Authorized Agency elects to create its own source selection method, it must document the file describing why the alternate method was selected.

(e) The Authorized Agency must ensure that all Procurement personnel responsible for procuring Placement Services or Client Health Care Services are provided training on the conditions and limitations of this Rule.

(f) Contract and Amendment Forms.

(A) Original Forms. Authorized Agencies must use a Contract form and Amendment form (Form) approved by the State Procurement Office when acquiring Client Placement Services or Client Health Care Services according to this Rule. The State Procurement Office may approve the Form by facsimile, email, letter or any other method that provides an objective means to verify its approval. The Authorized Agency must review the approved Form at least every two years.

(B) Revised Forms.

(i) Designated Procurement Officer Approval up to \$150,000. For revised Forms up to a cumulative value of \$150,000 and before an Authorized Agency may use a revised Form, it must obtain its Designated Procurement Officer's approval of any revisions to a Form's terms and conditions. The Designated Procurement Officer's approval is not required for revisions to Form exhibits that are unrelated to terms and conditions.

(ii) Department of Justice Approval over \$150,000. For revised Forms exceeding a cumulative value of \$150,000 and before an Authorized Agency may use a revised Form, it must obtain Department of Justice approval of any revisions to the revised Form's terms and conditions. The Department of Justice approval is not required for revisions to Form exhibits that are unrelated to terms and conditions. The Department of Justice approval may be delivered by facsimile, email, letter or any other objective means of approval. Upon an Authorized Agency's request, the Department of Justice may approve a revised Form for repeated use for a specific class or classes of transactions.

(g) Nothing in this Rule exempts the Authorized Agency from obtaining the approval of the Attorney General for legal sufficiency according to ORS 291.047.

(2) Client Services Source Selection.

(a) An Authorized Agency with delegated authority under OAR 125-246-0170 may use this Special Procurement Rule.

(b) The Chief Procurement Officer waives the source selection requirements as found in OAR 125-247-0200(1)–(6) for Authorized Agencies to procure Client Services, as defined in OAR 125-246-0110.

(c) The Authorized Agency is urged to solicit for Client Services when there is known competition. Under these circumstances, the Authorized Agency may:

(A) Use one of the defined source selection methods as found in OAR 125-247-0200. If an Authorized Agency uses one of the defined source selection methods, it must conduct it in accordance with the Code, Rules and Department policies; or

(B) The Authorized Agency may elect to create its own source selection method. If an Authorized Agency creates its own source selection method, it must document the file describing why the alternate method was selected. This Subsection (2)(c) does not apply to Section (1) above.

(3) Renegotiations of Existing Contracts with Incumbent Contractors.

(a) Authorization. An Authorized Agency with delegated authority under OAR 125-246-0170 may use this Special Procurement by Rule to rene-

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gotiate and amend existing Contracts with incumbent Contractors, and then only if it is in the best interest of the State.

(b) Process and Criteria. The Authorized Agency may renegotiate various items of the Contract, including but not limited to: price, term, delivery and shipping, order size, item substitution, warranties, discounts, on-line ordering systems, price adjustments, product availability, product quality, and reporting requirements. The Authorized Agency must meet the following conditions in its Renegotiations with incumbent Contractors

(A) Favorable Result. The Authorized Agency must determine that, with all things considered, the renegotiated Contract is at least as favorable to the State as the Original Contract and document this in the Procurement File. For example, the Authorized Agency and the Contractor may adjust terms and conditions within the Original Contract to meet different needs;

(B) Within the Scope. The Supplies and Services provided under the renegotiated Contract must be reasonably related to the Original Contract's Solicitation. For example, the Authorized Agency may accept functionally equivalent substitutes for any Supplies and Services in the Original Contract's Solicitation;

(C) Optional Term or Condition. If a Contractor offered to the Authorized Agency during the original Solicitation a term or condition that was rejected at that time, (for the purpose of this Subsection only, Rejected Term or Condition), the Authorized Agency may not renegotiate for a lower price based on this Rejected Term or Condition as a mandatory term or condition in the renegotiated Contract. If, however, a Contractor offers a lower price according to a Rejected Term or Condition without additional consideration from the Authorized Agency and as only an option to the Authorized Agency, then the Authorized Agency may accept the option of a lower price under the Rejected Term or Condition. For example, if the Authorized Agency initially rejected a Contractor's proposed Condition that the price required a minimum order, any renegotiated Contract may not mandate this Condition; but the Authorized Agency may agree to the option to order lesser amounts or receive a reduced price based upon a minimum order; and

(D) Market. In order to avoid encouraging favoritism or diminishing competition, the Authorized Agency may research the accepted competitive practices and expectations of Offerors within the market for the specific Contract(s) or Classes of Contracts to be renegotiated (Market Norm). If the Authorized Agency researches the Market Norm, then the Authorized Agency must document its results in the Procurement File. Based upon this information, the Authorized Agency may confirm that, if the Authorized Agency follows the Market Norm, favoritism is not likely to be encouraged, competition is not likely to be diminished, and substantial cost savings may be realized. Under no condition may the Authorized Agency accept or follow any Market Norm that likely encourages favoritism or diminishes competition, even if it is accepted or expected in the market.

(4) Advertising Contracts.

(a) Authorization. An Authorized Agency with delegated authority under OAR 125-246-0170 may use this Special Procurement by Rule to purchase media advertising, regardless of dollar value, without competitive bidding, according to OAR 125-246-0170.

(b) Process and Criteria. Authorized Agencies must use competitive methods where practicable to achieve best value and must document in Agency policy or the Procurement File the reasons why a competitive process was deemed to be impractical. If the anticipated purchase exceeds \$5,000 and a competitive method is used, the Authorized Agency must post notice on ORPIN. The resulting Contract must be in Writing and the Authorized Agency Procurement File must document the use of this Special Procurement Rule by number to identify the sourcing method. Nothing in this Rule waives the Department of Justice legal sufficiency review if applicable under ORS 291.047.

(5) Equipment Repair and Overhaul.

(a) Authorization. An Authorized Agency with delegated authority under OAR 125-246-0170 may use this Special Procurement by Rule for equipment repair and overhaul, as described in this Rule.

(b) Conditions. An Authorized Agency, having delegated purchasing authority according to OAR 125-246-0170, may enter into a Public Contract for equipment repair or overhaul without competitive bidding, subject to the following conditions:

(A) Service or parts required are unknown and the cost cannot be determined without extensive preliminary dismantling or testing; or

(B) Service or parts required are for sophisticated equipment for which specially trained personnel are required and such personnel are available from only one source; and

(C) The Authorized Agency purchases within the limits and according to the methods in (4)(c) of this Rule.

(c) Process and Criteria. Authorized Agencies must use competitive methods where practicable to achieve best value and must document in Agency policy or the Procurement File the reasons why a competitive process was deemed to be impractical. If the anticipated purchase exceeds \$5,000 and a competitive method is used, the Authorized Agency must post notice on ORPIN. The resulting Contract must be in Writing and the Authorized Agency Procurement File must document the use of this Special Procurement Rule by number to identify the sourcing method. Nothing in this Rule waives

the Department of Justice legal sufficiency review if applicable under ORS 291.047.

(6) Contracts for Price Regulated Items.

(a) Authorization. An Authorized Agency with delegated authority under OAR 125-246-0170 may use this Special Procurement by Rule for the Procurement of price regulated items, and the Authorized Agency must comply with the conditions of this Rule. An Authorized Agency having delegated purchasing authority according to OAR 125-246-0170 may, regardless of dollar value and without competitive bidding, contract for the direct purchase of Supplies and Services where the rate or price for the Supplies and Services being purchased is established by federal, state, or local regulatory authority.

(b) Process and Criteria. Authorized Agencies must use competitive methods where practicable to achieve best value and must document in Agency policy or the Procurement File the reasons why a competitive process was deemed to be impractical. If the anticipated purchase exceeds \$5,000 and a competitive method is used, the Authorized Agency must post notice on ORPIN. The resulting Contract must be in Writing and the Authorized Agency Procurement File must document the use of this Special Procurement Rule by number to identify the sourcing method. Nothing in this Rule waives the Department of Justice legal sufficiency review if applicable under ORS 291.047.

(7) Investment Contracts.

(a) Authorization. An Authorized Agency with delegated authority under OAR 125-246-0170 may use this Special Procurement by Rule for investment Contracts, including related Contracts arising from or giving rise to investment opportunities (collectively, investment Contracts), as described in this Rule. An Authorized Agency may, without competitive bidding, and regardless of dollar amount, contract for the purpose of the investment of public funds or the borrowing of funds by the Authorized Agency when such investment or borrowing is contracted according to duly enacted statute, or constitution.

(b) Process and Criteria. Authorized Agencies must use competitive methods where practicable to achieve best value and must document in Agency policy or the Procurement File the reasons why a competitive process was deemed to be impractical. If the anticipated purchase exceeds \$5,000 and a competitive method is used, the Authorized Agency must post notice on ORPIN. The resulting Contract must be in Writing and the Authorized Agency Procurement File must document the use of this Special Procurement Rule by number to identify the sourcing method. Nothing in this Rule waives the Department of Justice legal sufficiency review if applicable under ORS 291.047.

(8) Food Contracts.

(a) Intent. The intent of this Rule is to provide a method for Authorized Agencies to procure food products, which are available for a limited period of time at "lower than normal" prices (also referred to as "spot buys") (Food Contracts).

(b) Authorization. An Authorized Agency with delegated authority under OAR 125-246-0170 may use this Special Procurement by Rule for the Procurement of Food Contracts, and the Authorized Agency must comply with the conditions of this Rule.

(c) Conditions. An Authorized Agency may procure an unlimited dollar value of food using a competitive bid or quote process when all of the following conditions are present:

(A) The proposed unit price of the item(s) to be purchased is significantly less than a comparable item's price on an existing Mandatory Use Contract or any recent bid and the amount saved exceeds any additional administrative costs incurred to purchase using this Special Procurement; (B) The product being purchased has limited availability (i.e., the product may no longer be available upon completion of normal bid processes); and

(C) The purchase does not jeopardize fulfillment of a guaranteed minimum volume under an existing Mandatory Use Contract.

(d) Documentation. Purchases may only be made under this Special Procurement after the Authorized Agency documents the following in its Procurement File in accordance with OAR 125-246-0556: the Authorized Agency's attempt and method to obtain Quotes from at least three sources; the Written Quote or Bid, if obtained; item Specifications; quantity; unit pricing; delivery; and other pertinent information. Contract or bid pricing used for comparison must be representative of current pricing available and must have been obtained or confirmed no more than six (6) months before the current purchase. When practical, Written Quotes are recommended.

(e) Process and Criteria. Authorized Agencies must use competitive methods where practicable to achieve best value and must document in Agency policy or the Procurement File the reasons why a competitive process was deemed to be impractical. If the anticipated purchase exceeds \$5,000 and a competitive method is used, the Authorized Agency must post notice on ORPIN, except when the competitive method involves verbal Quotes for perishable food. The resulting Contract must be in Writing and the Authorized Agency Procurement File must document the use of this Special Procurement Rule by number to identify the sourcing method. Nothing in this Rule waives the Department of Justice legal sufficiency review if applicable under ORS 291.047.

(9) Purchase of Used Personal Property.

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(a) Authorization. An Authorized Agency with delegated authority under OAR 125-246-0170 may use this Special Procurement by Rule Subject to the provisions of this Rule, an Authorized Agency may purchase used property or equipment without competitive bidding and without obtaining Quotes, if, at the time of purchase, the Agency has determined and documented that the purchase will (i) be unlikely to encourage favoritism or diminish competition; and (ii) result in substantial cost savings or promote the public interest. "Used personal property or equipment" means the property or equipment which has been placed in its intended use by a previous owner or user for a period of time recognized in the relevant trade or industry as qualifying the personal property or equipment as "used," at the time of the Authorized Agency purchase. "Used personal property or equipment" generally does not include property or equipment if the Authorized Agency was the previous user, whether under a lease, as part of a demonstration, trial or pilot project, or similar arrangement.

(b) Process and Criteria.

(A) For purchases of used personal property or equipment not exceeding \$150,000, Authorized Agencies having delegated authority according to OAR 125-246-0170, must, where feasible, obtain three Quotes, unless the Authorized Agency has determined and documented that a purchase without obtaining Quotes will result in cost savings to the Authorized Agency and will not diminish competition or encourage favoritism.

(B) For purchases of used personal property or equipment exceeding \$150,000, the State Procurement Office must obtain and keep a Written record of the source and amount of Quotes received. If three Quotes are not available, a Written record must be made of the attempt to obtain Quotes.

(C) If the total purchase is estimated to exceed \$150,000, an Authorized Agency must submit a Written request for a Written delegation of authority from the State Procurement Office before making the purchase.

(D) Authorized Agencies must use competitive methods wherever possible to achieve best value and must document in Agency policy or the Procurement File the reasons why a competitive process was deemed to be impractical. If the anticipated purchase exceeds \$5,000 and a competitive method is used, the Authorized Agency must post notice on ORPIN. The resulting Contract must be in Writing and the Authorized Agency Procurement File must document the use of this Special Procurement Rule by number to identify the sourcing method. Nothing in this Rule waives the Department of Justice legal sufficiency review if applicable under ORS 291.047.

(10) Reverse Auctions.

(a) Authority. An Authorized Agency with delegated authority under OAR 125-246-0170 may use this Special Procurement by Rule.

(b) Process. A Reverse Auction means a process for the purchase of Supplies and Services by a buyer from the lowest Bidder. The Authorized Agency as the buyer must conduct Reverse Auctions by first publishing a Solicitation that describes its requirements, Contract terms and conditions. Then, the Authorized Agency must solicit online Bids from all interested Bidders through an Internet-based program. The Solicitation must set forth a start and end time for Bids and specify the following type of information to be disclosed to Bidders during the Reverse Auction:

(A) The prices of the other Bidders or the price of the most competitive Bidder;

(B) The rank of each Bidder (e.g., (i) "winning" or "not winning" or (ii) "1st, 2nd, or higher");

(C) The scores of the Bidders if the Authorized Agency chooses to use a scoring model that weighs non-price factors in addition to price; or

(D) Any combination of (A), (B) and (C) above. Before the Reverse Auction commences, Bidders must be required by the Authorized Agency to assent to the Contract terms and conditions, either in Writing or by an Internet "click" agreement. The Bidders then compete for the award of a Contract by offering successively lower prices, informed by the price(s), ranks, and scores, separately or in any combination thereof, disclosed by the Authorized Agency. The identity of the Bidders must not be revealed during this process. Only the successively lower price(s), ranks, scores and related details, separately or in any combination thereof, will be revealed to the participants. The Authorized Agency may cancel this Solicitation if this Agency determines that it is in this Agency's or the State's best interest. At the end of this Bidding process, the Authorized Agency must award any potential Contract to the lowest Responsible Bidder or in the case of multiple awards, lowest Responsible Bidders according to ORS 279B.055(10)(b). This process allows the Authorized Agency to test and determine the suitability of the Supplies and Services before making the Award. The Authorized Agency must comply with the following procedures for this type of Solicitation:

(c) Policy. The Authorized Agency must follow the policy of the Department.

(d) Public Notice.

(A) The Authorized Agency must disclose the Reverse Auction process in the Solicitation Document. The Reverse Auction process must include the manner of giving notices of the price(s) offered, rank(s), score(s), and related details to the initial Bidders.

(B) The Authorized Agency must provide initial notice of this Solicitation through ORPIN.

(C) If the value exceeds \$150,000, the Authorized Agency must issue a Notice of Intent to award at least seven (7) calendar Days before making the Award.

(e) Prequalification. For each Solicitation, on a case-by-case basis, the Authorized Agency may determine whether prequalification of suppliers is needed. If prequalification is used, the Authorized Agency must prequalify suppliers and provide an appeal process in accordance with ORS 279B.120 and related Rules.

(f) E-Procurement. The requirements of OAR 125-247-0330 apply to Reverse Auctions. In the event of conflict or ambiguity, the more specific requirements of this Section (11) take precedence over the more general requirements of OAR 125-247-0330.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279B.085

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10

## 125-247-0296

### Price Agreements and Mandatory Use Contracts

(1) Mandatory Use Contracts, for the purposes of this Rule and including Department Price Agreements, service agreements, and sales agreements, may be established for the purposes of minimizing paper work, achieving continuity of product, securing a source of supply, reducing inventory, combining Agency requirements for volume discounts, standardization among Agencies, and reducing lead time for ordering. A Mandatory Use Contract requires the Authorized Agency to purchase Supplies and Services for an anticipated need at a predetermined price, provided the Mandatory Use Contract is let by a competitive Procurement Process according to the requirements of ORS 279ABC and these Rules.

(2) Authorized Agencies may purchase the Supplies and Services from a Contractor awarded a Mandatory Use Contract without first undertaking additional competitive Solicitation.

(3) Authorized Agencies must use Mandatory Use Contracts established by the Department unless otherwise specified in the Contract, allowed by law or these Rules, or specifically authorized by the State Procurement Office.

(4) Despite Section (3) above, Authorized Agencies are exempted from Mandatory Use Contracts for acquisition of the following, regardless of dollar amount:

(a) Supplies and Services from another Oregon Public Agency provided that a formal, Written agreement is entered into between the parties;

(b) Personal property for resale through student stores operated by public educational Agencies; and

(c) Emergency purchases declared by an Authorized Agency according to ORS 279B.

(5) Authorized Agencies may be exempted from a Mandatory Use Contract upon a request to and approval by the State Procurement Office.

(6) The term of the Contract, including renewals, must not exceed the maximum term stated in the original Solicitation.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279B.140

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10

## 125-247-0305

### Public Notice of Solicitation Documents

(1) Application. This Rule applies only to Bidding and Proposals in accordance with ORS 279B.055, 279B.060, and OAR 125-247-0255 through 125-247-0260.

(2) Notice of Solicitation Documents.

(a) Official Notice. An Authorized Agency must post public notice of every Solicitation Document on ORPIN in accordance with OAR 125-246-0500 (Official Notice).

(b) Additional Notice. The Authorized Agency may give additional notice if:

(A) The additional notice refers to the Official Notice, and

(B) The Authorized Agency uses any method it determines appropriate to foster and promote competition, including:

(i) Mailing notice of the availability of the Solicitation Document to Persons that have expressed an interest in the Authorized Agency's Procurements;

(ii) Placing notice on the Authorized Agency's Internet World Wide Web site; or

(iii) Publishing notice in a newspaper of general circulation as described in ORS 279B.055(4) (Additional Notice).

(3) Content of Official and Additional Notices. All notices for solicitation of Offers must set forth:

(a) Where, when, how, and for how long the Solicitation Document may be obtained;

(b) A general description of the Supplies and Services to be acquired;

(c) The date that Persons must file applications for prequalification if prequalification is a requirement and the class of Supplies and Services is one for which Persons must be prequalified;

(d) The office where contract terms, conditions and Specifications may be reviewed if not electronically attached;



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(e) The name, title and address of the individual authorized by the Authorized Agency to receive Offers;

(f) The scheduled Opening; and

(g) Any other information the Authorized Agency deems to be appropriate.

(4) Notice Time Periods.

(a) The Authorized Agency must give Official Notice of an Invitation to Bid at least fourteen (14) Days before the Closing.

(b) The Authorized Agency must give Official Notice of a Request for Proposals at least thirty (30) Days before the Closing.

(c) The Authorized Agency may give Additional Notice for any reasonable time

(d) Despite Section (4)(a) and (b), the Authorized Agency may determine that a shorter time period is in the public's interest and that a shorter time period will not substantially affect competition. In no event may the Authorized Agency give any Official Notice less than seven (7) Days before Closing. The Authorized Agency must document the specific reasons for the shorter time period in the Procurement File in accordance with OAR 125-246-0556.

(e) Despite other provisions of this Rule, the public notice time period for a Qualified Products List is at least seven (7) days.

(5) Availability of Written Advertisement for Offers. Upon the request of any member of the public, the Authorized Agency must provide a copy of each advertisement for Offers and all supporting documents, to be located in the Procurement File or an identified repository.

(6) Minority, Women, and Emerging Small Business. In accordance with ORS 200.035, an Authorized Agency must provide timely notice of all Procurements to the Advocate for Minority, Women and Emerging Small Business if the estimated Contract Price exceeds \$5,000.

(7) Fees. The Authorized Agency may charge a fee or require a deposit for the Solicitation Document, supporting documents and any combination thereof.

(8) Notice of Addenda. The Authorized Agency must provide notice to potential Offerors on ORPIN of any Addenda to a Solicitation Document in accordance with OAR 125-247-0430.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279B.050-279B.085

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10

## 125-247-0310

### Bids or Proposals are Offers

(1) Offer and Acceptance. The Bid or Proposal is the Bidder's or Proposer's Offer to enter into a Contract.

(a) In competitive bidding and competitive Proposals, the Offer is always a "Firm Offer," i.e., the Offer must be held open by the Offeror for the Authorized Agency's acceptance for the period specified in OAR 125-247-0480. The Authorized Agency may elect to accept the Offer at any time during the specified period, and the Authorized Agency's Award of the Contract constitutes acceptance of the Offer and binds the Offeror to the Contract.

(b) Despite the fact that a competitive Proposal is a "Firm Offer" for the period specified in OAR 125-247-0480, the Authorized Agency may elect to discuss or negotiate certain contractual provisions, as identified in these Rules or in the Solicitation Document, with the Proposer. Where negotiation is permitted by these Rules or the Solicitation Document, Proposers are obligated to negotiate in good faith and only on those terms or conditions that these Rules or the Solicitation Document have reserved for negotiation.

(2) Contingent Offers. Except to the extent the Proposer is authorized to propose certain terms and conditions according to OAR 125-247-0260, a Proposer must not make its Offer contingent upon the Authorized Agency's acceptance of any terms or conditions (including Specifications) other than those contained in the Solicitation Document.

(3) Offeror's Acknowledgment. By Signing and returning the Offer, the Offeror acknowledges it has read and understands the terms and conditions contained in the Solicitation Document and that it accepts and agrees to be bound by the terms and conditions of the Solicitation Document. If the Request for Proposals permits Proposal of alternative terms or conditions under OAR 125-247-0260, the Offeror's Offer includes any nonnegotiable terms and conditions, any proposed terms and conditions offered for Negotiation upon and to the extent accepted by the Authorized Agency in Writing, and Offeror's agreement to perform the scope of work and meet the performance standards set forth in the final negotiated scope of work, in accordance with Oregon Laws 2009, Chapter 880, Sections 5 and 6.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279B.050-279B.085

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10

## 125-247-0320

### Facsimile Bids and Proposals

(1) Authorized Agency Authorization. An Authorized Agency may authorize Offerors to submit facsimile Offers. If the Authorized Agency determines that Bid or Proposal security is or will be required, the Authorized Agency should not authorize facsimile Offers unless the Authorized Agency

has another method for receipt of such security. Before authorizing the submission of facsimile Offers, the Authorized Agency must determine that the Authorized Agency's equipment and personnel are capable of receiving the size and volume of anticipated Offers within a short period of time. In addition, the Authorized Agency must establish administrative procedures and controls:

(a) To receive, identify, record, and safeguard facsimile Offers;

(b) To ensure timely delivery of Offers to the location of Opening; and

(c) To preserve the Offers as sealed.

(2) Provisions to be Included in Solicitation Document. In addition to all other requirements, if the Authorized Agency authorizes a facsimile Offer, the Authorized Agency will include in the Solicitation Document the following:

(a) A provision substantially in the form of the following: "A 'facsimile Offer,' as used in this Solicitation Document, means an Offer, modification of an Offer, or withdrawal of an Offer that is transmitted to and received by the Authorized Agency via a facsimile machine";

(b) A provision substantially in the form of the following: "Offerors may submit facsimile Offers in response to this Solicitation Document. The entire response must arrive at the place and by the time specified in this Solicitation Document";

(c) A provision that requires Offerors to Sign their facsimile Offers;

(d) A provision substantially in the form of the following: "The Authorized Agency reserves the right to award the Contract solely on the basis of a facsimile Offer. However, upon the Authorized Agency's request the apparent successful Offeror must promptly submit its complete original Signed Offer;

(e) The data and compatibility characteristics of the Authorized Agency's receiving facsimile machine as follows:

(A) Telephone number; and

(B) Compatibility characteristics, e.g. make and model number, receiving speed, communications protocol; and

(f) A provision that provides that the Authorized Agency is not responsible for any failure attributable to the transmission or receipt of the facsimile Offer including, but not limited to the following:

(A) Receipt of garbled or incomplete documents;

(B) Availability or condition of the receiving facsimile machine;

(C) Incompatibility between the sending and receiving facsimile machine;

(D) Delay in transmission or receipt of documents;

(E) Failure of the Offeror to properly identify the Offer documents;

(F) Illegibility of Offer documents; and

(G) Security and confidentiality of data.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279B.050-279B.085

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10

## 125-247-0340

### Reverse Auctions

(1) If the Authorized Agency desires to conduct a Reverse Auction as defined in OAR 125-247-0288, the Authorized Agency must follow the policy of the Department. The requirements of OAR 125-247-0288 apply to Reverse Auctions. In the event of conflict or ambiguity, the more specific requirements of OAR 125-247-0288 take precedence over the more general requirements of this Rule.

(2) Multiple Receipts of Offers during a Period of Time. When the Authorized Agency specifies that Persons may submit multiple Electronic Offers during a period of time, the Authorized Agency must accept Electronic Offers, and Persons may submit Electronic Offers, in accordance with the following:

(a) Following receipt of the first Electronic Offer after the day and time the Authorized Agency first receives Electronic Offers, the Authorized Agency must give notice to the initial Bidders and update on a real time basis:

(A) The prices of the other Bidders or the price of the most competitive Bidder;

(B) The rank of each Bidder (e.g., (i) "winning" or "not winning" or (ii) "1st, 2nd, or higher");

(C) The scores of the Bidders if the Authorized Agency chooses to use a scoring model that weighs non-price factors in addition to price; or

(D) Any combination of (A), (B) and (C) above. At any time before the date and time after which the Authorized Agency will no longer receive Electronic Offers, a Person may revise its Electronic Offer, except that a Person may not lower its price unless that price is below the then lowest Electronic Offer.

(b) A Person may not increase the price set forth in an Electronic Offer after the day and time that the Authorized Agency first accepts Electronic Offers.

(c) A Person may withdraw an Electronic Offer only in compliance with these division 247 Rules. If a Person withdraws an Electronic Offer, it may not later submit an Electronic Offer at a price higher than that set forth in the withdrawn Electronic Offer.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070

Stats. Implemented: ORS 279B.050-279B.085

Hist.: DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10

# ADMINISTRATIVE RULES

## 125-247-0470

### Mistakes

(1) General. To protect the integrity of the competitive Procurement Process and to assure fair treatment of Offerors, an Authorized Agency should carefully consider whether to permit waiver, correction or withdrawal of Offers for certain mistakes.

(2) Authorized Agency Treatment of Mistakes. An Authorized Agency must not allow an Offeror to correct or withdraw an Offer for an error in judgment. If the Authorized Agency discovers certain mistakes in an Offer after Opening, but before the Award of the Contract, the Authorized Agency may take the following action:

(a) An Authorized Agency may waive, or permit an Offeror to correct, a minor informality. A minor informality is a matter of form rather than substance that is evident on the face of the Offer, or an insignificant mistake that can be waived or corrected without prejudice to other Offerors. Examples of minor informalities include an Offeror's failure to:

(A) Return the correct number of Signed Offers or the correct number of other documents required by the Solicitation Document;

(B) Sign the Offer in the designated block, provided a Signature appears elsewhere in the Offer, evidencing an intent to be bound; and

(C) Acknowledge receipt of an Addendum to the Solicitation Document, provided: it is clear on the face of the Offer that the Offeror received the Addendum and intended to be bound by its terms; or the Addendum involved did not affect price, quality or delivery.

(b) An Authorized Agency may correct a clerical error if the error is evident on the face of the Offer, or other documents submitted with the Offer, and the Offeror confirms the Authorized Agency's correction in Writing. A clerical error is an Offeror's error in transcribing its Offer. Unit prices must prevail over extended prices in the event of a discrepancy between extended prices and unit prices.

(c) An Authorized Agency may permit an Offeror to withdraw an Offer based on one or more clerical errors in the Offer only if the Offeror shows with objective proof and by clear and convincing evidence:

(A) The nature of the error;

(B) That the error is not a minor informality under this Subsection or an error in judgment;

(C) That the error cannot be corrected or waived under Subsection (b) of this Section;

(D) That the Offeror acted in good faith in submitting an Offer that contained the claimed error and in claiming that the alleged error in the Offer exists;

(E) That the Offeror acted without gross negligence in submitting an Offer that contained a claimed error;

(F) That the Offeror will suffer substantial detriment if the Authorized Agency does not grant the Offeror permission to withdraw the Offer;

(G) That the Authorized Agency's or the public's status has not changed so significantly that relief from the forfeiture will Work a substantial hardship on the Authorized Agency or the public it represents; and

(H) That the Offeror promptly gave notice of the claimed error to the Authorized Agency.

(d) The criteria in Subsection (2)(c) of this Rule must determine whether an Authorized Agency will permit an Offeror to withdraw its Offer after Closing. These criteria also must apply to the question whether an Authorized Agency will permit an Offeror to withdraw its Offer without forfeiture of its Bid bond (or Proposal security), or without liability to the Authorized Agency based on the difference between the amount of the Offeror's Offer and the amount of the Contract actually awarded by the Authorized Agency, whether by Award to the next lowest Responsive and Responsible Bidder the most Advantageous Responsive and Responsible Proposer, or by resort to a new Solicitation.

(3) Rejection for Mistakes. The Authorized Agency must reject any Offer in which a mistake is evident on the face of the Offer and the intended correct Offer is not evident or cannot be substantiated from documents accompanying the Offer.

(4) Identification of Mistakes After Award. The procedures and criteria set forth above are Offeror's only opportunity to correct mistakes or withdraw Offers because of a mistake. Following Award, an Offeror is bound by its Offer, and may only withdraw its Offer or rescind a Contract entered into according to this Division 247 to the extent permitted by applicable law.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279B.050 - 279B.090

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10

## 125-247-0500

### Responsibility of Offerors

(1) Determination. Before awarding a Contract, the Authorized Agency must determine that the Offeror submitting the lowest Bid or Proposal or most Advantageous Offer is Responsible. The Authorized Agency must use the standards set forth in ORS 279B.110 and OAR 125-247-0640(1)(c)(F) to determine if an Offeror is Responsible. In the event an Authorized Agency determines an Offeror is not Responsible, it must prepare a Written determination of non-Responsibility as required by ORS 279B.110 and must reject the Offer.

(2) Independent Contractor Status, Tax Compliance, and Requirements to Transact Business in Oregon. For these responsibilities of Offerors, see OAR 125-246-0330.

(3) Life Cycle Costing. See OAR 125-247-0170.

(4) Record of Performance and Integrity. Authorized Agencies must comply with ORS 279B.110, as revised by Oregon Laws 2009, Chapter 880.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279B.110

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10

## 125-247-0550

### Prequalification of Prospective Offerors, Pre-negotiation of Contract Terms and Conditions, and Request for Qualifications (RFQ)

(1) Prequalification of Prospective Offerors. An Authorized Agency may prequalify prospective Offerors according to ORS 279B.120 and 279B.125. Despite the prohibition against revocation of prequalification in ORS 279B.120(3), an Authorized Agency may determine that a prequalified Offeror is not Responsible before Contract Award.

(2) Pre-negotiation of Contract Terms and Conditions. An Authorized Agency may pre-negotiate some or all Contract terms and conditions including prospective Proposer Contract forms such as license agreements, maintenance and support agreements or similar documents for use in future Procurements. Such pre-negotiation of Contract terms and conditions (including prospective Proposer forms) may be part of the prequalification process of a Proposer in Section (1) or the pre-negotiation may be a separate process and not part of a prequalification process. Unless required as part of the prequalification process, the failure of the Authorized Agency and the prospective Proposer to reach agreement on pre-negotiated Contract terms and conditions does not prohibit the prospective Proposer from responding to Procurements. An Authorized Agency may agree to different pre-negotiated Contract terms and conditions with different prospective Proposers. When an Authorized Agency has pre-negotiated different terms and conditions with Proposers or when permitted, Proposers offer different terms and conditions, an Authorized Agency may consider the terms and conditions in the Proposal evaluation process.

(3) Request for Qualifications (RFQ). For purposes of this Section, an RFQ may be used without the RFQ constituting a Prequalification according to Section (1) of this Rule, if the Authorized Agency establishes the RFQ to determine whether competition exists to perform the needed services or to establish a nonbinding, open list of qualified Contractors in addition to the general public and in order to expand the pool of qualified Contractors, before issuing a Request for Proposals (RFP). If an Authorized Agency establishes a closed, exclusive, or binding list of qualified Contractors, then the Authorized Agency must comply with Section (1) of this Rule. The Authorized Agency is not required to issue an RFQ and may elect to forego using an RFQ before issuing an RFP.

(a) At a minimum, the RFQ must describe the particular specialty desired, the qualifications the Contractor(s) must have in order to be considered, and the evaluation factors and their relative importance. The RFQ may require information including, but not limited to: the Contractor's particular capability to perform the required services; the number of experienced staff available to perform the required services, including specific qualifications and experience of personnel; a list of similar services the Contractor has completed, with references concerning past performance; and any other information deemed necessary by the Authorized Agency to evaluate Contractor qualifications.

(b) A qualifications pre-submission meeting, voluntary or mandatory, may be held for all interested Contractors to discuss the proposed services. The RFQ must include the date, time and place of the meeting(s).

(c) Unless the RFQ establishes that competition does not exist or unless the Solicitation process is canceled or all qualification statements are rejected, all respondents who met the published qualifications must receive a notice, or other materials as appropriate, in addition to the general public, of any required services and have an opportunity to submit a proposal in response to an Authorized Agency's subsequent RFP.

(d) All RFQs must:

(A) Be in Writing;

(B) Be posted on ORPIN;

(C) Provide that the Authorized Agency may, at any time during the Solicitation process, reject any or all Proposals or cancel the Solicitation without liability if it is in the public interest to do so; and

(D) Provide that the Authorized Agency is not responsible for any costs of any proposers incurred while submitting Proposals, and that all Proposers who respond to Solicitations do so solely at their own expense, unless compensation is expressly provided for in the Solicitation Document.

(e) According to ORS 200.035, the Authorized Agency must notify, in Writing, the Advocate for Minority, Women and Emerging Small Businesses of each Solicitation and contracting opportunity exceeding \$5,000.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070

Stats. Implemented: ORS 279.015, 279B.050-279B.085, 279B.120, 279B.125

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10

# ADMINISTRATIVE RULES

## 125-247-0600

### Offer Evaluation and Award

(1) Authorized Agency Evaluation. The Authorized Agency must evaluate Offers only as set forth in the Solicitation Document, according to ORS 279B.055(6)(a) and 279B.060(6)(b), and in accordance with applicable law. The Authorized Agency must not evaluate Offers using any other requirement or criterion.

(a) Evaluation of Bids.

(A) Nonresident Bidders. In determining the lowest Responsive Bid, the Authorized Agency must apply the reciprocal preference set forth in ORS 279A.120(2)(b) and OAR 125-246-0310 for nonresident Bidders.

(B) Public Printing. The Authorized Agency must, for the purpose of evaluating Bids, apply the public printing preference set forth in ORS 282.210.

(C) Award When Bids are Identical. If the Authorized Agency determines that one or more Bids are identical under OAR 125-246-0300, the Authorized Agency must award a Contract in accordance with the procedures set forth in OAR 125-246-0300.

(b) Evaluation of Proposals.

(A) Award When Proposals are Identical. If the Authorized Agency determines that one or more Proposals are identical under OAR 125-246-0300, the Authorized Agency must award a Contract in accordance with the procedures set forth in OAR 125-246-0300.

(B) Public Printing. The Authorized Agency must for the purpose of evaluating Proposals apply the public printing preference set forth in ORS 282.210.

(c) Recycled Materials. When procuring Goods, the Authorized Agency must give preference for Recycled Materials as set forth in ORS 279A.125 and OAR 125-246-0322.

(2) Clarification of Bids or Proposals. After the Bid Opening, an Authorized Agency may conduct Discussions with apparent Responsive Offerors for the purpose of clarification and to assure full understanding of the Bids or Proposals. All Bids or Proposals, at the Authorized Agency's sole discretion, needing clarification must be afforded such an opportunity. The Authorized Agency must document clarification of any Bidder's Bid in the Procurement File in accordance with OAR 125-246-0556.

(3) Negotiations Prohibited or Allowed.

(a) Prohibition in Competitive Sealed Bidding. An Authorized Agency must not negotiate with any Bidder in a competitive sealed bidding according to ORS 279B.060 and related Rule. After Award of the Contract, the Authorized Agency and Contractor may only modify the Contract in accordance with OAR 125-246-0560. An Authorized Agency may conduct Discussions in accordance with OAR 125-247-0255

(b) Allowance in Other Procurement Methods. An Authorized Agency may conduct Discussions or Negotiations with one or more Offerors in Competitive Sealed Proposals, Small Procurements, Intermediate Procurements, Emergency Procurements if applicable, and Special Procurements if applicable, in accordance with ORS 279B.060(6)(b), OAR 125-247-0260, 125-247-0260, 125-247-0270, 125-247-0287, and 125-247-0288. To the extent practical, an Authorized Agency must negotiate in Sole-Source Procurements in accordance with OAR 125-247-0275. After Award of the Contract, the Authorized Agency and Contractor may only modify the Contract in accordance with OAR 125-246-0560.

(c) Other Procurements. This Section (3) does not apply to Small Procurements, Emergency Procurements, or Special Procurements which do not use Solicitations.

(4) Award.

(a) General. If awarded, the Authorized Agency must award the Contract to the Responsible Bidder submitting the lowest, Responsive Bid or the Responsible Proposer submitting the most Advantageous, Responsive Proposal. The Authorized Agency may award by item, groups of items or the entire Offer provided such Award is consistent with the Solicitation Document and in the public interest.

(b) Multiple Items. An Invitation to Bid or Request for Proposals may call for pricing of multiple items of similar or related type with the Award based on individual line item, group total of certain items, a "market basket" of items representative of the Authorized Agency's expected purchases, or grand total of all items.

(c) Multiple Awards; Bids.

(A) Despite Subsection 4(a) of this Rule, an Authorized Agency may award multiple Contracts under an Invitation to Bid in accordance with the criteria set forth in the Invitation to Bid. A multiple Award may be made if the Award to two or more Bidders is beneficial for adequate availability, delivery, service, competition, pricing, product capabilities, skills, or other factors deemed significant by the Authorized Agency. Multiple Awards may not be allowed for user preference unrelated to utility or economy. A notice to prospective Bidders that multiple Contracts may be awarded for any Invitation to Bid must not preclude the Authorized Agency from awarding a single Contract for such Invitation to Bid.

(B) If an Invitation to Bid permits the Award of multiple Contracts, the Authorized Agency must specify in the Invitation to Bid the criteria it will use to choose from the multiple Contracts when purchasing Supplies and

Services. This criteria may include consideration and evaluation of the terms and conditions agreed to by the Contractors.

(d) Multiple Awards; Proposals.

(A) Despite Subsection 4(a) of this Rule, an Authorized Agency may award multiple Contracts under a Request for Proposals in accordance with the criteria set forth in the Request for Proposals. A multiple Award may be made if the Award to two or more Proposers is beneficial for adequate availability, delivery, service, competition, pricing, product capabilities, skills, or other factors deemed significant by the Authorized Agency. Multiple Awards may not be allowed for user preference unrelated to utility or economy. A notice to prospective Proposers that multiple Contracts may be awarded for any Request for Proposals must not preclude the Authorized Agency from awarding a single Contract for such Request for Proposals.

(B) If a Request for Proposals permits the Award of multiple Contracts, the Authorized Agency must specify in the Request for Proposals the criteria it will use to choose from the multiple Contracts when purchasing Supplies and Services. This criteria may include consideration and evaluation of the terms and conditions agreed to by the Contractors.

(e) Partial Awards. If after evaluation of Offers, the Authorized Agency determines that an acceptable Offer has been received for only parts of the requirements of the Solicitation Document:

(A) The Authorized Agency may award a Contract for the parts of the Solicitation Document for which acceptable Offers have been received; or

(B) The Authorized Agency may reject all Offers and may issue a new Solicitation Document on the same or revised terms, conditions and Specifications.

(f) All or None Offers. An Authorized Agency may award all or no Offers if the evaluation shows an all or no Award to be the lowest cost for Bids or the most Advantageous for Proposals of those submitted.

(g) Life Cycle Costing. The Authorized Agency must follow OAR 125-247-0170.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279B.050-279B.085

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10

## 125-247-0610

### Notice of Intent to Award

(1) Notice of Intent to Award. The Authorized Agency must provide Written notice of its intent to award a Contract resulting from a formal Invitation to Bid or Request for Proposal to all Offerors according to ORS 279B.135 at least seven (7) Days before the Award of a Contract, unless the Authorized Agency determines that circumstances justify prompt execution of the Contract, in which case the Authorized Agency may provide a shorter notice period. The Authorized Agency must document the specific reasons for the shorter notice period in the Procurement File in accordance with OAR 125-246-0556.

(2) Finality. The Authorized Agency's Award must not be final until the later of the following:

(a) The expiration of the protest period provided according to OAR 125-247-0740; or

(b) The Authorized Agency provides Written responses to all timely-filed protests denying the protests and affirming the Award.

(3) The Authorized Agency may provide this notice through any reasonable means and, if functionality exists, through ORPIN in accordance with OAR 125-246-0500.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070

Stats. Implemented: ORS 279B.050-279B.085, 279B.135

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10

## 125-247-0630

### Availability of Award Decisions

(1) Contract Documents. To the extent required by the Solicitation Document, the Authorized Agency must deliver to the successful Offeror a Contract, a Signed Purchase Order, Price Agreement, or other Contract documents as applicable.

(2) Availability of Award Decisions. A Person may obtain tabulations of awarded Bids or evaluation summaries of Proposals for a minimal charge, in person or by submitting to the Authorized Agency a Written request accompanied by payment. The requesting Person must provide the Solicitation Document number and enclose a self-addressed, stamped envelope. In addition, the Authorized Agency may make available tabulations of Bids and Proposals through ORPIN or the Authorized Agency's website.

(3) Availability of Procurement Files. After the notice of intent to award, the Authorized Agency must make Procurement Files available in accordance with applicable law, except where applicable law requires the Authorized Agency to make information contained in the Procurement Files available before any notice of intent to award. See the Public Records Law. A protestor of a Competitive Range in accordance with OAR 125-247-0260 is not entitled to obtain or review the Procurement Files related to the protest until after the notice of intent to award. See OAR 125-247-0720.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279B.050-279B.090

# ADMINISTRATIVE RULES

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10

## 125-247-0640

### Rejection of an Offer

(1) Rejection.

(a) An Authorized Agency may reject any Offer as set forth in ORS 279B.100.

(b) The Authorized Agency must reject an Offer upon the Authorized Agency's finding that the Offer:

(A) Is contingent upon the Authorized Agency's acceptance of terms and conditions (including Specifications) that differ from the Solicitation Document;

(B) Takes exception to terms and conditions (including Specifications) set forth in the Solicitation Document;

(C) Attempts to prevent public disclosure of matters in contravention of the terms and conditions of the Solicitation Document or in contravention of applicable law;

(D) Offers Supplies and Services that fail to meet the Specifications of the Solicitation Document;

(E) Is late;

(F) Is not in substantial compliance with the Solicitation Document; or

(G) Is not in substantial compliance with all prescribed public procurement procedures.

(c) The Authorized Agency must reject an Offer upon the Authorized Agency's finding that the Offeror:

(A) Has not been prequalified under ORS 279B.120 and the Authorized Agency required mandatory prequalification;

(B) Has been Debarred as set forth in ORS 279B.130 or has been disqualified pursuant to OAR 125-246-0210(4) (DBE Disqualification);

(C) Has not met the requirements of ORS 279A.105, if required by the Solicitation Document;

(D) Has not submitted properly executed Bid or Proposal security as required by the Solicitation Document;

(E) Has failed to provide the certification of non-discrimination required under ORS 279A.110(4); or

(F) Is non-Responsible. Offerors are required to demonstrate their ability to perform satisfactorily under a Contract. Before awarding a Contract, the Authorized Agency must have information that indicates that the Offeror meets the applicable standards of Responsibility. To be a Responsible Offeror, the Authorized Agency must determine pursuant to ORS 279B.110 that the Offeror:

(i) Has available the appropriate financial, material, equipment, facility and personnel resources and expertise, or ability to obtain the resources and expertise, necessary meet all contractual responsibilities;

(ii) Has completed previous Contracts of a similar nature with a satisfactory record of performance. A "satisfactory record of performance" means that to the extent the costs associated with and the time available to perform a previous Contract were within the Offeror's control, the Offeror stayed within the time and budget allotted for the Procurement and otherwise performed the Contract in a satisfactory manner. An Authorized Agency should carefully scrutinize an Offeror's record of contract performance if the Offeror is or recently has been materially deficient in contract performance. In reviewing the Offeror's performance, the Authorized Agency should determine whether the Offeror's deficient performance was expressly excused under the terms of the contract, or whether the Offeror took appropriate corrective action. The Authorized Agency may review the Offeror's performance on both private and Public Contracts in determining the Offeror's record of contract performance. Pursuant to ORS 279B.110(2)(b), the Authorized Agency must make its basis for determining an Offeror non-Responsible under this subparagraph part of the Procurement File in accordance with OAR 125-246-0355;

(iii) Has a satisfactory record of integrity. An Offeror may lack integrity if an Authorized Agency determines the Offeror demonstrates a lack of business ethics such as violation of state environmental laws or false certifications made to an Authorized Agency. An Authorized Agency may find an Offeror non-Responsible based on the lack of integrity of any Person having influence or control over the Offeror (such as a key employee of the Offeror that has the authority to significantly influence the Offeror's performance of the Contract or a parent company, predecessor or successor Person). The standards for Debarment under ORS 279B.130 may be used to determine an Offeror's integrity. An Authorized Agency may find an Offeror non-responsible based on previous convictions of offenses related to obtaining or attempting to obtain a Contract or subcontract or in connection with the Offeror's performance of a Contract or subcontract. Pursuant to ORS 279B.110(2)(c), the Authorized Agency must make its basis for determining that an Offeror is non-Responsible under this subparagraph part of the Procurement File in accordance with OAR 125-246-0355;

(iv) Is legally qualified to contract with the Authorized Agency; and

(v) Has supplied all necessary information in connection with the inquiry concerning Responsibility. If the Offeror fails to promptly supply information requested by the Authorized Agency concerning Responsibility,

the Authorized Agency must base the determination of Responsibility upon any available information, or may find the Offeror non-Responsible.

(2) Form of Business Entity. For purposes of this Rule, the Authorized Agency may investigate any Person submitting an Offer. The investigation may include that Person's officers, directors, owners, affiliates, or any other Person acquiring ownership of the Person to determine application of this Rule or to apply the Debarment provisions of ORS 279B.130.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279B.050-279B.090

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10

## 125-247-0660

### Cancellation of Procurement or Solicitation

(1) Cancellation in the Public Interest. An Authorized Agency may cancel a Procurement or Solicitation as set forth in ORS 279B.100.

(2) Notice of Cancellation before Opening. If the Authorized Agency cancels a Procurement or Solicitation before Opening, the Authorized Agency must provide Written notice of cancellation in the same manner that the Authorized Agency initially provided notice of the Solicitation. Such notice of cancellation must:

(a) Identify the Solicitation Document;

(b) Briefly explain the reason for cancellation; and

(c) If appropriate, explain that an opportunity will be given to compete on any re-solicitation.

(3) Notice of Cancellation after Opening. If the Authorized Agency cancels a Procurement or Solicitation after Opening, the Authorized Agency must provide Written notice of cancellation to all Offerors who submitted Offers.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279B.050-279B.090

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10

## 125-247-0691

### Brand Name or Equal Specification

(1) Applicability and Use. This Rule applies to Specifications for a Solicitation or class of Solicitations. For a Solicitation or class of Solicitations under ORS 279B.060, 279B.065, 279B.070, 279B.085, or 279A.200-279A.225, as provided in ORS 279B.215:

(a) A brand name or equal Specification may be used when the use of a brand name or equal Specification is advantageous to the Agency, because the brand name describes the standard of quality, performance, functionality and other characteristics of the product needed by the Agency.

(b) The Agency is entitled to determine what constitutes a product that is equal or superior to the product specified, and any such determination is final.

(c) Nothing in this Subsection may be construed as prohibiting an Agency from specifying one or more comparable products as examples of the quality, performance, functionality or other characteristics of the product needed by the Agency.

(2) Determination. A brand name Specification may be prepared and used only if the Agency determines for a Solicitation or a class of Solicitations that only the identified brand name Specification will meet the needs of the Agency based on one or more of the following written determinations:

(a) That use of a brand name Specification is unlikely to encourage favoritism in the awarding of Public Contracts or substantially diminish competition for Public Contracts;

(b) That use of a brand name Specification would result in substantial cost savings to the Agency;

(c) That there is only one manufacturer or seller of the product of the quality, performance or functionality required; or

(d) That efficient utilization of existing Goods requires the acquisition of compatible Goods or Services.

(3) An Agency's use of a brand name Specification may be subject to review only as provided in ORS 279B.405.

(4) Single Manufacturer, Multiple Sellers. An Authorized Agency may prepare and use a brand name or equal Specification for Supplies and Services available from only one manufacturer, but available through multiple sellers, if the Authorized Agency complies with Sections (1) and (2) of this Rule and the following requirements:

(a) If the total purchase is \$5,000 or more but does not exceed \$150,000 and Supplies and Services are not available under an existing Mandatory Use Contract, the Authorized Agency must obtain informal, competitive Quotes, Bids, or Proposals and document this process in the Procurement File according to ORS 279B.070 and OAR 125-247-0270;

(b) If the purchase exceeds \$150,000, and the Supplies and Services are not available under an existing Price Agreement for information technology with competing products or a Mandatory Use Contract, an Authorized Agency must first request and obtain prior written authorization from the Chief Procurement Officer to proceed with the acquisition.

(5) Single Manufacturer, Multiple Purchases. If an Authorized Agency intends to make several purchases of brand name-specified Supplies and Services from a particular manufacturer or seller for a period not to exceed five (5) years, the Authorized Agency must so state this information in: the

# ADMINISTRATIVE RULES

Procurement File; the Solicitation Document, if any; or a Public Notice of a solicitation on ORPIN. If the Authorized Agency estimates the total purchase amount to exceed \$150,000, this estimate must also be stated in the Public Notice. This Section (5) does not apply to Department Price Agreements, also known as Mandatory Use Contracts.

(6) Nothing in this Rule exempts the Authorized Agency from obtaining the approval of the Attorney General for legal sufficiency according to ORS 291.047.

(7) All Authorized Agencies must comply with ORS 200.035 and related Department policy, despite this Rule.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070  
Stats. Implemented: ORS 279B.215

Hist.: DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10

## 125-247-0700

### Protests and Judicial Review of Approvals of Special Procurements

(1) Purpose. An Affected Person may protest the approval of a Special Procurement. According to ORS 279B.400(1), before seeking judicial review of the approval of a Special Procurement, an Affected Person must file a Written protest with the Chief Procurement Officer and exhaust all administrative remedies.

(2) Delivery. Regardless of the requirements for filing a writ of review under ORS Chapter 34 according to ORS 279B.400(4)(a), an Affected Person must deliver a Written protest to the Chief Procurement Officer within seven Days after the first date of public notice of the approval of a Special Procurement by the Chief Procurement Officer, unless a different protest period is provided in the public notice of the approval of a Special Procurement:

(3) Content of Protest. The Written protest must include:

- (a) A detailed statement of the legal and factual grounds for the protest;
- (b) A description of the resulting harm to the Affected Person; and
- (c) The relief requested.

(4) Chief Procurement Officer Response. The Chief Procurement Officer must not consider an Affected Person's protest of the approval of a Special Procurement submitted after the timeline established for submitting such protest under this Rule or such different time period as may be provided in the public notice of the approval of a Special Procurement. The Chief Procurement Officer must issue a Written disposition of the protest in a timely manner. If the Chief Procurement Officer upholds the protest, in whole or in part, the Chief Procurement Officer may with sole discretion implement the sustained protest in the approval of the Special Procurement, or revoke the approval of the Special Procurement.

(5) Judicial Review. An Affected Person may seek judicial review of the Chief Procurement Officer's decision relating to a protest of the approval of a Special Procurement in accordance with ORS 279B.400.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070  
Stats. Implemented: ORS 279B.400

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10

## 125-247-0710

### Protests and Judicial Review of Sole-Source Procurements

(1) Purpose. For Sole-Source Procurements requiring public notice under OAR 125-247-0275, an Affected Person may protest the determination of the Chief Procurement Officer or Designated Procurement Officer of the Authorized Agency for Contracts not exceeding \$150,000 or under a specific delegation agreement (Designated Procurement Officer), that the Supplies and Services or class of Supplies and Services are available from only one source. According to ORS 279B.420(3)(f), before seeking judicial review, an Affected Person must file a Written protest with the Chief Procurement Officer or Designated Procurement Officer and exhaust all administrative remedies.

(2) Delivery. Unless otherwise specified in the public notice of the Sole-Source Procurement, an Affected Person must deliver a Written protest to the Chief Procurement Officer or Designated Procurement Officer within seven (7) Days after the first date of public notice of the Sole-Source Procurement, unless a different protest period is provided in the public notice of a Sole-Source Procurement.

(3) Content of Protest. The Written protest must include:

- (a) A detailed statement of the legal and factual grounds for the protest;
- (b) A description of the resulting harm to the Affected Person; and
- (c) The relief requested.

(4) Response. The Chief Procurement Officer or Designated Procurement Officer must not consider an Affected Person's Sole-Source Procurement protest submitted after the timeline established for submitting such protest under this Rule, or such different time period as may be provided in the public notice of the Sole-Source Procurement. The Chief Procurement Officer or Designated Procurement Officer must issue a Written disposition of the protest in a timely manner. If the Chief Procurement Officer or Designated Procurement Officer upholds the protest, in whole or in part, the Authorized Agency must not enter into a sole-source Contract.

(5) Judicial Review. Judicial review of the Chief Procurement Officer's or Designated Procurement Officer's disposition of a Sole-Source Procurement protest must be in accordance with ORS 279B.420.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279B.405

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10

## 125-247-0720

### Protests and Judicial Review of Multiple-Tiered and Multistep Solicitations

(1) Purpose. An Affected Offeror may protest exclusion from the Competitive Range or from subsequent tiers or steps of a Solicitation in accordance with the applicable Solicitation Document. When such a protest is permitted by the Solicitation Document, then according to ORS 279B.420(3)(f), before seeking judicial review, an Affected Offeror must file a Written protest with the Authorized Agency and exhaust all administrative remedies. A protestor of a Competitive Range in accordance with this Rule is not entitled to obtain or review the Procurement Files related to the protest until after the notice of intent to award. See OAR 125-247-0630.

(2) Basis for Protest. An Affected Offeror may only protest its exclusion from a tier or step of competition if the Offeror is Responsible and submitted a Responsive Offer and but for the Authorized Agency's mistake in evaluating the Offeror's or other Offerors' Offers, the protesting Offeror would have been eligible to participate in the next tier, step or Phase of competition. For example, the protesting Offeror must claim it is eligible for inclusion in the Competitive Range if all ineligible higher-scoring Offerors are removed from consideration, and that those ineligible Offerors are ineligible for inclusion in the Competitive Range because: their Proposals were not Responsive, or the Authorized Agency committed a substantial violation of a provision in the Solicitation Document or of an applicable procurement statute or administrative rule, and the protesting Offeror was unfairly evaluated and would have, but for such substantial violation, been included in the Competitive Range.

(3) Delivery. Unless otherwise specified in the Solicitation Document, an Affected Offeror must deliver a Written protest to the Authorized Agency within seven (7) Days after issuance of the notice of the Competitive Range or notice of subsequent tiers, steps or Phases.

(4) Content of Protest. The Affected Offeror's protest must be in Writing and must specify the grounds upon which the protest is based.

(5) Authorized Agency Response. The Authorized Agency must not consider an Affected Offeror's multi-tiered or multistep Solicitation protest submitted after the timeline established for submitting such protest under this Rule, or such different time period as may be provided in the Solicitation Document. The Authorized Agency must issue a Written disposition of the protest in a timely manner. If the Authorized Agency upholds the protest, in whole or in part, the Authorized Agency may in its sole discretion either issue an Addendum under OAR 125-247-0430 reflecting its disposition or cancel the Procurement or Solicitation under OAR 125-247-0660.

(6) Judicial Review. Judicial review of the Authorized Agency's decision relating to a multi-tiered or multistep Solicitation protest must be in accordance with ORS 279B.420.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279B.405

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10

## 125-247-0740

### Protests and Judicial Review of Contract Award

(1) Purpose. An Offeror may protest the Award of a Contract, or the Intent to Award a Contract, whichever occurs first, if the conditions set forth in ORS 279B.410(1) are satisfied. An Offeror must file a Written protest with the Authorized Agency and exhaust all administrative remedies before seeking judicial review of the Authorized Agency's Contract Award decision.

(2) Delivery. Unless otherwise specified in the Solicitation Document, an Offeror must deliver a Written protest to the Authorized Agency within seven (7) Days after the Award of the Contract or the issuance of the notice of intent to award the Contract, whichever occurs first.

(3) Content of Protest. An Offeror's Written protest must specify the grounds for the protest to be considered by the Authorized Agency according to ORS 279B.410(2).

(4) Authorized Agency Response. The Authorized Agency must not consider an Offeror's Contract Award protest submitted after the timeline established for submitting such protest under this Rule, or such different time period as may be provided in the Solicitation Document. The Authorized Agency must issue a Written disposition of the protest in a timely manner as set forth in ORS 279B.410(4). If the Authorized Agency upholds the protest, in whole or in part, the Authorized Agency may in its sole discretion either award the Contract to the successful protestor or cancel the Procurement or Solicitation.

(5) Judicial Review. Judicial review of the Authorized Agency's decision relating to a Contract Award protest must be in accordance with ORS 279B.415.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279B.410 & 270B.415

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10

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## 125-247-0750

### Judicial Review of Other Violations

(1) Any violation of ORS Chapter 279A or 279B by an Authorized Agency, for which no judicial remedy is otherwise provided in the Public Contracting Code, is subject to judicial review as set forth in ORS 279B.420.

(2) Alleged Violation. Oregon Laws 2009, Chapter 880, Section 8 provides that an alleged violation of an Authorized Agency is subject to judicial review under this Rule, and Authorized Agencies must comply with ORS 279B.145.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070  
Stats. Implemented: ORS 279B.420 & OL 2009, Ch 880  
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10

## 125-248-0130

### Applicable Selection Procedures; Pricing Information; Disclosure of Proposals; Conflicts of Interest

(1) When selecting the most qualified Consultants to perform Architectural, Engineering and Land Surveying Services, Authorized Agencies that are contracting with Consultants under the conditions listed in ORS 279C.110(2) must follow the applicable selection procedure under either OAR 125-248-0200 (Direct Appointment Procedure), 125-248-0210 (Informal Selection Procedure) or 125-248-0220 (Formal Selection Procedure). Authorized Agencies subject to this Section (1) must not solicit or use pricing policies and pricing proposals, or other pricing information, to determine a Consultant's compensation until after the Authorized Agency has selected the most qualified Consultant in accordance with the applicable selection procedure.

(2) Authorized Agencies selecting Consultants to perform Related Services must follow one of the following selection procedures:

(a) When selecting a Consultant on the basis of qualifications alone, Authorized Agencies must follow the applicable selection procedure under OAR 125-248-0200 (Direct Appointment Procedure) if the requirements of OAR 125-248-0200(1) apply, 125-248-0210 (Informal Selection Procedure) or 125-248-0220 (Formal Selection Procedure); and

(b) When selecting a Consultant on the basis of price competition alone, Authorized Agencies must follow either the provisions under OAR Chapter 125, Division 247 for obtaining and evaluating Bids, or OAR 125-248-0200 (Direct Appointment Procedure) if the requirements of OAR 125-248-0200(1) apply; and

(c) When selecting a Consultant on the basis of price and qualifications, Authorized Agencies must follow either the provisions under OAR Chapter 125, Division 247 for obtaining and evaluating Proposals, or OAR 125-248-0200 (Direct Appointment Procedure) if the requirements of OAR 125-248-0200(1) apply. Authorized Agencies subject to this Section (2) may request and consider a Proposer's pricing policies and pricing proposals or other pricing information, submitted with a Proposal as part of the evaluation.

(3) Authorized Agencies may use electronic methods to screen and select a Consultant in accordance with the procedures described in Sections (1) and (2) of this rule. If an Authorized Agency uses electronic methods to screen and select a Consultant, the Authorized Agency must conduct the screening and selection procedure by electronic means, substantially in conformance with OAR 125-247-0330 (Electronic Procurement).

(4) In applying these Rules, Authorized Agencies must support the State's goal of promoting a sustainable economy in the rural areas of the State.

(5) Consistent with the requirements of ORS 279C.107 and the remaining requirements of ORS 279C.100, 279C.105 and 279C.110 through 279C.125, the following provisions apply to proposals received by an Authorized Agency for Architectural, Engineering and Land Surveying Services or Related Services:

(a) The term "competitive proposal", for purposes of ORS 279C.107 includes proposals under OAR 125-248-0200 (Direct Appointment Procedure), 125-248-0210 (Informal Selection Procedure), 125-248-0220 (Formal Selection Procedure) or 125-248-0130(2)(c) (selection based on price and qualifications),

(b) For purposes of proposals received by an Authorized Agency under OAR 125-248-0200 (Direct Appointment Procedure), a formal notice of intent to award is not required. As a result, OAR 125-248-0200 proposals are not required to be open for public inspection until after the Authorized Agency has made the decision to begin contract negotiations with the selected consultant.

(c) In the limited circumstances permitted by ORS 279C.110, 279C.115 and 279C.120, where the Authorized Agency is conducting discussions or negotiations with proposers who submit proposals that the Authorized Agency has determined to be closely competitive or to have a reasonable chance of being selected for award, the Authorized Agency may open proposals so as to avoid disclosure of proposal contents to competing Proposers, consistent with the requirements of ORS 279C.107. Otherwise, Authorized Agencies should open proposals in such a way as to avoid disclosure of the contents until after the Authorized Agency issues a notice of intent to award a contract.

(d) Disclosure of proposals and proposal information is otherwise governed by ORS 279C.107.

(6) As required by Oregon Laws 2009, chapter 880, Section 11, pertaining to requirements to ensure the objectivity and independence of providers of certain Personal Services which are procured under ORS 279C, Authorized Agencies may not:

(a) Procure the Personal Services identified in Oregon Laws 2009, chapter 880, Section 11 from a Contractor or an affiliate of a Contractor who is a party to the Public Contract that is subject to administration, management, monitoring, inspection, evaluation or oversight by means of the Personal Services; or

(b) Procure the Personal Services identified in Oregon Laws 2009, chapter 880, Section 11 through the Public Contract that is subject to administration, management, monitoring, inspection, evaluation or oversight by means of the Personal Services.

(7) The requirements of Oregon Laws 2009, chapter 880, Section 11 and Section (6) of this Rule apply in the following circumstances, except as provided in Section (8) of this Rule:

(a) The Procurement of Personal Services which an Authorized Agency requires for the purpose of administering, managing, monitoring, inspecting, evaluating compliance with or otherwise overseeing a Public Contract or performance under a Public Contract that is subject to ORS 279C. A Public Contract that is "subject to ORS 279C" includes a Public Contract for Architectural, Engineering and Land Surveying Services, a Public Contract for Related Services or a Public Contract for construction services under ORS 279C.

(b) The Procurements of Personal Services subject to the restrictions of Oregon Laws 2009, chapter 880, Section 11 include, but are not limited to, the following:

(A) Procurements for Architectural, Engineering and Land Surveying Services, which involve overseeing or monitoring the performance of a construction Contractor under a Public Contract for construction services subject to ORS 279C;

(B) Procurements for commissioning services, which involve monitoring, inspecting, evaluating or otherwise overseeing the performance of a Contractor providing Architectural, Engineering and Land Surveying Services or the performance of a construction Contractor under a Public Contract for construction services subject to ORS 279C;

(C) Procurements for project management services, which involve administration, management, monitoring, inspecting, evaluating compliance with or otherwise overseeing the performance of a Contractor providing Architectural, Engineering and Land Surveying Services, construction services subject to ORS 279C, commissioning services or other Related Services for a Project;

(D) Procurements for special inspections and testing services, which involve inspecting, testing or otherwise overseeing the performance of a construction Contractor under a Public Contract for construction services subject to ORS 279C; and

(E) Procurements for other Related Services or Personal Services, which involve administering, managing, monitoring, inspecting, evaluating compliance with or otherwise overseeing the Public Contracts described in Section (7)(a) of this Rule.

(8) The restrictions of Oregon Laws 2009, chapter 880, Section 11 do not apply in the following circumstances, except as further specified below:

(a) To an Authorized Agency's Procurement of both design services and construction services through a single "Design-Build" Procurement, as that term is defined in OAR 125-249-0610. Such a Design-Build Procurement includes a Procurement under an Energy Savings Performance Contract, as defined in ORS 279A.010. Provided, however, the restrictions of Oregon Laws 2009, chapter 880, Section 11 do apply to an Authorized Agency's Procurement of Personal Services for the purpose of administering, managing, monitoring, inspecting, evaluating compliance with or otherwise overseeing a Design-Build Contract or performance under such a Contract resulting from a Design-Build Procurement.

(b) To an Authorized Agency's Procurement of both pre-construction services and construction services through a single "Construction Manager/General Contractor" Procurement, as defined in OAR 125-249-0610. Provided, however, the restrictions of Oregon Laws 2009, chapter 880, Section 11 do apply to an Authorized Agency's Procurement of Personal Services for the purpose of administering, managing, monitoring, inspecting, evaluating compliance with or otherwise overseeing a Construction Manager/General Contractor Contract or performance under such a Contract resulting from a Construction Manager/General Contractor Procurement.

(9) All Agencies must provide timely notice to the Advocate for Minority, Women and Emergency Small Business, according to ORS 200.035.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070  
Stats. Implemented: ORS 279A.065, 279C.100-279C.125 & OL 2009, Ch 880, Section 11  
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10

# ADMINISTRATIVE RULES

## 125-248-0200

### Direct Appointment Procedure

(1) Authorized Agencies may enter into a Contract directly with a Consultant without following the selection procedures set forth elsewhere in these Rules if:

(a) Emergency. The Authorized Agency finds that an Emergency exists; or

(b) Small Estimated Fee. The Estimated Fee to be paid under the Contract does not exceed \$50,000; or

(c) Continuation of Project with Intermediate Estimated Fee. Where a Project is being continued, as more particularly described below, and where the Estimated Fee will not exceed \$150,000, the Architectural, Engineering and Land Surveying Services or Related Services to be performed under the Contract must meet the following requirements:

(A) The services consist of or are related to Architectural, Engineering and Land Surveying Services or Related Services that have been substantially described, planned or otherwise previously studied in an earlier Contract with the same Consultant and are rendered for the same Project as the Architectural, Engineering and Land Surveying Services or Related Services rendered under the earlier Contract;

(B) The Estimated Fee to be made under the Contract does not exceed \$150,000; and

(C) The Authorized Agency used either the formal selection procedure under OAR 137-048-0220 (Formal Selection Procedure) or the formal selection procedure applicable to selection of the Consultant at the time of original selection, to select the Consultant for the earlier Contract; or

(d) Continuation of Project with Extensive Estimated Fee. Where a Project is being continued, as more particularly described below, and where the Estimated Fee is expected to exceed \$150,000, the Architectural, Engineering and Land Surveying Services or Related Services to be performed under the Contract must meet the following requirements:

(A) The services consist of or are related to Architectural, Engineering and Land Surveying Services or Related Services that have been substantially described, planned or otherwise previously studied in an earlier Contract with the same Consultant and are rendered for the same Project as the Architectural, Engineering and Land Surveying Services or Related Services rendered under the earlier Contract;

(B) The Authorized Agency used either the formal selection procedure under OAR 125-248-0220 (Formal Selection Procedure) or the formal selection procedure applicable to selection of the Consultant at the time of original selection, to select the Consultant for the earlier Contract; and

(C) The Authorized Agency makes written findings that entering into a Contract with the Consultant, whether in the form of an amendment to an existing Contract or a separate Contract for the additional Scope of services, will:

(i) Promote efficient use of public funds and resources and result in substantial cost savings to Authorized Agency;

(ii) Protect the integrity of the public contracting process and the competitive nature of the Procurement by not encouraging favoritism or substantially diminishing competition in the award of the Contract.

(2) The Authorized Agencies may select Consultants for Contracts under this Rule from the following sources:

(a) The Authorized Agency's list of Consultants that is created under OAR 125-248-0120 (List of Interested Consultants; Performance Record);

(b) Another Authorized Agency's list of Consultants that the Authorized Agency has created under OAR 125-248-0120 (List of Interested Consultants; Performance Record), with Written consent of that Authorized Agency; or

(c) All Consultants offering the required Architectural, Engineering and Land Surveying Services or Related Services that Authorized Agencies reasonably can identify under the circumstances.

(3) The Authorized Agency must direct Negotiations with Consultants selected under this Rule toward obtaining Written agreement on:

(a) Consultant's performance obligations and performance schedule;

(b) Payment methodology and a maximum amount payable to the Consultant for the Architectural, Engineering and Land Surveying Services or Related Services required under the Contract that is fair and reasonable to the Authorized Agency as determined solely by the Authorized Agency, taking into account the value, Scope, complexity and nature of the Architectural, Engineering and Land Surveying Services or Related Services; and

(c) Any other provisions the Authorized Agency believes to be in the Authorized Agency's best interest to negotiate.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279C110 & 279C.115

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10

## 125-248-0210

### Informal Selection Procedure

(1) Authorized Agencies may use the informal selection procedure described in this Rule to obtain a Contract if the Estimated Fee is expected to not exceed \$150,000.

(2) Authorized Agencies using the informal selection procedure must:

(a) Create a Request for Proposals that includes at a minimum the following:

(A) A description of the Project for which Consultant's Architectural, Engineering and Land Surveying Services or Related Services are needed and a description of the Architectural, Engineering and Land Surveying Services or Related Services that will be required under the resulting Contract;

(B) Anticipated Contract performance schedule;

(C) Conditions or limitations, if any, that may constrain or prohibit the selected Consultant's ability to provide additional services related to the Project, including construction services;

(D) Date and time Proposals are due and other directions for submitting Proposals;

(E) Criteria upon which the most qualified Consultant will be selected. Selection Criteria may include:

(i) Amount and type of resources and number of experienced staff Consultant has available to perform the Architectural, Engineering and Land Surveying Services or Related Services described in the Request for Proposals within the applicable time limits, including the current and projected Workloads of such staff and the proportion of time such staff would have available for the Architectural, Engineering and Land Surveying Services or Related Services;

(ii) Proposed management techniques for the Architectural, Engineering and Land Surveying Services or Related Services described in the Request for Proposals;

(iii) A Consultant's capability, experience and past performance history and record in providing similar Architectural, Engineering and Land Surveying Services or Related Services, including but not limited to quality of Work, ability to meet schedules, cost control methods and Contract Administration practices;

(iv) A Consultant's approach to Architectural, Engineering and Land Surveying Services or Related Services described in the Request for Proposals and design philosophy, if applicable;

(v) A Consultant's geographic proximity to and familiarity with the physical location of the Project;

(vi) Volume of Work, if any, previously awarded to a Consultant, with the objective of effecting equitable distribution of Contracts among qualified Consultants, provided such distribution does not violate the principle of selecting the most qualified Consultant for the type of professional services required; and

(vii) A Consultant's ownership status and employment practices regarding women, minorities and emerging small businesses or historically underutilized businesses;

(F) A Statement that Proposers responding to the RFP do so solely at their expense, and the Authorized Agency is not responsible for any Proposer expenses associated with the RFP;

(G) A statement directing Proposers to the protest procedures set forth in these Rules; and

(H) For Related Services only, pricing policies, and pricing proposals, or other pricing information.

(b) Provide a Request for Proposals to a minimum of five (5) prospective Consultants drawn from:

(A) The Authorized Agency's list of Consultants that is created and maintained under OAR 125-248-0120 (List of Interested Consultants; Performance Record);

(B) Another Authorized Agency's list of Consultants that is created and maintained under OAR 125-248-0120 (List of Interested Consultants; Performance Record); or

(C) All Consultants the Authorized Agency can reasonably locate that offer the desired Architectural, Engineering and Land Surveying Services or Related Services, separately or in any combination thereof.

(c) Review and rank all Proposals received according to the criteria set forth in the Request for Proposals, and select the three highest ranked Proposers.

(3) If the Authorized Agency does not cancel the RFP after it reviews and ranks each Proposer, the Authorized Agency will begin negotiating a Contract with the highest ranked Proposer. The Authorized Agency must direct Negotiations toward obtaining Written agreement on:

(a) Consultant's performance obligations and performance schedule;

(b) Payment methodology and a maximum amount payable to the Consultant for the Architectural, Engineering and Land Surveying Services or Related Services required under the Contract that is fair and reasonable to the Authorized Agency as determined solely by the Authorized Agency, taking into account the value, Scope, complexity and nature of the Architectural, Engineering and Land Surveying Services or Related Services; and

(c) Any other provisions the Authorized Agency believes to be in the Authorized Agency's best interest to negotiate.

(4) The Authorized Agency must, either orally or in Writing, formally terminate Negotiations with the highest ranked Proposer if the Authorized Agency and Proposer are unable for any reason to reach agreement on a Contract within a reasonable amount of time. The Authorized Agency may thereafter negotiate with the second ranked Proposer, and if necessary, with the third ranked Proposer, in accordance with Section (3) of this Rule, until Negotiations result in a Contract. If Negotiations with any of the top three

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Proposers do not result in a Contract within a reasonable amount of time, the Authorized Agency may end the particular informal Solicitation and thereafter may proceed with a new informal Solicitation under this Rule or proceed with a formal Solicitation under OAR 125-248-0220 (Formal Selection Procedure).

(5) The Authorized Agency must terminate the informal selection procedure and proceed with the formal selection procedure under OAR 125-248-0220 if the Scope of the anticipated Contract is revised during Negotiations so that the Estimated Fee will exceed \$150,000. Regardless of the foregoing, the Authorized Agency may continue Contract Negotiations with the Proposer selected under the informal selection procedure if the Authorized Agency makes Written findings that contracting with that Proposer will:

(a) Promote efficient use of the public funds, and resources and result in substantial cost savings to the Authorized Agency; and

(b) Protect the integrity of the Public Contracting process and the competitive nature of the Procurement by not encouraging favoritism or substantially diminishing competition in the award of the Contract.

(6) The Authorized Agency must comply with applicable preferences for recycled materials, according to ORS 279A.125 and OAR 125-246-0320 through 125-246-0324.

(7) Minority, Women and Emerging Small Business. In accordance with ORS 200.035, an Authorized Agency must provide timely notice of all Procurements to the Advocate for Minority, Women and Emerging Small Business if the estimated Contract Price exceeds \$5,000.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279C.110

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10

## 125-248-0220

### Formal Selection Procedure

(1) General. Subject to OAR 125-248-0130 (Applicable Selection Procedures; Pricing Information; Disclosure of Proposals), Authorized Agencies must use the formal selection procedure described in this Rule to select Consultants if the Consultants cannot be selected under either OAR 125-248-0200 (Direct Appointment Procedure) or under 125-248-0210 (Informal Selection Procedure). The Formal Selection Procedure may otherwise be used at Authorized Agencies' discretion.

(2) Advertisement. Authorized Agencies using the formal selection procedure must obtain Contracts through public advertisement of Requests for Proposals or Requests for Qualifications followed by Requests for Proposals.

(a) The Authorized Agency must advertise each RFP and RFQ at least once in at least one newspaper of general circulation in the area where the Project is located and in as many other issues and publications as may be necessary or desirable to achieve adequate competition. Other issues and publications may include, but are not limited to: local newspapers, trade journals, and publications targeted to reach the minority, women and emerging small business enterprise audiences. In addition, an Authorized Agency must use ORPIN according to OAR 125-246-0500, provided the Authorized Agency follows a procedure for electronic advertisement approved by the State Procurement Office or its designee.

(A) The Authorized Agency must publish the advertisement within a reasonable time before the deadline for the Proposal submission or response to the RFQ or RFP, but in any event no fewer than fourteen (14) calendar Days before the closing date set forth in the RFQ or RFP.

(B) The Authorized Agency must include a brief description of the following items in the advertisement:

(i) The Project;

(ii) A description of the Architectural, Engineering and Land Surveying Services or Related Services the Authorized Agency seeks;

(iii) How and where Consultants may obtain a copy of the RFQ or RFP; and

(iv) The deadline for submitting a Proposal or response to the RFQ or RFP.

(b) The Authorized Agency may also send notice of the RFP or RFQ directly to all Consultants on the Authorized Agency's list of Consultants that is created and maintained under OAR 125-248-0120 (List of Interested Consultants; Performance Record).

(3) Request for Qualifications Procedure. Authorized Agencies may use the RFQ procedure to evaluate potential Consultants and establish a short list of qualified Consultants to whom the Authorized Agency may issue an RFP for some or all of the Architectural, Engineering and Land Surveying Services or Related Services described in the RFQ.

(a) The Authorized Agency must include the following, at a minimum, in each RFQ:

(A) A brief description of the Project for which the Authorized Agency is seeking Consultants;

(B) A description of the Architectural, Engineering and Land Surveying Services or Related Services the Authorized Agency seeks for the Project;

(C) Conditions or limitations, if any, that may constrain or prohibit the selected Consultant's ability to provide additional services related to the Project, including but not limited to construction services;

(D) The deadline for submitting a response to the RFQ;

(E) A description of required Consultant qualifications for the Architectural, Engineering and Land Surveying Services or Related Services the Authorized Agency seeks;

(F) The RFQ evaluation criteria, including weights, points, or other classifications applicable to each criterion;

(G) A statement whether or not the Authorized Agency will hold a pre-qualification meeting for all interested Consultants to discuss the Project and the Architectural, Engineering and Land Surveying Services or Related Services described in the RFQ and if a pre-qualification meeting will be held, the location of the meeting and whether or not attendance is mandatory; and

(H) A Statement that Consultants responding to the RFQ do so solely at their expense, and the Authorized Agency is not responsible for any Consultant expenses associated with the RFQ.

(b) The Authorized Agency may include a request for any or all of the following in each RFQ:

(A) A statement describing Consultants' general qualifications and related performance information;

(B) A description of Consultants' specific qualifications to perform the Architectural, Engineering and Land Surveying Services or Related Services described in the RFQ including Consultants' available resources and recent, current and projected workloads;

(C) A list of similar Architectural, Engineering and Land Surveying Services or Related Services and references concerning past performance, and a copy of all records, if any, of Consultants' performance under Contracts with any other Authorized Agency;

(D) The number of Consultants' experienced staff available to perform the Architectural, Engineering and Land Surveying Services, and Related Services described in the RFQ, including such personnel's specific qualifications and experience and an estimate of the proportion of their time that such personnel would spend on those services;

(E) Consultants' approaches to Architectural, Engineering and Land Surveying Services or Related Services described in the RFQ and design philosophy, if applicable;

(F) Consultants' geographic proximity to and familiarity with the physical location of the Project;

(G) Consultants' Ownership status and employment practices regarding women, minorities and emerging small businesses or historically underutilized businesses;

(H) Consultants' ability to assist an Authorized Agency in complying with art acquisition requirements, according to ORS 276.073 through 276.090;

(I) Consultants' ability to assist an Authorized Agency in complying with State of Oregon energy efficient design requirements, according to ORS 276.900 through 276.915;

(J) Consultants' ability to assist an Authorized Agency in complying with the solar energy technology requirements of ORS 279C.527;

(K) Any other information the Authorized Agency deems reasonable and necessary to evaluate Consultants' qualifications; and

(L) For Related Services only, Consultants' pricing policies and pricing proposals and other pricing information.

(c) RFQ Evaluation Committee. The Authorized Agency must establish an RFQ evaluation committee of at least two (2) individuals to review, score, and rank the responding Consultants according to the Solicitation criteria. The Authorized Agency may appoint to the evaluation committee, Authorized Agency employees, or employees of other public Authorized Agencies, with experience in architecture, engineering and land surveying, Related Services, construction or Public Contracting. If an Authorized Agency procedure permits, the Authorized Agency may include on the evaluation committee private practitioners of architecture, engineering and land surveying or related professions. The Authorized Agency must designate one member of the evaluation committee as the evaluation committee chairperson.

(d) The Authorized Agency may use any reasonable screening or evaluation method to establish a short list of qualified Consultants, including but not limited to the following:

(A) Requiring Consultants responding to an RFQ to achieve a Threshold score before qualifying for placement on the short list;

(B) Placing a pre-determined number of the highest scoring Consultants on a short list;

(C) Placing on a short list only those Consultants with certain essential qualifications; or experience, whose practice is limited to a particular subject area, or who practice in a particular geographic locale or region, provided that such factors are material, would not unduly restrict competition, and were announced as dispositive in the RFP.

(e) After the evaluation committee reviews, scores and ranks the responding Consultants, the Authorized Agency must establish a short list of at least three qualified Consultants, provided however, that if four or fewer Consultants responded to the RFQ, then:

(A) The Authorized Agency may establish a short list of fewer than three qualified Consultants; or

(B) The Authorized Agency may cancel the RFQ and issue an RFP.

(f) No Consultant will be eligible for placement on the Authorized Agency's short list established under Section (3) of this Rule if the Consultant



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or any of Consultant's principals, partners or associates is a member of the Authorized Agency's RFQ evaluation committee.

(g) Except when the RFQ is cancelled, the Authorized Agency must provide a copy of the subsequent RFP to each Consultant on the short list.

(4) Formal Selection of Consultants through Request for Proposals. Authorized Agencies must use the procedure described in Section (4) of this Rule when issuing an RFP for a Contract described in Section (1) of this Rule.

(a) RFP Required Contents. Authorized Agencies using the formal selection procedure must include at least the following in each Request for Proposals, whether or not the RFP is preceded by an RFQ:

(A) General background information, including a description of the Project and the specific Architectural, Engineering and Land Surveying Services or Related Services sought for the Project, the estimated Project cost, the estimated time period during which the Project is to be completed, and the estimated time period in which the specific Architectural, Engineering and Land Surveying Services or Related Services sought will be performed.

(B) The RFP evaluation process and the criteria which will be used to select the most qualified Proposer, including the weights, points or other classifications applicable to each criterion. If the Authorized Agency does not indicate the applicable number of points, weights or other classifications then each criterion is of equal value. Evaluation criteria may include, but are not limited to, the following:

(i) Proposers' availability and capability to perform the Architectural, Engineering and Land Surveying Services or Related Services described in the RFP;

(ii) Experience of Proposers' key staff persons in providing similar Architectural, Engineering and Land Surveying Services or Related Services on comparable Projects;

(iii) The amount and type of resources, and number of experienced staff persons Proposers have available to perform the Architectural, Engineering and Land Surveying Service or Related Services described in the RFP;

(iv) The recent, current and projected workloads of the staff and resources referenced in this Section;

(v) The proportion of time Proposers estimate that the staff referenced in this Section would spend on the Architectural, Engineering and Land Surveying Services or Related Services described in the RFP;

(vi) Proposers' demonstrated ability to successfully complete similar Architectural, Engineering and Land Surveying Services or Related Services on time and within budget, including whether or not there is a record of satisfactory performance under OAR 125-248-0120 (List of Interested Consultants; Performance Record);

(vii) References and recommendations from past clients;

(viii) Proposers' performance history in meeting deadlines, submitting accurate estimates, producing high quality Work, and meeting financial obligations;

(ix) Status and quality of any required license or certification;

(x) Proposers' knowledge and understanding of the Project and Architectural, Engineering and Land Surveying Services or Related Services described in the RFP as shown in Proposers' approaches to staffing and scheduling needs for the Architectural, Engineering and Land Surveying Services or Related Services and proposed solutions to any perceived design and constructability issues;

(xi) Results from interviews, if conducted;

(xii) Design philosophy, if applicable, and approach to the Architectural, Engineering and Land Surveying Services or Related Services described in the RFP;

(xiii) Any other criteria that the Authorized Agency seems relevant to the Project and Architectural, Engineering and Land Surveying Services, and Related Services described in the RFP, including, where the nature and budget of the Project so warrant, a design competition between competing Proposers;

(C) Conditions or limitations, if any, that may constrain or prohibit the selected Consultant's ability to provide additional services related to the Project, including but not limited to construction services;

(D) Whether interviews are possible and if so, the weight, points, or other classifications applicable to the potential interview;

(E) The date and time Proposals are due, and the delivery location for Proposals;

(F) Reservation of the right to seek clarifications of each Proposal;

(G) Reservation of the right to negotiate a final Contract that is in the best interest of the Authorized Agency;

(H) Reservation of the right to reject any or all Proposals and reservation of the right to cancel the RFP at anytime if doing either would be in the public interest as determined by the Authorized Agency;

(I) A Statement that Proposers responding to the RFP do so solely at their expense, and the Authorized Agency is not responsible for any Proposer expenses associated with the RFP;

(J) A statement directing Proposers to the protest procedures set forth in these Rules;

(K) Special Contract requirements, including but not limited to disadvantaged business enterprise ("DBE"), minority business enterprise

("MBE"), women business enterprise ("WBE") and emerging small business enterprise ("ESB") participation goals or good faith efforts with respect to DBE, MBE, WBE and ESB participation, and federal requirements when federal funds are involved;

(L) A statement whether or not the Authorized Agency will hold a pre-Proposal meeting for all interested Consultants to discuss the Project and the Architectural, Engineering and Land Surveying Services or Related Services described in the RFP and if a pre-Proposal meeting will be held, the location of the meeting and whether or not attendance is mandatory;

(M) A request for any information the Authorized Agency deems reasonably necessary to permit the Authorized Agency to evaluate, rank and select the most qualified Proposer to perform the Architectural, Engineering and Land Surveying Services or Related Services described in the RFP;

(N) A sample form of the Contract; and

(O) For Related Services only, pricing policies, proposals and other pricing information.

(b) RFP Evaluation Committee. The Authorized Agency must establish a committee of at least three individuals to review score and rank Proposals according to the evaluation criteria set forth in the RFP. If the RFP has followed an RFQ, the Authorized Agency may include the same members who served on the RFQ evaluation committee. The Authorized Agency may appoint to the evaluation committee, Authorized Agency employees, or employees of other public Authorized Agencies, with experience in architecture, engineering and land surveying, related services, construction or Public Contracting. At least one member of the evaluation committee must be an Authorized Agency employee. If the Authorized Agency procedure permits, the Authorized Agency may include on the evaluation committee private practitioners of architecture, engineering and land surveying or related professions. The Authorized Agency must designate one of its employees who also is a member of the evaluation committee as the evaluation committee chairperson.

(A) No Proposer will be eligible for award of the Contract under the RFP if the Proposer or any of Proposer's principals, partners or associates is a member of the Authorized Agency's RFP evaluation committee for the Contract.

(B) If the RFP provides for the possibility of Proposer interviews, the evaluation committee may elect to interview Proposers if the evaluation committee considers it necessary or desirable. If the evaluation committee conducts interviews, it must award weights, points or other classifications indicated in the RFP for the anticipated interview.

(C) The evaluation committee must provide to the Authorized Agency the results of the scoring and ranking for each Proposer.

(c) Initial Negotiations. If the Authorized Agency does not cancel the RFP after it receives the results of the scoring and ranking for each Proposer, the Authorized Agency will begin negotiating a Contract with the highest ranked Proposer. The Authorized Agency must direct Negotiations toward obtaining Written agreement on:

(A) Consultant's performance obligations and performance schedule;

(B) Payment methodology and a maximum amount payable to the Consultant for the Architectural, Engineering and Land Surveying Services or Related Services required under the Contract that is fair and reasonable to the Authorized Agency as determined solely by the Authorized Agency, taking into account the value, Scope, complexity and nature of the Architectural, Engineering and Land Surveying Services or Related Services; and

(C) Any other provisions the Authorized Agency believes to be in the Authorized Agency's best interest to negotiate.

(d) Subsequent Negotiations. The Authorized Agency must, either orally or in Writing, formally terminate Negotiations with the highest ranked Proposer if the Authorized Agency and Proposer are unable for any reason to reach agreement on a Contract within a reasonable amount of time. The Authorized Agency may thereafter negotiate with the second ranked Proposer, and if necessary, with the third ranked Proposer, and so on, in accordance with Section 4(c) of this Rule, until Negotiations result in a Contract. If Negotiations with any Proposer do not result in a Contract within a reasonable amount of time, the Authorized Agency may end the particular formal Solicitation. Nothing in this Rule precludes the Authorized Agency from proceeding with a new formal Solicitation for the same Architectural, Engineering and Land Surveying Services or Related Services described in the RFP that failed to result in a Contract.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279C.110

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10

## 125-248-0230

### Ties Among Proposers

(1) If an Authorized Agency is selecting a Consultant on the basis of qualifications alone and determines after the ranking of Proposers that two or more Proposers are equally qualified, the Authorized Agency may select a candidate through any process that the Authorized Agency believes will result in the best value for the Authorized Agency, taking into account the Scope, complexity and nature of the Architectural, Engineering and Land Surveying Services or Related Services. The process must instill public confidence

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through ethical and fair dealing, honesty and good faith on the part of the Authorized Agency and Proposers and must protect the integrity of the Public Contracting process. Once a tie is broken, the Authorized Agency and the selected Proposer must proceed with Negotiations under OAR 125-248-0210(3) or 125-248-0220(4)(c), as applicable.

(2) If an Authorized Agency is selecting a Consultant on the basis of price alone, or on the basis of price and qualifications, and determines after the ranking of Proposers that two or more Proposers are equal in terms of price or are equal in terms of price and qualifications, then the Authorized Agency must follow the procedure set forth in OAR 125-246-0300 (Preferences for Oregon Supplies and Services) to select the Consultant.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279C.110

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10

## 125-248-0240

### Protest Procedures

(1) RFP Protest and Request for Change. Consultants may submit a Written protest of anything contained in an RFP and may request a change to any provision, Specification or Contract term contained in an RFP, no later than seven (7) calendar Days before the date Proposals are due unless a different deadline is indicated in the RFP. Each protest and request for change must include the reasons for the protest or request, and any proposed changes to the RFP provisions, Specifications or Contract terms. The Authorized Agency will not consider any protest or request for change that is submitted after the submission deadline.

(2) Protest of Consultant Selection.

(a) Single Award. In the event of an Award to a single Proposer, the Authorized Agency must provide to all Proposers a copy of the selection notice that the Authorized Agency sent to the highest ranked Proposer. A Proposer who claims to have been adversely affected or aggrieved by the selection of the highest ranked Proposer may submit a Written protest of the selection to the Authorized Agency no later than seven (7) calendar Days after the date of the selection notice unless a different deadline is indicated in the RFP. A Proposer submitting a protest must claim that the protesting Proposer is the highest ranked Proposer because the Proposals of all higher ranked Proposers failed to meet the requirements of the RFP or because the higher ranked Proposers otherwise are not qualified to perform the Architectural, Engineering and Land Surveying Services or Related Services described in the RFP.

(b) Multiple Awards. In the event of an Award to more than one Proposer, the Authorized Agency must provide to all Proposers copies of the selection notices that the Authorized Agency sent to the highest ranked Proposers. A Proposer who claims to have been adversely affected or aggrieved by the selection of the highest ranked Proposers may submit a Written protest of the selection to the Authorized Agency no later than seven (7) calendar Days after the date of the selection notices, unless a different deadline is indicated in the RFP. A Proposer submitting a protest must claim that the protesting Proposer is one of the highest ranked Proposers because the Proposals of all higher ranked Proposers failed to meet the requirements of the RFP, or because a sufficient number of Proposals of higher ranked Proposers to include the protesting Proposer in the group of highest ranked Proposers failed to meet the requirements of the RFP. In the alternative, a Proposer submitting a protest must claim that the Proposals of all higher ranked Proposers, or a sufficient number of higher ranked Proposers to include the protesting Proposer in the group of highest ranked Proposers, otherwise are not qualified to perform the Architectural, Engineering and Land Surveying Services or Related Services described in the RFP.

(c) Effect of Protest Submission Deadline. The Authorized Agency may not consider any protest that is submitted after the submission deadline.

(3) Resolution of Protests. A duly authorized representative of the Authorized Agency must resolve all timely submitted protests within a reasonable time following the Authorized Agency's receipt of the protest and once resolved, must promptly issue a Written decision on the protest to the Proposer who submitted the protest. If the protest results in a change to the RFP, the Authorized Agency must revise the RFP accordingly and must re-advertise the RFP in accordance with these Rules.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.065 & 279C.110

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10

## 125-248-0260

### Two-Tiered Selection Procedure for Local Contracting Agency Public Improvement Projects

(1) Definition. For purposes of this Rule, "Local Contracting Agency" is defined in ORS 279A.010(1)(n) and means a local government or special government body authorized by law to conduct a Procurement. "Local Contracting Agency" includes any Person authorized by a Local Contracting Agency to conduct a Procurement on behalf of the Local Contracting Agency.

(2) Generally. If a Local Contracting Agency requires an Architect, Engineer, or Land Surveyor to provide Architectural, Engineering and Land Surveying Services, and Related Services for a Public Improvement owned

and maintained by that Local Contracting Agency, and an Authorized Agency will serve as the lead Authorized Agency and will enter into Contracts with Consultants for Architectural, Engineering and Land Surveying Services, and Related Services for that Public Improvement, the Authorized Agency must utilize the two-tiered selection process described below to obtain these Contracts with Architects, Engineers or Land Surveyors.

(3) Tier One. The Authorized Agency must, when feasible, identify no fewer than the three (3) most qualified Proposers responding to an RFP that was issued under the applicable selection procedures described in OAR 125-248-0210 (Informal Selection Procedure) and 125-248-0220 (Formal Selection Procedure), or from among Architects, Engineers or Land Surveyors identified under OAR 125-248-0200 (Direct Appointment Procedure), and must notify the Local Contracting Agency of the Architects, Engineers or Land Surveyors selected.

(4) Tier Two. In accordance with the Qualifications Based Selection requirements of ORS 279C.110, the Local Contracting Agency must either:

(a) Select an Architect, Engineer or Land Surveyor from the State Authorized Agency's list of Proposers provided from the Authorized Agency to perform the Architectural, Engineering and Land Surveying Services, and Related Services for Local Contracting Agency's Public Improvement; or

(b) Select an Architect, Engineer or Land Surveyor to perform the Architectural, Engineering and Land Surveying Services, and Related Services for the Local Contracting Agency's Public Improvement through an alternative process adopted by the Local Contracting Agency, consistent with the provisions of the applicable RFP, if any, and these Division 248 Rules. The Local Contracting Agency's alternative process must be described in the applicable RFP, may be structured to take into account the unique circumstances of the particular Local Contracting Agency, and may include provisions to allow the Local Contracting Agency to perform its tier two responsibilities efficiently and economically, alone or in cooperation with other Local Contracting Agencies. The Local Contracting Agency's alternative process may include, but is not limited to, one or more of the following methods:

(A) A general written direction from the Local Contracting Agency to the Authorized Agency, before the advertisement of a Procurement or series of Procurements or during the course of the Procurement or series of Procurements, that the Local Contracting Agency's tier two selection must be the highest-ranked firm identified by the Authorized Agency during the tier one process, and that no further coordination or consultation with the Local Contracting Agency is required. However, the Local Contracting Agency may provide written notice to the Authorized Agency that the Local Contracting Agency's general written direction is not to be applied for a particular Procurement and describe the process that the Local Contracting Agency will utilize for the particular Procurement. In order for a written direction from the Local Contracting Agency consistent with this Subsection to be effective for a particular Procurement, it must be received by the Authorized Agency with adequate time for the Authorized Agency to revise the RFP in order for Proposers to be notified of the tier two process to be utilized in the Procurement. In the event of a multiple award under the terms of the applicable Procurement, the written direction from the Local Contracting Agency may apply to the highest ranked firms that are selected under the terms of the Procurement document.

(B) An intergovernmental agreement between the Local Contracting Agency and the Authorized Agency outlining the alternative process that the Local Contracting Agency has adopted for a Procurement or series of Procurements.

(C) Where multiple Local Contracting Agencies are involved in a two-tiered selection procedure, the Local Contracting Agencies may name one or more authorized representative(s) to act on behalf of all the Local Contracting Agencies, whether the Local Contracting Agencies are acting collectively or individually, to select the Architect, Engineer or Land Surveyor to perform the Architectural, Engineering and Land Surveying Services or Related Services under the tier two selection process. In the event of a multiple Award under the terms of the applicable Procurement, the authorized representative(s) of the Local Contracting Agencies may act on behalf of the Local Contracting Agencies to select the highest ranked firms that are required under the terms of the Procurement document, as part of the tier two selection process.

(5) The Authorized Agency must thereafter begin contract Negotiations with the selected Architect, Engineer or Land Surveyor in accordance with the negotiation provisions in OAR 125-248-0200 (Direct Appointment Procedure), 125-248-0210 (Informal Selection Procedure) or 125-248-0220 (Formal Selection Procedure) as applicable.

(6) Nothing in these division 248 rules may be construed to deny or limit a Local Contracting Agency's ability to contract directly with Architects, Engineers or Land Surveyors according to ORS 279C.125(4), through a selection process established by that Local Contracting Agency.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279C.110, 279C.125

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10

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## 125-248-0300

### Contract Form; Prohibited Payment Methodology; Purchase Restrictions

(1) Contract Forms. The State Procurement Office or its delegatee must develop and maintain a standard Contract form and an Amendment form, which must be used by the Authorized Agencies in completing all Architectural, Engineering and Land Surveying and Related Services Contracts. These forms can be obtained from the State Procurement Office. Authorized Agencies must review the approved Contract form and Amendment form at least every two years. If upon review the Authorized Agency revises either form, the Authorized Agency must obtain approval from its Designated Procurement Officer for revised forms up to \$100,000 or approval from the Department of Justice for revised forms exceeding \$100,000, before using the revised Contract or Amendment form. In using the standard Contract form and standard Amendment form, Authorized Agencies must abide by the following Contract provisions:

(2) Except as otherwise allowed by law, the Authorized Agency must not enter into any Contract in which the compensation provisions expressly provide for payment of:

(a) Consultant's costs under the Contract plus a percentage of those costs; or

(b) A percentage of the Project construction costs or total Project costs.

(3) Except as otherwise allowed by law, an Authorized Agency must not enter into any Contract in which:

(a) The compensation paid under the Contract is solely based on or limited to the Consultant's hourly rates for the Consultant's personnel Working on the Project and reimbursable expenses incurred during the performance of Work on the Project (sometimes referred to as a "time and materials" Contract); and

(b) The Contract does not include a maximum amount payable to the Consultant for the Architectural, Engineering and Land Surveying, and Related Services required under the Contract.

(4) Except in cases of Emergency or in the particular instances noted in the Subsections below, the Authorized Agency must not purchase any building materials, supplies or equipment for any building, structure or facility constructed by or for the Authorized Agency from any Consultant under a Contract with an Authorized Agency to perform Architectural, Engineering and Land Surveying, and Related Services, for the building, structure or facility. This prohibition does not apply if either of the following circumstances exists:

(a) Consultant is providing Architectural, Engineering and Land Surveying, or Related Services under a Contract with to perform Design-Build services as defined in OAR 125-249-0010(3) or Energy Savings Performance Contract services (see OAR 125-249-0670 and 125-249-0680); or

(b) That portion of the Contract relating to the acquisition of building materials, supplies or equipment was awarded to Consultant according to applicable law governing the award of such Contracts.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.065

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10

## 125-248-0310

### Expired or Terminated Contracts

(1) If an Authorized Agency enters into a Contract for Architectural, Engineering, and Land Surveying Services or Related Services and that Contract subsequently expires or is terminated, the Authorized Agency may proceed as follows, subject to the requirements of Subsection (2) of this Rule:

(a) Expired Contracts. If the Contract has expired as the result of Project delay caused by the Authorized Agency or caused by any other occurrence outside the reasonable control of the Authorized Agency or the Consultant, and if no more than one year has passed since the Contract expiration date, the Authorized Agency may amend the Contract to extend the Contract expiration date, revise the description of the Architectural, Engineering and Land Surveying Services or Related Services required under the Contract to reflect any material alteration of the Project made as a result of the delay, and revise the applicable performance schedule. Beginning on the effective date of the Amendment, the Authorized Agency and the Consultant must continue performance under the Contract as amended; or

(b) Terminated Contracts. If the Authorized Agency or both parties to the Contract have terminated the Contract for any reason and if no more than one year has passed since the Contract termination date, then the Authorized Agency may enter into a new Contract with the same Consultant to perform the remaining Architectural, Engineering and Land Surveying Services or Related Services not completed under the original Contract, or to perform any remaining Architectural, Engineering and Land Surveying Services or Related Services not completed under the Contract as adjusted to reflect a material alteration of the Project.

(2) The Authorized Agency may proceed under either Subsection (1)(a) or (1)(b) of this Rule only after making Written findings that amending the existing Contract or entering into a new Contract with Consultant will:

(a) Promote efficient use of public funds and resources and result in substantial cost savings;

(b) Protect the integrity of the Public Contracting process and the competitive nature of the Procurement process by not encouraging favoritism or substantially diminishing competition in the award of Contracts; and

(c) Result in a Contract that is still within the Scope of the final form of the original Procurement document.

Stat. Auth.: ORS 279A.050, 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.065, 279A.070, 279C.110 & 279A.140

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10

## 125-248-0330

### Special Contract Processes

(1) Consultants for Agreements-To-Agree must be selected, and the Authorized Agency must obtain Architectural, Engineering and Land Surveying and Related Services by selecting a Consultant or Consultants in the following manner:

(a) The Authorized Agency selects one or more Consultants under the applicable provisions of OAR 125-248-0200, 125-248-0210, or 125-248-0220.

(b) The Authorized Agency develops a document that includes the general provisions required under OAR 125-248-300 and a specific Statement of Work for each anticipated Contract under the Agreement-To-Agree document.

(c) When the Authorized Agency selects more than one Consultant under the Agreement-To-Agree Solicitation process, the Authorized Agency must identify a standard in the Solicitation Document and the Agreement-to-Agree to be used in assigning particular Architectural, Engineering and Land Surveying and or Related Services under the Agreements-To-Agree.

(2) Design-Build Contracts involve the provision of both design and construction services for Public Improvements under one Contract. Under most circumstances, Design-Build Contracts are Mixed Contracts with the predominate purpose of the Contract involving construction of the Public Improvement. If the predominate purpose of the Contract is to obtain Architectural, Engineering and Land Surveying and Related Services, selection may proceed under these division 248 rules, so long as the requirements of OAR 125-248-0300 are not violated. Otherwise, the selection process will require an exemption from competitive bidding under ORS 279C, unless the Design-Build Contract is to be awarded to the Responsible Bidder submitting the lowest Responsive Bid.

Stat. Auth.: ORS 279A.050, 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279C.110 & 279C.115

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10

## 125-248-0340

### Contract Amendments

(1) An Authorized Agency may amend any Contract for Architectural, Engineering and Land Surveying and Related Services if the Authorized Agency, in its sole discretion, determines that the Amendment is within the Scope of the Solicitation Document and that the Amendment would not materially impact the field of competition for the Architectural, Engineering and Land Surveying Services or Related Services described in the final form of the original Procurement document. In making this determination, the Authorized Agency must consider potential alternative methods of procuring the services contemplated under the proposed Amendment. An Amendment would not materially impact the field of competition for the services described in the Solicitation Document, if the Authorized Agency reasonably believes that the number of Proposers would not significantly increase if the Procurement document were re-issued to include the additional services.

(2) The Authorized Agency may amend any Contract if the additional services are required by reason of existing or new regulations or ordinances of federal, state or local agencies, and these existing or new regulations or ordinances affect performance of the Original Contract and were not cited in the original Request for Proposals or Contract or were enacted or amended after issuance of the original Request for Proposals or execution of the Original Contract.

(3) All Amendments to Contracts must be in Writing, must be signed by an authorized representative of the Consultant and the Authorized Agency and must receive all required approvals before the Amendments will be binding on the Authorized Agency.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.065

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10

## 125-249-0120

### Definitions

The definitions for this Division 249 are found in OAR 125-246-0110, except the following Rule and definitions apply only to this Division 249: Capitalized terms used in this Division 249 of the Rules must have the meaning set forth below or within the Sections in which they appear (such as the Section on Alternative Contracting Methods beginning at OAR 125-249-0600, and if not defined there, then the meaning set forth in division 246 of

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the rules, and if not defined there, then the meaning set forth in the Code at ORS 279A.010 (general definitions) or 279C.330 (for the term Findings).

(1) "Competitive Range" means the number of Proposers with whom the Authorized Agency will conduct Discussions or Negotiations if the Authorized Agency intends to conduct Discussions or Negotiations in accordance with OAR 125-249-0390. The size of the Competitive Range must be stated in the Solicitation Document, but will be decreased if the number of Proposers that submit Proposals is less than the specified number, or may be increased by the Authorized Agency in accordance with OAR 125-249-0390.

(2) "Conduct Disqualification" means a Disqualification according to ORS 279C.440.

(3) "Disqualification" means the preclusion of a Person from contracting with an Authorized Agency for a period of time. Disqualification may be a Conduct Disqualification or DBE Disqualification. An Authorized Agency is authorized to disqualify a Person in accordance with OAR 125-249-0370.

(4) "Foreign Contractor" means a Contractor that is not domiciled in or registered to do business in the State of Oregon. See OAR 125-249-0490.

(5) "Notice" means any of the alternative forms of public announcement of Procurements, as described OAR 125-249-0210.

(6) "Responsible Offeror" (also, Responsible Bidder or Responsible Proposer, as applicable) means a Person that has submitted an Offer and meets the standards set forth in OAR 125-249-0390(2) and that has not been disqualified by the Authorized Agency under OAR 125-249-0370. When used alone, "Responsible" means meeting the aforementioned standards.

(7) "Responsive Offer" (also, Responsive Bid or Responsive Proposal, as applicable) means an Offer that substantially complies in all material respects with applicable Solicitation procedures and requirements and the Solicitation Document. When used alone, "Responsive" means having the characteristic of substantially complying in all material respects with applicable Solicitation procedure and requirements and the Solicitation Document.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070  
Stats. Implemented: ORS 279A.065  
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10

## 125-249-0130

### Competitive Bidding Requirement

An Authorized Agency must solicit Bids for Public Improvement Contracts by Invitation to Bid ("ITB"), except as otherwise allowed or required according to ORS 279C.335 on competitive bidding exceptions and exemptions, ORS 279A.030 on federal law overrides, or ORS 279A.100 on affirmative action. Also see OAR 125-249-0600 to 125-249-0690 regarding the use of Alternative Contracting Methods and the exemption process.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070  
Stats. Implemented: ORS 279C.335  
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10

## 125-249-0145

### Contracts for Oversight of Public Contracts

(1) Application.

(a) This Rule does not apply to a Procurement that qualifies as a construction manager/general contractor procurement or a design-build procurement, both as defined on August 4, 2009, in OAR 125-249-0610, as follows:

(A) "Construction Manager/General Contractor" (CM/GC) means a form of Procurement that results in a Public Improvement Contract for a Construction Manager/General Contractor to undertake project team involvement with design development; constructability reviews; value engineering, scheduling, estimating and subcontracting services; establish a Guaranteed Maximum Price to complete the Contract Work; act as General Contractor; hold all subcontracts, self-perform portions of the Work as may be allowed by the Authorized Agency under the CM/GC Contract; coordinate and manage the building process; provide general Contractor expertise; and act as a member of the project team along with the Authorized Agency, architect/engineers and other Consultants. CM/GC also refers to a Contractor under this form of Contract, sometimes known as the "Construction Manager at Risk."

(B) "Design-Build" means a form of Procurement that results in a Public Improvement Contract in which the construction Contractor also provides or obtains specified design Services, participates on the project team with the Authorized Agency, and manages both design and construction. In this form of Contract, a single Person provides the Authorized Agency with all of the Personal Services and Work necessary to both design and construct the project.

(b) This Rule applies to:

(A) Procurements first advertised or otherwise solicited on or after January 1, 2010; or

(B) Contracts entered into on or after January 1, 2010.

(2) Definitions. For the purposes of this Rule only,

(a) "Personal Services" means Personal Services as defined in OAR 125-246-0110.

(b) "Affiliate" means a Person that, directly or indirectly through one or more intermediaries, controls, is controlled by or is under common control with the Contractor who is a party to a Public Contract that is subject to oversight by means of a Public Contract for Personal Services.

(3) Requirements.

(a) If an Authorized Agency has contracted with a firm to provide construction services or Architectural, Engineering and Land Surveying Services or Related Services, the Authorized Agency may not contract with that same firm or an affiliate of that firm to provide Personal Services for administering, managing, monitoring, inspecting, evaluating compliance with, or otherwise providing oversight of the construction services or Architectural, Engineering and Land Surveying Services or Related Services.

(b) An Authorized Agency may not contract with a firm to perform construction services or Architectural, Engineering and Land Surveying Services or Related Services and then use the contract with that firm, through a sub-contract, to contract with a Person to provide Personal Services for administering, managing, monitoring, inspecting, evaluating compliance with, or otherwise providing oversight of that firm.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070  
Stats. Implemented: OL 2009, Ch 880  
Hist.: DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10

## 125-249-0200

### Solicitation Documents; Required Provisions; Assignment or Transfer

(1) Solicitation Document. According to ORS 279C.365 and this Rule, the Solicitation Document must include the following:

(a) General Information.

(A) Identification of the Public Improvement project, including the character of the Work, and applicable plans, Specifications and other contract documents;

(B) Notice of any pre-Offer conference as follows:

(i) The time, date and location of any pre-Offer conference;

(ii) Whether attendance at the conference will be mandatory or voluntary; and

(iii) That statements made by the Authorized Agency's representatives at the conference are not binding upon the Authorized Agency unless confirmed by Written Addendum.

(C) The deadline for submitting mandatory prequalification applications and the class or classes of Work for which Offerors must be prequalified if prequalification is a requirement;

(D) The name and title of the Authorized Agency Person designated for receipt of Offers and contact Person (if different);

(E) Instructions and information concerning the form and submission of Offers, including the address of the office to which Offers must be delivered, any Bid or Proposal security requirements, and any other required information or special information, e.g., whether Offers may be submitted by Facsimile or electronic means (See OAR 125-249-0300 regarding Facsimile Bids or Proposals and OAR 125-249-0310 regarding electronic Procurement);

(F) The time, date and place of Opening;

(G) The time and date of Closing after which an Authorized Agency will not accept Offers, which time must be not less than five (5) Days after the date of the last publication of the advertisement. Although a minimum of five (5) Days is proscribed, Authorized Agencies are encouraged to use at least a (fourteen) 14 Day Solicitation period when feasible. If the Authorized Agency is issuing an ITB that may result in a Public Improvement Contract with a value in excess of \$100,000, the Authorized Agency must designate a time of Closing consistent with the first-tier subcontractor disclosure requirements of ORS 279C.370(1)(b) and OAR 125-249-0360. For timing issues relating to Addenda, see OAR 125-249-0250;

(H) The office where the Specifications for the Work may be reviewed;

(I) A statement that each Bidder to an ITB must identify whether the Bidder is a "resident Bidder", as defined in ORS 279A.120;

(J) If the Contract resulting from a Solicitation will be a Contract for a Public Work subject to ORS 279C.800 to 279C.870 or the Davis-Bacon Act (40 U.S.C. 3141 to 3148), a statement that no Offer will be received or considered by the Authorized Agency unless the Offer contains a statement by the Offeror as a part of its Offer that "Contractor agrees to be bound by and will comply with the provisions of ORS 279C.838, 279C.840 or 40 U.S.C. 3141 to 3148;

(K) A statement that the Authorized Agency will not receive or consider an Offer for a Public Improvement Contract unless the Offeror is registered with the Construction Contractors Board, or is licensed by the State Landscape Contractors Board, as specified in OAR 125-249-0230;

(L) Whether a Contractor or a subcontractor under the Contract must be licensed under ORS 468A.720 regarding asbestos abatement projects;

(M) Contractor's certification of nondiscrimination in obtaining required subcontractors in accordance with ORS 279A.110(4). (See OAR 125-249-0440(3));

(N) How the Authorized Agency will notify Offerors of Addenda and how the Authorized Agency will make Addenda available (See OAR 125-249-0250); and

(O) When applicable, instructions and forms regarding First-Tier Subcontractor Disclosure requirements, as set forth in OAR 125-249-0360.

(b) Evaluation Process.

(A) A statement that the Authorized Agency may reject any Offer not in compliance with all prescribed Public Contracting procedures and require-

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Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10

ments, including the requirement to demonstrate the Bidder's responsibility under ORS 279C.375(3)(b), and may reject for good cause all Offers after finding that doing so is in the public interest;

(B) The anticipated Solicitation schedule, deadlines, protest process, and evaluation process, if any;

(C) Evaluation criteria, including the relative value applicable to each criterion, that the Authorized Agency will use to determine the Responsible Bidder with the lowest Responsive Bid (where Award is based solely on price) or the Responsible Proposer or Proposers with the best Responsive Proposal or Proposals (where use of Competitive Proposals is authorized under ORS 279C.335 and OAR 125-249-0620), along with the process the Authorized Agency will use to determine acceptability of the Work;

(i) If the Solicitation Document is an Invitation to Bid, the Authorized Agency must set forth any special price evaluation factors in the Solicitation Document. Examples of such factors include, but are not limited to, conversion costs, transportation cost, volume weighing, trade-in allowances, cash discounts, depreciation allowances, cartage penalties, and ownership or life-cycle cost formulas. Price evaluation factors need not be precise predictors of actual future costs; but, to the extent possible, such evaluation factors must be objective, reasonable estimates based upon information the Authorized Agency has available concerning future use;

(ii) If the Solicitation Document is a Request for Proposals, the Authorized Agency must refer to the additional requirements of OAR 125-249-0650.

(c) Contract Provisions. The Authorized Agency must include all contract terms and conditions, including warranties, insurance and bonding requirements, that the Authorized Agency considers appropriate for the Public Improvement project. The Authorized Agency must also include all applicable contract provisions required by Oregon law as follows:

(A) Prompt payment to all Persons supplying labor or material; contributions to Industrial Accident Fund; liens and withholding taxes (ORS 279C.505(1));

(B) Demonstrate that an employee drug testing program is in place (ORS 279C.505(2));

(C) If the Contract calls for demolition Work described in ORS 279C.510(1), a condition requiring the Contractor to salvage or recycle construction and demolition debris, if feasible and cost-effective;

(D) If the Contract calls for lawn or landscape maintenance, a condition requiring the Contractor to compost or mulch yard waste material at an approved site, if feasible and cost effective (ORS 279C.510(2));

(E) Payment of claims by public officers (ORS 279C.515(1));

(F) Contractor and first-tier subcontractor liability for late payment on Public Improvement Contracts according to ORS 279C.515(2), including the rate of interest;

(G) Person's right to file a complaint with the Construction Contractors Board for all Contracts related to a Public Improvement Contract (ORS 279C.515(3));

(H) Hours of labor in compliance with ORS 279C.520;

(I) Environmental and natural resources regulations (ORS 279C.525);

(J) Payment for medical care and attention to employees (ORS 279C.530(1));

(K) Maximum hours, holidays and overtime (ORS 279C.540);

(L) Time limitation on claims for overtime (ORS 279C.545);

(M) Prevailing wage rates (ORS 279C.800 to 279C.870);

(i) BOLI Public Works bond (ORS 279C.830(2));

(N) Retainage (ORS 279C.550 to 279C.570);

(i) Prompt payment policy, progress payments, rate of interest (ORS 279C.570);

(O) Contractor's relations with subcontractors (ORS 279C.580);

(P) Notice of claim (ORS 279C.605);

(Q) Contractor's certification of compliance with the Oregon tax laws in accordance with ORS 305.385; and

(R) Contractor's certification that all subcontractors performing Work described in ORS 701.005(2) (i.e., construction Work) will be registered with the Construction Contractors Board or licensed by the State Landscape Contractors Board in accordance with ORS 701.035 to 701.055 before the subcontractors commence Work under the Contract.

(2) Assignment or Transfer Restricted. Unless otherwise provided in the Contract, the Contractor must not assign, sell, dispose of, or transfer rights, or delegate duties under the Contract, either in whole or in part, without the Authorized Agency's prior Written consent. Unless otherwise agreed by the Authorized Agency in Writing, such consent must not relieve the Contractor of any obligations under the Contract. Any assignee or transferee must be considered the agent of the Contractor and be bound to abide by all provisions of the Contract. If the Authorized Agency consents in Writing to an assignment, sale, disposal or transfer of the Contractor's rights or delegation of Contractor's duties, the Contractor and its surety, if any, must remain liable to the Authorized Agency for complete performance of the Contract as if no such assignment, sale, disposal, transfer or delegation had occurred unless the Authorized Agency otherwise agrees in Writing.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070

Stats. Implemented: ORS 279A.110, 279A.120, 279C.365, 279C.370, 279C.390, 279C.505 - 580, 279C.605, 305.385, 468A.720, 701.005, 701.055

## 125-249-0230

### Eligibility to Bid or Propose; Registration or License

(1) Construction Contracts. An Authorized Agency must not consider a Person's Offer to do Work as a Contractor, as defined in ORS 701.005(2), unless the Person has a current, valid certificate of registration issued by the Construction Contractors Board at the time the Offer is made.

(2) Landscape Contracts. An Authorized Agency must not consider a Person's Offer to do Work as a landscape Contractor as defined in ORS 671.520(2), unless the Person has a current, valid landscape Contractors license issued according to ORS 671.560 by the State Landscape Contractors Board at the time the Offer is made.

(3) Noncomplying Entities. The Authorized Agency must deem an Offer received from a Person that fails to comply with this rule nonresponsive and must reject the Offer as stated in ORS 279C.365(1)(k), unless contrary to federal law or subject to different timing requirements set by federal funding Authorized Agencies.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279C.365, 671.530 & 701.055

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10

## 125-249-0260

### Request for Clarification or Change; Solicitation Protests

(1) Clarification. Before the deadline for submitting a Written request for change or protest, an Offeror may request that the Authorized Agency clarify any provision of the Solicitation Document. The Authorized Agency's clarification to an Offeror, whether orally or in Writing, does not change the Solicitation Document and is not binding on the Authorized Agency unless the Authorized Agency amends the Solicitation Document by Addendum.

(2) Request for Change.

(a) Delivery. An Offeror may request in Writing a change to the Specifications or contract terms and conditions. Unless otherwise specified in the Solicitation Document, an Offeror must deliver the Written request for change to the Authorized Agency not less than ten (10) Days before Closing;

(b) Content of Request for Change.

(A) An Offeror's Written request for change must include a statement of the requested change(s) to the contract terms and conditions, including any Specifications, together with the reason for the requested change.

(B) An Offeror must mark its request for change as follows:

(i) "Contract Provision Request for Change"; and

(ii) Solicitation Document number (or other identification as specified in the Solicitation Document).

(3) Protest.

(a) Delivery. An Offeror may protest Specifications or contract terms and conditions. Unless otherwise specified in the Solicitation Document, an Offeror must deliver a Written protest on those matters to the Authorized Agency not less than ten (10) Days before Closing;

(b) Content of Protest.

(A) An Offeror's Written protest must include:

(i) A detailed statement of the legal and factual grounds for the protest;

(ii) A description of the resulting prejudice to the Offeror; and

(iii) A statement of the desired changes to the contract terms and conditions, including any Specifications.

(B) An Offeror must mark its protest as follows:

(i) "Contract Provision Protest"; and

(ii) Solicitation Document number (or other identification as specified in the Solicitation Document)

(4) The Authorized Agency Response. The Authorized Agency is not required to consider an Offeror's request for change or protest after the deadline established for submitting such request or protest. The Authorized Agency must provide notice to the applicable Person if it entirely rejects a protest. If the Authorized Agency agrees with the Person's request or protest, in whole or in part, the Authorized Agency must either issue an Addendum reflecting its determination under OAR 125-249-0260 or cancel the Solicitation under 125-249-0270.

(5) Extension of Closing. If an Authorized Agency receives a Written request for change or protest from an Offeror in accordance with this Rule, the Authorized Agency may extend Closing if the Authorized Agency determines an extension is necessary to consider the request or protest and issue an Addendum, if any, to the Solicitation Document.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279C.345 & 279C.365

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10

## 125-249-0270

### Cancellation of Solicitation Document

(1) Cancellation in the Public Interest. An Authorized Agency may cancel a Solicitation for good cause if the Authorized Agency finds that cancellation is in the public interest. The Authorized Agency's reasons for cancellation must be made part of the Solicitation file.

(2) Notice of Cancellation. If the Authorized Agency cancels a Solicitation before Opening, the Authorized Agency must provide Notice of

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cancellation in accordance with OAR 125-249-0210(1). Such notice of cancellation must:

- (a) Identify the Solicitation;
- (b) Briefly explain the reason for cancellation; and
- (c) If appropriate, explain that an opportunity will be given to compete on any re-Solicitation.

(3) Disposition of Offers.

(a) Before Offer Opening. If the Authorized Agency cancels a Solicitation before Offer Opening, the Authorized Agency will return all Offers it received to Offerors unopened, provided the Offeror submitted its Offer in a hard copy format with a clearly visible return address. If there is no return address on the envelope, the Authorized Agency will open the Offer to determine the source and then return it to the Offeror.

(b) After Offer Opening. If the Authorized Agency rejects all Offers, the Authorized Agency will retain all such Offers as part of the Authorized Agency's Solicitation file.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279C.395

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10

## 125-249-0280

### Offer Submissions

(1) Offer and Acceptance. The Bid or Proposal is the Bidder's or Proposer's offer to enter into a Contract.

(a) In competitive bidding and competitive Proposals, the Offer is always a "Firm Offer," i.e., the Offer must be held open by the Offeror for the Authorized Agency's acceptance for the period specified in OAR 125-249-0410. The Authorized Agency may elect to accept the Offer at any time during the specified period, and the Authorized Agency's Award of the Contract to a Bidder constitutes acceptance of the Offer and binds the Offeror to the Contract.

(b) Despite the fact that a competitive Proposal is a "Firm Offer" for the period specified in OAR 125-249-0410, the Authorized Agency may elect to discuss or negotiate certain contractual provisions, as identified in these rules or in the Solicitation Document with the Proposer. See OAR 125-249-0650 on Requests for Proposals and OAR 125-249-0290 on Bid or Proposal Security. Where negotiation is permitted by the rules or the Solicitation Document, Proposers are bound to an obligation to negotiate in good faith and only on those terms that the rules or the Solicitation Document has reserved for negotiation.

(2) Responsive Offer. An Authorized Agency may award a Contract only to a Responsible Offeror with a Responsive Offer.

(3) Contingent Offers. Except to the extent that an Offeror is authorized to propose certain terms and conditions according to OAR 125-249-0650, an Offeror must not make an Offer contingent upon the Authorized Agency's acceptance of any terms or conditions (including Specifications) other than those contained in the Solicitation Document.

(4) Offeror's Acknowledgement. By signing and returning the Offer, the Offeror acknowledges they have read and understand the terms and conditions contained in the Solicitation Document and that they accept and agree to be bound by the terms and conditions of the Solicitation Document. If the Request for Proposals permits proposal of alternative terms under OAR 125-249-0650, the Offeror's Offer includes the nonnegotiable terms and conditions and any proposed terms and conditions offered for Negotiation upon and to the extent accepted by the Authorized Agency in Writing.

(5) Instructions. Offerors must submit and Sign their Offers in accordance with the Solicitation Document. Offerors must initial and submit any corrections or erasures to their Offers before the Opening in accordance with the requirements for submitting an Offer under the Solicitation Document.

(6) Forms. Offerors must submit their Offers on the form(s) provided in the Solicitation Document, unless Offerors are otherwise instructed in the Solicitation Document.

(7) Documents. Offerors must provide the Authorized Agency with all documents and Descriptive Literature required under the Solicitation Document.

(8) Facsimile or Electronic Submissions. If the Authorized Agency permits facsimile or electronic Offers in the Solicitation Document, the Offeror may submit facsimile or electronic Offers in accordance with the Solicitation Document. The Authorized Agency must not consider facsimile or electronic Offers unless authorized by the Solicitation Document.

(9) Product Samples and Descriptive Literature. An Authorized Agency may require Product Samples or Descriptive Literature if it is necessary or desirable to evaluate the quality, features or characteristics of the offered items. The Authorized Agency will dispose of Product Samples, or return or make available for return Product Samples to the Offeror in accordance with the Solicitation Document.

(10) Identification of Offers.

(a) To ensure proper identification and handling, Offers must be submitted in a sealed envelope appropriately marked or in the envelope provided by the Authorized Agency, whichever is applicable.

(b) The Authorized Agency is not responsible for Offers submitted in any manner, format or to any delivery point other than as required in the Solicitation Document.

(11) Receipt of Offers. The Offerors are responsible for ensuring that the Authorized Agency receives their Offers at the required delivery point before the Closing, regardless of the method used to submit or transmit the Offer.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070

Stats. Implemented: ORS 279C.365, 279C.375

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10

## 125-249-0300

### Facsimile Bids and Proposals

(1) The Authorized Agency Authorization. An Authorized Agency may authorize Offerors to submit facsimile Offers. If the Authorized Agency determines that Bid or Proposal security is or will be required, the Authorized Agency must not authorize facsimile Offers unless the Authorized Agency has established a method for receipt of such security. Before authorizing the submission of facsimile Offers, the Authorized Agency must determine that the Authorized Agency's equipment and personnel are capable of receiving the size and volume of anticipated Offers within a short period of time. In addition, the Authorized Agency must establish administrative procedures and controls:

(a) To receive, identify, record and safeguard facsimile Offers;

(b) To ensure timely delivery of Offers to the location of Opening; and

(c) To preserve the Offers as sealed.

(2) Provisions to be Included in Solicitation Document. In addition to all other requirements, if the Authorized Agency authorizes a facsimile Offer for Bids or Proposals, the Authorized Agency must include in the Solicitation Document (other than in a request for Quotes) the following:

(a) A provision substantially in the form of the following: "A 'facsimile Offer', as used in this Solicitation Document, means an Offer, modification of an Offer, or withdrawal of an Offer that is transmitted to and received by the Authorized Agency via a facsimile machine";

(b) A provision substantially in the form of the following: "Offerors may submit facsimile Offers in response to this Solicitation Document. The entire response must arrive at the place and by the time specified in this Solicitation Document.";

(c) A provision that requires Offerors to Sign their facsimile Offers;

(d) A provision substantially in the form of the following: "The Authorized Agency reserves the right to award the Contract solely on the basis of the facsimile Offer. However, upon the Authorized Agency's request the apparent successful Offeror must promptly submit its complete original Signed Offer.";

(e) The data and compatibility characteristics of the Authorized Agency's receiving facsimile machine as follows:

(A) Telephone number; and

(B) Compatibility characteristics, e.g., make and model number, receiving speed, communications protocol; and

(f) A provision that the Authorized Agency is not responsible for any failure attributable to the transmission or receipt of the facsimile Offer including, but not limited to the following:

(A) Receipt of garbled or incomplete documents;

(B) Availability or condition of the receiving facsimile machine;

(C) Incompatibility between the sending and receiving facsimile machine;

(D) Delay in transmission or receipt of documents;

(E) Failure of the Offeror to properly identify the Offer documents;

(F) Illegibility of Offer documents; and

(G) Security and confidentiality of data.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279C.365

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10

## 25-249-0330

### Receipt, Opening and Recording of Offers; Confidentiality of Offers

(1) Receipt. An Authorized Agency must electronically or mechanically time-stamp or hand-mark each Offer and any modification upon receipt. The Authorized Agency must not open the Offer or modification upon receipt, but must maintain it as confidential and secure until Opening. If the Authorized Agency inadvertently opens an Offer or a modification before the Opening, the Authorized Agency must return the Offer or modification to its secure and confidential state until Opening. The Authorized Agency must document the resealing for the Procurement File in accordance with OAR 125-246-0556 (e.g. "The Authorized Agency inadvertently opened the Offer due to improper identification of the Offer").

(2) Opening and Recording. An Authorized Agency must publicly open Offers including any modifications made to the Offer according to OAR 125-249-0320. In the case of Invitations to Bid, to the extent practicable, the Authorized Agency must read aloud the name of each Bidder, the Bid price(s), and such other information as the Authorized Agency considers appropriate. In the case of Requests for Proposals or voluminous Bids, if the

# ADMINISTRATIVE RULES

Solicitation Document so provides, the Authorized Agency will not read Offers aloud.

(3) Availability. After Opening, the Authorized Agency must make Bids available for public inspection, but according to ORS 279C.410 Proposals are not required to be available for public inspection until after notice of intent to award is issued. In any event Authorized Agencies may withhold from disclosure those portions of an Offer that the Offeror designates as trade secrets or as confidential proprietary data in accordance with applicable law. See ORS 192.501(2); 646.461 to 646.475. To the extent the Authorized Agency determines such designation is not in accordance with applicable law, the Authorized Agency must make those portions available for public inspection. The Offeror must separate information designated as confidential from other non-confidential information at the time of submitting its Offer. Prices, makes, model or catalog numbers of items offered, scheduled delivery dates, and terms of payment are not confidential, and must be publicly available regardless of an Offeror's designation to the contrary.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070  
Stats. Implemented: ORS 279C.365, 279C.375 & 279C.395  
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10

## 125-249-0350

### Mistakes

(1) Generally. To protect the integrity of the competitive Procurement Process and to assure fair treatment of Offerors, an Authorized Agency should carefully consider whether to permit waiver, correction or withdrawal of Offers for certain mistakes.

(2) The Authorized Agency Treatment of Mistakes. An Authorized Agency must not allow an Offeror to correct or withdraw an Offer for an error in judgment. If the Authorized Agency discovers certain mistakes in an Offer after Opening, but before Award of the Contract, the Authorized Agency may take the following action:

(a) An Authorized Agency may waive, or permit an Offeror to correct, a minor informality. A minor informality is a matter of form rather than substance that is evident on the face of the Offer, or an insignificant mistake that can be waived or corrected without prejudice to other Offerors. Examples of minor informalities include an Offeror's failure to:

(A) Return the correct number of Signed Offers or the correct number of other documents required by the Solicitation Document;

(B) Sign the Offer in the designated block, provided a Signature appears elsewhere in the Offer, evidencing an intent to be bound; and

(C) Acknowledge receipt of an Addendum to the Solicitation Document, provided that it is clear on the face of the Offer that the Offeror received the Addendum and intended to be bound by its terms; or the Addendum involved did not affect price, quality or delivery.

(b) An Authorized Agency may correct a clerical error if the error is evident on the face of the Offer or other documents submitted with the Offer, and the Offeror confirms the Authorized Agency's correction in Writing. A clerical error is an Offeror's error in transcribing its Offer. Unit prices must prevail over extended prices in the event of a discrepancy between extended prices and unit prices.

(c) An Authorized Agency may permit an Offeror to withdraw an Offer based on one or more clerical errors in the Offer only if the Offeror shows with objective proof and by clear and convincing evidence:

(A) The nature of the error;

(B) That the error is not a minor informality under this Subsection or an error in judgment;

(C) That the error cannot be corrected or waived under Subsection (b) of this Section;

(D) That the Offeror acted in good faith in submitting an Offer that contained the claimed error and in claiming that the alleged error in the Offer exists;

(E) That the Offeror acted without gross negligence in submitting an Offer that contained a claimed error;

(F) That the Offeror will suffer substantial detriment if the Authorized Agency does not grant the Offeror permission to withdraw the Offer;

(G) That the Authorized Agency's or the public's status has not changed so significantly that relief from the forfeiture will Work a substantial hardship on the Authorized Agency or the public it represents; and

(H) That the Offeror promptly gave notice of the claimed error to the Authorized Agency.

(d) The criteria in Subsection (2)(c) of this Rule must determine whether an Authorized Agency will permit an Offeror to withdraw its Offer after Closing. These criteria also must apply to the question of whether an Authorized Agency will permit an Offeror to withdraw its Offer without forfeiture of its Bid bond (or other Bid or Proposal security), or without liability to the Authorized Agency based on the difference between the amount of the Offeror's Offer and the amount of the Contract actually awarded by the Authorized Agency, whether by Award to the next lowest Responsive and Responsible Bidder or the best Responsive and Responsible Proposer, or by resort to a new Solicitation.

(3) Rejection for Mistakes. The Authorized Agency must reject any Offer in which a mistake is evident on the face of the Offer and the intended

correct Offer is not evident or cannot be substantiated from documents submitted with the Offer.

(4) Identification of Mistakes after Award. The procedures and criteria set forth above are Offeror's only opportunity to correct mistakes or withdraw Offers because of a mistake. Following Award, an Offeror is bound by its Offer, and may withdraw its Offer or rescind a Contract entered into according to this division 249 only to the extent permitted by applicable law.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279C.375 & 279C.395

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10

## 125-249-0360

### First-Tier Subcontractors; Disclosure and Substitution; ITB

(1) Required Disclosure. Within two (2) Working hours after the Bid Closing on an ITB for a Public Improvement having a Contract Price anticipated by the Authorized Agency to exceed \$100,000, all Bidders must submit to the Authorized Agency a disclosure form as described by ORS 279C.370(2), identifying any first-tier subcontractors (those Entities that would be contracting directly with the prime Contractor) that will be furnishing labor or labor and materials on the Contract, if Awarded, whose subcontract value would be equal to or greater than:

(a) Five percent (5%) of the total Contract Price, but at least \$15,000; or

(b) \$350,000, regardless of the percentage of the total Contract Price.

(2) Bid Closing, Disclosure Deadline, and Bid Opening. For each ITB to which this rule applies, the Authorized Agency must:

(a) Set the Bid Closing on a Tuesday, Wednesday or Thursday, and at a time between 2 p.m. and 5 p.m., except that these Bid Closing restrictions do not apply to an ITB for maintenance or construction of highways, bridges or other transportation facilities, and provided that the two (2) hour disclosure deadline described by this Rule would not then fall on a legal holiday;

(b) Open Bids publicly immediately after the Bid Closing; and

(c) Consider for Contract Award only those Bids for which the required disclosure has been submitted by the announced deadline on forms prescribed by the Authorized Agency.

(3) Bidder Instructions and Disclosure Form. For the purposes of this Rule, an Authorized Agency in its Solicitation must:

(a) Prescribe the disclosure form that must be utilized, substantially in the form set forth in ORS 279C.370(2); and

(b) Provide instructions in a notice substantially similar to the following: "Instructions for First-Tier Subcontractor Disclosure." Bidders are required to disclose information about certain first-tier subcontractors (see ORS 279C.370). Specifically, when the contract amount of a first-tier subcontractor furnishing labor or labor and materials would be greater than or equal to: 5% of the project Bid, but at least \$15,000, or \$350,000 regardless of the percentage, the Bidder must disclose the following information about that subcontract either in its Bid submission, or within two (2) hours after Bid Closing:

(A) The subcontractor's name,

(B) The category of Work that the subcontractor would be performing, and

(C) The dollar value of the subcontract. If the Bidder will not be using any subcontractors that are subject to the above disclosure requirements, the Bidder is required to indicate "NONE" on the accompanying form.

"THE AUTHORIZED AGENCY MUST REJECT A BID IF THE BIDDER FAILS TO SUBMIT THE DISCLOSURE FORM WITH THIS INFORMATION BY THE STATED DEADLINE."

(4) Submission. A Bidder must submit the disclosure form required by this Rule either in its Bid submission, or within two working hours after Bid Closing in the manner specified by the ITB.

(5) Responsiveness. Compliance with the disclosure and submittal requirements of ORS 279C.370 and this Rule is a matter of Responsiveness. Bids which are submitted by Bid Closing, but for which the disclosure submittal has not been made by the specified deadline, are not Responsive and must not be considered for Contract Award.

(6) Authorized Agency Role. Authorized Agencies must obtain, and make available for public inspection, the disclosure forms required by ORS 279C.370 and this Rule. Authorized Agencies must also provide copies of disclosure forms to the Bureau of Labor and Industries as required by ORS 279C.835. Authorized Agencies are not required to determine the accuracy or completeness of the information provided on disclosure forms.

(7) Substitution. Substitution of affected first-tier subcontractors must be made only in accordance with ORS 279C.585. Authorized Agencies must accept Written submissions filed under that statute as public records. Aside from issues involving inadvertent clerical error under ORS 279C.585, Authorized Agencies do not have a statutory role or duty to review, approve, or resolve disputes concerning such substitutions. See ORS 279C.590 regarding complaints to the Construction Contractors Board on improper substitution.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279C.370, 279C.585, 279C.590 & 279C.835

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10

# ADMINISTRATIVE RULES

## 125-249-0370

### Disqualification of Persons

(1) Authority. An Authorized Agency may disqualify a Person from consideration of Award of the Authorized Agency's Contracts after providing the Person with notice and a reasonable opportunity to be heard in accordance with Sections (2) and (4) of this Rule.

(a) Standards for Conduct Disqualification. As provided in ORS 279C.440, an Authorized Agency may disqualify a Person for:

(A) Conviction for the commission of a criminal offense as an incident in obtaining or attempting to obtain a public or private Contract or subcontract, or in the performance of such Contract or subcontract.

(B) Conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty that currently, seriously and directly affects the Person's responsibility as a Contractor.

(C) Conviction under state or federal antitrust statutes.

(D) Violation of a contract provision that is regarded by the Authorized Agency to be so serious as to justify Disqualification. A violation under this Subsection 2(d) may include but is not limited to material failure to perform the terms of a Contract or an unsatisfactory performance in accordance with the terms of the Contract. However, a Person's failure to perform or unsatisfactory performance caused by acts beyond the Person's control is not a basis for Disqualification.

(b) Standards for DBE Disqualification. As provided in ORS 200.065, 200.075 or 279A.110, an Authorized Agency may disqualify a Person's right to submit an Offer or to participate in a Contract (e.g. subcontractors) as follows:

(A) For a DBE Disqualification under ORS 200.065, the Authorized Agency may disqualify a Person upon finding that:

(i) The Person fraudulently obtained or retained or attempted to obtain or retain or aided another Person to fraudulently obtain or retain or attempt to obtain or retain certification as a disadvantaged, minority, women or emerging small business enterprise; or

(ii) The Person knowingly made a false claim that any Person is qualified for certification or is certified under ORS 200.055 for the purpose of gaining a Contract or subcontract or other benefit; or

(iii) The Person has been disqualified by another Authorized Agency according to ORS 200.065.

(B) For a DBE Disqualification under ORS 200.075, the Authorized Agency may disqualify a Person upon finding that:

(i) The Person has entered into an agreement representing that a disadvantaged, minority, women, or emerging small business enterprise, certified according to ORS 200.055 ("Certified Enterprise"), will perform or supply materials under a Public Improvement Contract without the knowledge and consent of the Certified Enterprise; or

(ii) The Person exercises management and decision-making control over the internal operations, as defined by ORS 200.075(1)(b), of any Certified Enterprise; or

(iii) The Person uses a Certified Enterprise to perform Work under a Contract to meet an established Certified Enterprise goal, and such enterprise does not perform a commercially useful function, as defined by ORS 200.075(3), in performing its obligations under the Contract.

(iv) If a Person is Disqualified for a DBE Disqualification under ORS 200.075, the affected Authorized Agency must not permit such Person to participate in that Authorized Agency's Contracts.

(C) For a DBE Disqualification under ORS 279A.110, an Authorized Agency may disqualify a Person if the Authorized Agency finds that the Person discriminated against minority, women, or emerging small business enterprises in awarding a subcontract under a Contract with that Authorized Agency.

(2) Notice of Intent to Disqualify. The Authorized Agency must notify the Person in Writing of a proposed Disqualification personally or by registered or certified mail, return receipt requested. This notice must:

(a) State that the Authorized Agency intends to disqualify the Person;

(b) Set forth the reasons for the Disqualification;

(c) Include a statement of the Person's right to a hearing if requested in Writing within the time stated in the notice and that if the Authorized Agency does not receive the Person's Written request for a hearing within the time stated, the Person must have waived its right to a hearing;

(d) Include a statement of the authority and jurisdiction under which the hearing will be held;

(e) Include a reference to the particular Sections of the statutes and rules involved;

(f) State the proposed Disqualification period; and

(g) State that the Person may be represented by legal counsel.

(3) Hearing. The Authorized Agency must schedule a hearing upon the Authorized Agency receipt of the Person's timely request. The Authorized Agency must notify the Person of the time and place of the hearing and provide information on the procedures, right of representation and other rights related to the conduct of the hearing before the hearing.

(4) Notice of Disqualification. The Authorized Agency will notify the Person in Writing of its Disqualification, personally or by registered or certified mail, return receipt requested. The notice must contain:

(a) The effective date and period of Disqualification;

(b) The grounds for Disqualification; and

(c) A statement of the Person's appeal rights and applicable appeal deadlines. For a Conduct Disqualification or a DBE Disqualification under ORS 279A.110, the Disqualified Person must notify the Authorized Agency in Writing within three (3) business days after receipt of the Authorized Agency's notice of Disqualification if the Person intends to appeal the Authorized Agency's decision.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 200.065, 200.075, 279A.110, 279C.440, 279C.445 & 279C.450  
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10

## 125-249-0390

### Offer Evaluation and Award; Determination of Responsibility

(1) General. If awarded, the Authorized Agency must award the Contract to the Responsible Bidder submitting the lowest, Responsive Bid or the Responsible Proposer or Proposers submitting the best, Responsive Proposal or Proposals, provided that such Person is not listed by the Construction Contractors Board as disqualified to hold a Public Improvement Contract (ORS 279C.375(3)(a)) or is ineligible for award as a nonresident education service district (ORS 279C.325). The Authorized Agency may award by item, groups of items or the entire Offer provided such Award is consistent with the Solicitation Document and in the public interest. Where Award is based on competitive Bids, ORS 279C.375(5) permits multiple contract awards when specified in the ITB.

(2) Determination of Responsibility. Offerors are required to demonstrate their ability to perform satisfactorily under a Contract. Before Awarding a Contract, the Authorized Agency must have information that indicates that the Offeror meets the standards of responsibility set forth in ORS 279C.375(3)(b). To be a Responsible Offeror, the Authorized Agency must determine that the Offeror:

(a) Has available the appropriate financial, material, equipment, facilities and Personnel resources and expertise, or ability to obtain the resources and expertise, necessary to meet all contractual responsibilities;

(b) Has completed previous contracts of a similar nature with a satisfactory record of performance. A satisfactory record of performance means that to the extent the costs associated with and time available to perform a previous contract were within the Offeror's control, the Offeror stayed within the time and budget allotted for the Procurement and otherwise performed the Contract in a satisfactory manner. An Authorized Agency should carefully scrutinize an Offeror's record of contract performance if the Offeror is or recently has been materially deficient in contract performance. In reviewing the Offeror's performance, the Authorized Agency should determine whether the Offeror's deficient performance was expressly excused under the terms of Contract, or whether the Offeror took appropriate corrective action. The Authorized Agency may review the Offeror's performance on both private and Public Contracts in determining the Offeror's record of contract performance. The Authorized Agency must make its basis for determining an Offeror not Responsible under this paragraph part of the Solicitation file;

(c) Has a satisfactory record of integrity. An Offeror may lack integrity if an Authorized Agency determines the Offeror demonstrates a lack of business ethics such as violation of state environmental laws or false certifications made to an Authorized Agency. An Authorized Agency may find an Offeror not Responsible based on the lack of integrity of any Person having influence or control over the Offeror (such as a key employee of the Offeror that has the authority to significantly influence the Offeror's performance of the Contract or a parent company, predecessor or successor Person). The standards for Conduct Disqualification under OAR 125-249-0370 may be used to determine an Offeror's integrity. An Authorized Agency may find an Offeror non-responsible based on previous convictions of offenses related to obtaining or attempting to obtain a Contract or subcontract or in connection with the Offeror's performance of a Contract or subcontract. The Authorized Agency must make its basis for determining that an Offeror is not Responsible under this paragraph part of the Solicitation file;

(d) Is legally qualified to contract with the Authorized Agency; and

(e) Has supplied all necessary information in connection with the inquiry concerning responsibility. If the Offeror fails to promptly supply information requested by the Authorized Agency concerning responsibility, the Authorized Agency must base the determination of responsibility upon any available information, or may find the Offeror not Responsible.

(3) Documenting Agency Determinations. Authorized Agencies must document their compliance with ORS 279C.375(3) and the above Sections of this Rule on a Responsibility Determination Form substantially as set forth in ORS 279C.375(3)(c).

(4) Authorized Agency Evaluation. The Authorized Agency must evaluate an Offer only as set forth in the Solicitation Document and in accordance with applicable law. The Authorized Agency must not evaluate an Offer using any other requirement or criterion.

(5) Offeror Submissions.



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(a) The Authorized Agency may require an Offeror to submit Product Samples, Descriptive Literature, technical data, or other material and may also require any of the following before award:

(A) Demonstration, inspection or testing of a product before award for characteristics such as compatibility, quality or Workmanship;

(B) Examination of such elements as appearance or finish; or

(C) Other examinations to determine whether the product conforms to Specifications.

(b) The Authorized Agency must evaluate product acceptability only in accordance with the criteria disclosed in the Solicitation Document to determine that a product is acceptable. The Authorized Agency must reject an Offer providing any product that does not meet the Solicitation Document requirements. An Authorized Agency's rejection of an Offer because it offers nonconforming Work or materials is not Disqualification and is not appealable under ORS 279C.445.

(6) Evaluation of Bids. The Authorized Agency must use only objective criteria to evaluate Bids as set forth in the ITB. The Authorized Agency must evaluate Bids to determine which Responsible Offeror offers the lowest Responsive Bid.

(a) Nonresident Bidders. In determining the lowest Responsive Bid, the Authorized Agency must add a percentage increase to the Bid of a nonresident Bidder equal to the percentage, if any, of the preference given to that Bidder in the state in which the Bidder resides.

(b) Clarifications. In evaluating Bids, an Authorized Agency may seek information from a Bidder only to clarify the Bidder's Bid. Such clarification must not vary, contradict or supplement the Bid. A Bidder must submit Written and Signed clarifications and such clarifications must become part of the Bidder's Bid.

(c) Negotiation Prohibited. The Authorized Agency must not negotiate Scope of Work or other terms or conditions under an Invitation to Bid process before award.

(7) Evaluation of Proposals. See OAR 125-249-0650 regarding rules applicable to Requests for Proposals.

(8) Independent Contractor Status, Tax Compliance, and Requirements to Transact Business in Oregon. For these responsibilities of Offerors, see OAR 125-246-0330.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070, OL 2005, Ch. 413

Stats. Implemented: ORS 279C.325, 279C.335, 279C.365, 279C.375, 279C.395

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10

## 125-249-0420

### Negotiation With Bidders Prohibited

(1) Bids. Except as permitted by ORS 279C.340 and OAR 125-249-0430 when all bids exceed the cost estimate, an Authorized Agency must not negotiate with any Bidder before Contract Award. After Award of the Contract, the Authorized Agency and Contractor may only modify the Contract by change order or Amendment to the Contract in accordance with OAR 125-249-0860.

(2) Requests for Proposals. An Authorized Agency may only conduct Discussions or Negotiations with Proposers in accordance with the requirements of OAR 125-249-0650.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279C.340 & 279C.375

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10

## 125-249-0430

### Negotiation When Bids Exceed Cost Estimate

(1) Generally. In accordance with ORS 279C.340, if all Responsive Bids from Responsible Bidders on a competitively Bid Project exceed the Authorized Agency's Cost Estimate, before Contract Award the Authorized Agency may negotiate Value Engineering and Other Options with the Responsible Bidder submitting the lowest, Responsive Bid in an attempt to bring the Project within the Authorized Agency's Cost Estimate. The subcontractor disclosure and substitution requirements of OAR 125-249-0360 do not apply to Negotiations under this Rule.

(2) Definitions. The following definitions apply to this Rule:

(a) "Cost Estimate" means the Authorized Agency's most recent pre-Bid, good faith assessment of anticipated contract costs, consisting either of an estimate of an architect, engineer or other qualified professional, or confidential cost calculation Worksheets, where available, and otherwise consisting of formal planning or budgetary documents.

(b) "Other Options" means those items generally considered appropriate for Negotiation in the RFP process, relating to the details of contract performance as specified in OAR 125-249-0650, but excluding any material requirements previously announced in the Solicitation process that would likely affect the field of competition.

(c) "Project" means a Public Improvement.

(d) "Value Engineering" means the identification of alternative methods, materials or systems which provide for comparable function at reduced initial or life-time cost. It includes proposed changes to the plans, Specifications, or other contract requirements which may be made, consistent with industry practice, under the Original Contract by mutual agreement in order to take advantage of potential cost savings without impairing the essen-

tial functions or characteristics of the Public Improvement. Cost savings include those resulting from life cycle costing, which may increase or decrease absolute costs over varying time periods.

(3) Rejection of Bids. In determining whether all Responsive Bids from Responsible Bidders exceed the Cost Estimate, only those Bids that have been formally rejected, or Bids from Bidders who have been formally disqualified by the Authorized Agency, must be excluded from consideration.

(4) Scope of Negotiations. Authorized Agencies must not proceed with Contract Award if the scope of the Project is significantly changed from the original Bid. The scope is considered to have been significantly changed if the pool of competition would likely have been affected by the change; that is, if other Bidders would have been expected by the Authorized Agency to participate in the Bidding process had the change been made during the Solicitation process rather than during Negotiation. This Rule must not be construed to prohibit Solicitation of trade subcontracts.

(5) Discontinuing Negotiations. The Authorized Agency may discontinue Negotiations at any time, and must do so if it appears to the Authorized Agency that the apparent low Bidder is not negotiating in good faith or fails to share cost and pricing information upon request. Failure to re-bid any portion of the project, or to obtain subcontractor pricing information upon request, must be considered a lack of good faith.

(6) Limitation. Negotiations may be undertaken only with the lowest Responsive, Responsible Bidder according to ORS 279C.340. That statute does not provide any additional authority to further negotiate with Bidders next in line for Contract Award.

(7) Public Records. To the extent that a Bidder's records used in contract Negotiations under ORS 279C.340 are public records, they are exempt from disclosure until after the negotiated Contract has been awarded or the Negotiation process has been terminated, at which time they are subject to disclosure according to the provisions of the Oregon Public Records Law, ORS 192.410 to 192.505.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279C.340

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10

## 125-249-0440

### Rejection of Offers

(1) Rejection of an Offer.

(a) An Authorized Agency may reject any Offer upon finding that to accept the Offer may impair the integrity of the Procurement Process or that rejecting the Offer is in the public interest.

(b) The Authorized Agency must reject an Offer upon the Authorized Agency's finding that the Offer:

(A) Is contingent upon the Authorized Agency's acceptance of terms and conditions (including Specifications) that differ from the Solicitation Document, or

(B) Takes exception to terms and conditions (including Specifications), or

(C) Attempts to prevent public disclosure of matters in contravention of the terms and conditions of Solicitation Document or in contravention of applicable law; or

(D) Offers Work that fails to meet the Specifications of the Solicitation Document; or

(E) Is late; or

(F) Is not in substantial compliance with the Solicitation Documents; or

(G) Is not in substantial compliance with all prescribed public Solicitation procedures.

(c) The Authorized Agency must reject an Offer upon the Authorized Agency's finding that the Offeror:

(A) Has not been prequalified under ORS 279C.430 and the Authorized Agency required mandatory prequalification; or

(B) Has been Disqualified; or

(C) Has been declared ineligible under ORS 279C.860 by the Commissioner of Bureau of Labor and Industries and the Contract is for a Public Work; or

(D) Is listed as not qualified by the Construction Contractors Board, if the Contract is for a Public Improvement; or

(E) Has not met the requirements of ORS 279A.105 if required by the Solicitation Document; or

(F) Has not submitted properly executed Bid or Proposal security as required by the Solicitation Document; or

(G) Has failed to provide the certification required under Section 3 of this Rule; or

(H) Is not Responsible. See OAR 125-249-0390(2) regarding Authorized Agency determination that the Offeror has met statutory standards of responsibility.

(2) Form of Business. For purposes of this Rule, the Authorized Agency may investigate any Person submitting an Offer. The investigation may include that Person's officers, Directors, owners, affiliates, or any other Person acquiring ownership of the Person to determine application of this Rule or to apply the Disqualification provisions of ORS 279C.440 to 279C.450 and OAR 125-249-0370.

# ADMINISTRATIVE RULES

(3) Certification of Non-Discrimination. The Offeror must certify and deliver to the Authorized Agency Written certification, as part of the Offer that the Offeror has not discriminated against minority, women or emerging small business enterprises in obtaining any required subcontracts. Failure to do so must be grounds for disqualification.

(4) Rejection of all Offers. An Authorized Agency may reject all Offers for good cause upon the Authorized Agency's Written finding it is in the public interest to do so. The Authorized Agency must notify all Offerors of the rejection of all Offers, along with the good cause justification and finding.

(5) Criteria for Rejection of All Offers. The Authorized Agency may reject all Offers upon a Written finding that:

(a) The content of or an error in the Solicitation Document, or the Solicitation process unnecessarily restricted competition for the Contract;

(b) The price, quality or performance presented by the Offerors is too costly or of insufficient quality to justify acceptance of the Offer;

(c) Misconduct, error, or ambiguous or misleading provisions in the Solicitation Document threaten the fairness and integrity of the competitive process;

(d) Causes other than legitimate market forces threaten the integrity of the competitive Procurement Process. These causes include, but are not limited to, those that tend to limit competition such as restrictions on competition, collusion, corruption, unlawful anti-competitive conduct, and inadvertent or intentional errors in the Solicitation Document;

(e) The Authorized Agency cancels the Solicitation in accordance with OAR 125-249-0270; or

(f) Any other circumstance indicating that Awarding the Contract would not be in the public interest.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070  
Stats. Implemented: ORS 279A.105, 279A.110, 279C.375, 279C.380 & 279C.395  
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10

## 125-249-0450

### Protest of Contractor Selection, Contract Award

(1) Purpose. An adversely affected or aggrieved Offeror must exhaust all avenues of administrative review and relief before seeking judicial review of the Authorized Agency's Contractor selection or Contract Award decision.

(2) Notice of Competitive Range. Unless otherwise provided in the RFP, when the competitive proposal process is authorized under OAR 125-249-0650, the Authorized Agency must provide Written notice to all Proposers of the Authorized Agency's determination of the Proposers included in the Competitive Range. The Authorized Agency's notice of the Proposers included in the Competitive Range must not be final until the later of the following:

(a) Ten (10) Days after the date of the notice, unless otherwise provided therein; or

(b) Until the Authorized Agency provides a Written response to all timely-filed protests that denies the protest and affirms the notice of the Proposers included in the Competitive Range.

(3) Notice of Intent to Award. The Authorized Agency must provide Written notice to all Offerors of the Authorized Agency's intent to award the Contract as provided by OAR 125-249-0395.

(4) Right to Protest Award.

(a) An adversely affected or aggrieved Offeror may submit to the Authorized Agency a Written protest of the Authorized Agency's intent to award within seven (7) Days after issuance of the notice of intent to award the Contract, unless a different protest period is provided under the Solicitation Document.

(b) The Offeror's protest must be in Writing and must specify the grounds upon which the protest is based.

(c) An Offeror is adversely affected or aggrieved only if the Offeror is eligible for Award of the Contract as the Responsible Bidder submitting the lowest Responsive Bid or the Responsible Proposer submitting the best Responsive Proposal and is next in line for Award, i.e., the protesting Offeror must claim that all lower Bidders or higher-scored Proposers are ineligible for Award:

(A) Because their Offers were non-responsive; or

(B) The Authorized Agency committed a substantial violation of a provision in the Solicitation Document or of an applicable procurement statute or administrative rule, and the protesting Offeror was unfairly evaluated and would have, but for such substantial violation, been the Responsible Bidder offering the lowest Bid or the Responsible Proposer offering the highest-ranked Proposal.

(d) The Authorized Agency must not consider a protest submitted after the time period established in this Rule or such different period as may be provided in the Solicitation Document. A Proposer may not protest an Authorized Agency's decision not to increase the size of the Competitive Range above the size of the Competitive Range set forth in the RFP.

(5) Right to Protest Competitive Range.

(a) An adversely affected or aggrieved Proposer may submit to the Authorized Agency a Written protest of the Authorized Agency's decision to exclude the Proposer from the Competitive Range within seven (7) Days after issuance of the notice of the Competitive Range, unless a different protest

period is provided under the Solicitation Document. (See procedural requirements for the use of RFPs at OAR 125-249-0650.)

(b) The Proposer's protest must be in Writing and must specify the grounds upon which the protest is based.

(c) A Proposer is adversely affected only if the Proposer is responsible and submitted a Responsive Proposal and is eligible for inclusion in the Competitive Range, i.e., the protesting Proposer must claim it is eligible for inclusion in the Competitive Range if all ineligible higher-scoring Proposers are removed from consideration, and that those ineligible Proposers are ineligible for inclusion in the Competitive Range because:

(A) Their Proposals were not responsive; or

(B) The Authorized Agency committed a substantial violation of a provision in the RFP or of an applicable procurement statute or administrative rule, and the protesting Proposer was unfairly evaluated and would have, but for such substantial violation, been included in the Competitive Range.

(d) The Authorized Agency must not consider a protest submitted after the time period established in this Rule or such different period as may be provided in the Solicitation Document. A Proposer may not protest an Authorized Agency's decision not to increase the size of the Competitive Range above the size of the Competitive Range set forth in the RFP.

(6) Authority to Resolve Protests. The head of the Authorized Agency, or such Person's delegatee, may settle or resolve a Written protest submitted in accordance with the requirements of this Rule.

(7) Decision. If a protest is not settled, the head of the Authorized Agency, or such Person's delegatee, must promptly issue a Written decision on the protest. Judicial review of this decision will be available if provided by statute.

(8) Award. The successful Offeror must promptly execute the Contract after the Award is final. The Authorized Agency must execute the Contract only after it has obtained all applicable required documents and approvals.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070  
Stats. Implemented: ORS 279C.375, 279C.380, 279C.385 & 279C.460  
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10

## 125-249-0620

### Use of Alternative Contracting Methods

(1) Competitive Bidding Exemptions. ORS Chapter 279C requires a competitive bidding process for Public Improvement Contracts unless a statutory exception applies, a class of Contracts has been exempted, or an individual Contract has been exempted in accordance with ORS 279C.335 and any applicable Authorized Agency rules. Use of Alternative Contracting Methods may be directed by the State Procurement Office as an exception to the prescribed Public Contracting practices in Oregon, and their use must be justified in accordance with the Public Contract law and these OAR 125-249-0600 to 125-249-0690 Rules. See OAR 125-249-0630 regarding required Findings and restrictions on class exemptions.

(2) Energy Savings Performance Contracts. Unlike other Alternative Contracting Methods covered by these OAR 125-249-0600 to 125-249-0690 Rules, ESPCs are exempt from the competitive bidding requirement process for Public Improvement Contracts according to ORS 279C.335(1)(f), if the Authorized Agency complies with the procedures set forth in these OAR 125-249-0600 to 125-249-0690 Rules related to the Solicitation, Negotiation and contracting for ESPC Services. If those procedures are not followed, an ESPC procurement may still be exempted from competitive bidding requirements by following the general exemption procedures within ORS 279C.335.

(3) Post-Project Evaluation. ORS 279C.355 requires that the Authorized Agency prepare a formal post-project evaluation of Public Improvement projects in excess of \$100,000 for which the competitive bidding process was not used. The purpose of this evaluation is to determine whether it was actually in the Authorized Agency's best interest to use an Alternative Contracting Method. The evaluation must be delivered to the Director of the Department as applicable within thirty (30) Days of the date the Authorized Agency "accepts" the Public Improvement project, which event is typically defined in the Contract. In the absence of such definition, acceptance of the Project occurs on the later of the date of final payment or the date of final completion of the Work. ORS 279C.355 describes the timing and content of this evaluation, with three (3) required elements:

(a) Financial information, consisting of cost estimates, any Guaranteed Maximum Price, changes and actual costs;

(b) A narrative description of successes and failures during design, engineering and construction; and

(c) An objective assessment of the use of the Alternative Contracting Method as compared to the exemption Findings.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070  
Stats. Implemented: ORS 279A.065, 279C.335 & 351.086  
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10

## 125-249-0640

### Competitive Proposals; Procedure

Authorized Agencies may utilize the following RFP process for Public Improvement Contracts, allowing flexibility in both Proposal evaluation and contract Negotiation, only in accordance with ORS 279C.400 to 279C.410

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and OAR 125-249-0600 to 125-249-690, unless other applicable statutes control an Authorized Agency's use of competitive Proposals for Public Improvement Contracts. Also see the Subdivision of Rules in this Division entitled Formal Procurement Rules, OAR 125-249-0200 to 125-249-0490, and RFP related Rules under the Alternative Contracting Methods Subdivision at OAR 125-249-0640 to 125-249-0660. For ESPCs, the following RFP process must be utilized if an Authorized Agency desires the Procurement Process to be exempt from the competitive bidding requirements of ORS 279C.335. The RFP process for the Alternative Contracting Methods identified in OAR 125-249-0600 to 125-249-0690 includes the following steps:

(1) Proposal Evaluation. Factors in addition to price may be considered in the selection process, but only as set forth in the RFP. For ESPC Proposal evaluations, the Authorized Agency may provide in the RFP that qualifications-based evaluation factors will outweigh the Authorized Agency's consideration of price-related factors, due to the fact that prices for the major components of the Work to be performed during the ESPC process contemplated by the RFP will likely not be determinable at the time of Proposal evaluation. Proposal evaluation must be as objective as possible. Evaluation factors need not be precise predictors of future costs and performance, but to the extent possible such evaluation factors must:

(a) Be reasonable estimates based on information available to the Authorized Agency;

(b) Treat all Proposals equitably; and

(c) Recognize that public policy requires that Public Improvements be constructed at the least overall cost to the Authorized Agency. See ORS 279C.305.

(2) Evaluation Factors.

(a) In basic negotiated construction contracting, where the only reason for an RFP is to consider factors other than price, those factors may consist of firm and personnel experience on similar projects, adequacy of equipment and physical plant, sources of supply, availability of key personnel, financial capacity, past performance, safety records, project understanding, proposed methods of construction, proposed milestone dates, references, service, and related matters that affect cost or quality.

(b) In CM/GC contracting, in addition to (a) above, those factors may also include the ability to respond to the technical complexity or unique character of the project, analyze and propose solutions or approaches to complex project problems, coordination of multiple disciplines, the time required to commence and complete the improvement, and related matters that affect cost or quality.

(c) In Design-Build contracting, in addition to (a) and (b) above, those factors may also include design professional qualifications, specialized experience, preliminary design submittals, technical merit, design-builder team experience and related matters that affect cost or quality.

(d) In ESPC contracting, in addition to the factors set forth in Subsections (a), (b) and (c) above, those factors may also include sample Technical Energy Audits from similar projects, sample M & V reports, financial statements and related information of the ESCO for a time period established in the RFP, financial statements and related information of joint venturers comprising the ESCO, the ESCO's capabilities and experience in performing energy baseline studies for facilities (independently or in cooperation with an independent third-party energy baseline Consultant), past performance of the ESCO in meeting energy guarantee contract levels, the specific Person that will provide the Energy Savings Guarantee to be offered by the ESCO, the ESCO's management plan for the project, information on the specific methods, techniques and equipment that the ESCO will use in the performance of the Work under the ESPC, the ESCO's team members and Consultants to be assigned to the project, the ESCO's experience in the Energy Savings Performance contracting field, the ESCO's experience acting as the prime Contractor on previous ESPC projects (as opposed to a subcontractor or Consultant to a prime ESCO), the ESCO's vendor and product neutrality related to the development of ECMs, the ESCO's project history related to removal from an ESPC project or the inability or unwillingness of the ESCO to complete an ESPC project, the ESCO's M & V capabilities and experience (independently or in cooperation with an independent third-party M & V Consultant), the ESCO's ability to explain the unique risks associated with ESPC projects and the assignment of risk in the particular project between the Authorized Agency and the ESCO, the ESCO's equipment performance guarantee policies and procedures, the ESCO's energy savings and cost savings guarantee policies and procedures, the ESCO's project cost guarantee policies and procedures, the ESCO's pricing methodologies, the price that the ESCO will charge for the Technical Energy Audit phase of the Work and the ESCO's fee structure for all phases of the ESPC.

(3) Contract Negotiations. Contract terms may be negotiated to the extent allowed by the RFP and OAR 125-249-0600 to 125-249-0690, provided that the general Work Scope remains the same and that the field of competition does not change as a result of material changes to the requirements stated in the Solicitation Document. See OAR 125-249-0650. Terms that may be negotiated consist of details of contract performance, methods of construction, timing, assignment of risk in specified areas, fee, and other matters that affect cost or quality. In ESPC contracting, terms that may be negotiated also include the Scope of preliminary design of ECMs to be evaluated by the

parties during the Technical Energy Audit phase of the Work, the Scope of services to be performed by the ESCO during the Project Development Plan phase of the Work, the detailed provisions of the Energy Savings Guarantee to be provided by the ESCO and Scope of Personal Services and Work, methodologies and compensation terms and conditions during the design and construction phase and M & V phase of the Work, consistent with the requirements of OAR 125-249-0680 below.

Stat. Auth.: ORS 279C.335 & 279A.065

Stats. Implemented: ORS 279A.065, 279C.335 & 351.086

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10

## 125-249-0645

### Requests for Qualifications (RFQ)

As provided by ORS 279C.405(1), Authorized Agencies may utilize Requests for Qualifications (RFQs) to obtain information useful in the preparation or distribution of a Request for Proposals (RFPs). When using RFQs as the first step in a two (2) step solicitation process, in which distribution of the RFPs will be limited to the firms identified as most qualified through their submitted statements of qualification, Authorized Agencies must first advertise and provide notice of the RFQ in the same manner in which RFPs are advertised, include the RFP, specifically state that RFPs will be distributed only to the firms selected in the RFQ process and also provide within the RFQ a protest provision substantially in form of OAR 125-249-0450(5) regarding protests of the competitive range. Thereafter, Authorizing Agencies may distribute RFPs to the selected firms without further advertisement of the Solicitation.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070

Stats. Implemented: ORS 279C.405

Hist.: DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10

## 125-249-0650

### Requests for Proposals (RFP)

(1) Generally. The use of competitive proposals must be specially authorized for a Public Improvement Contract under the competitive bidding requirement of ORS 279C.335(1), OAR 125-249-0130 and 125-249-0600 to 125-249-0690. Also see ORS 279C.400 to 279C.410 for statutory requirements regarding competitive Proposals, and OAR 125-249-0640 regarding competitive Proposal procedures.

(2) Solicitation Documents. In addition to the Solicitation Document requirements of OAR 125-249-0200, this Rule applies to the requirements for Requests for Proposals. RFP Solicitation Documents must conform to the following standards:

(a) The Authorized Agency must set forth selection criteria in the Solicitation Document. Examples of evaluation criteria include price or cost, quality of a product or service, past performance, management, capability, personnel qualification, prior experience, compatibility, reliability, operating efficiency, expansion potential, experience of key personnel, adequacy of equipment or physical plant, financial wherewithal, sources of supply, references and warranty provisions. See OAR 125-249-0640. Evaluation factors need not be precise predictors of actual future costs and performance, but to the extent possible, such factors must be reasonable estimates based on information available to the Authorized Agency;

(b) When the Authorized Agency is willing to negotiate terms and conditions of the Contract or allow submission of revised Proposals following Discussions, the Authorized Agency must identify the specific terms and conditions in or provisions of the Solicitation Document that are subject to Negotiation or Discussion and authorize Offerors to propose certain alternative terms and conditions instead of the terms and conditions the Authorized Agency has identified as authorized for Negotiation. The Authorized Agency must describe the evaluation and Discussion or Negotiation process, including how the Authorized Agency will establish the Competitive Range;

(c) The anticipated size of the Competitive Range must be stated in the Solicitation Document, but may be decreased if the number of the Proposers that submit responsive Proposals is less than the specified number, or may be increased as provided in OAR 125-249-0650(4)(a)(B);

(d) When the Authorized Agency intends to award Contracts to more than one Proposer, the Authorized Agency must identify in the Solicitation Document the manner in which it will determine the number of Contracts it will Award. The Authorized Agency must also include the criteria it will use to determine how the Authorized Agency will endeavor to achieve optimal value, utility and substantial fairness when selecting a particular Contractor to provide Supplies and Services from those Contractors Awarded Contracts.

(3) Evaluation of Proposals.

(a) Evaluation. The Authorized Agency must evaluate Proposals only in accordance with criteria set forth in the RFP and applicable law. The Authorized Agency must evaluate Proposals to determine the Responsible Proposer or Proposers submitting the best Responsive Proposal or Proposals.

(A) Clarifications. In evaluating Proposals, an Authorized Agency may seek information from a Proposer to clarify the Proposer's Proposal. A Proposer must submit Written and Signed clarifications and such clarifications must become part of the Proposer's Proposal.

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(B) Limited Negotiation. If the Authorized Agency did not permit Negotiation in its Request for Proposals, the Authorized Agency may, nonetheless, negotiate with the highest-ranked Proposer, but may then only negotiate the:

- (i) Statement of Work; and
- (ii) Contract Price as it is affected by negotiating the statement of Work.
- (iii) The process for Discussions or Negotiations that is outlined and explained in Subsections (5)(b) and (6) of this Rule does not apply to this limited Negotiation.

(b) Discussions; Negotiations. If the Authorized Agency permitted Discussions or Negotiations in the Request for Proposals, the Authorized Agency must evaluate Proposals [and establish the Competitive Range, and may then conduct Discussions and Negotiations in accordance with this Rule.

(A) If the Solicitation Document provided that Discussions or Negotiations may occur at the Authorized Agency's discretion, the Authorized Agency may forego Discussions and Negotiations and evaluate all Proposals in accordance with this Rule.

(B) If the Authorized Agency proceeds with Discussions or Negotiations, the Authorized Agency must establish a Negotiation team tailored for the acquisition. The Authorized Agency's team may include legal, technical and negotiating personnel.

(c) Cancellation. Nothing in this Rule must restrict or prohibit the Authorized Agency from canceling the Solicitation at any time.

(4) Competitive Range, Protest, Award.

(a) Determining Competitive Range.

(A) If the Authorized Agency does not cancel the Solicitation, after the Opening the Authorized Agency will evaluate all Proposals in accordance with the evaluation criteria set forth in the Request for Proposals. After evaluation of all Proposals in accordance with the criteria set forth in the Request for Proposals, the Authorized Agency will determine and rank the Proposers in the Competitive Range.

(B) The Authorized Agency may increase the number of Proposers in the Competitive Range if the Authorized Agency's evaluation of Proposals establishes a natural break in the scores of Proposers indicating a number of Proposers greater than the initial Competitive Range are closely competitive, or have a reasonable chance of being determined the best Proposer after the Authorized Agency's evaluation of revised Proposals submitted in accordance with the process described in this Rule.

(b) Protesting Competitive Range. The Authorized Agency must provide Written notice to all Proposers identifying Proposers in the Competitive Range. A Proposer that is not within the Competitive Range may protest the Authorized Agency's evaluation and determination of the Competitive Range in accordance with OAR 125-249-0450.

(c) Intent to Award; Discuss or Negotiate. After the protest period provided in accordance with these Rules expires, or after the Authorized Agency has provided a final response to any protest, whichever date is later, the Authorized Agency may either:

(A) Provide Written notice to all Proposers in the Competitive Range of its intent to award the Contract to the highest-ranked Proposer in the Competitive Range.

(i) An unsuccessful Proposer may protest the Authorized Agency's intent to award in accordance with OAR 125-249-0450.

(ii) After the protest period provided in accordance with OAR 125-249-0450 expires, or after the Authorized Agency has provided a final response to any protest, whichever date is later, the Authorized Agency must commence final contract Negotiations with the highest-ranked Proposer in the Competitive Range; or

(B) Engage in Discussions with Proposers in the Competitive Range and accept revised Proposals from them, and, following such Discussions and receipt and evaluation of revised Proposals, conduct Negotiations with the Proposers in the Competitive Range.

(5) Discussions; Revised Proposals. If the Authorized Agency chooses to enter into Discussions with and receive revised Proposals from the Proposers in the Competitive Range, the Authorized Agency must proceed as follows:

(a) Initiating Discussions. The Authorized Agency must initiate oral or Written Discussions with all of the Proposers in the Competitive Range regarding their Proposals with respect to the provisions of the RFP that the Authorized Agency identified in the RFP as the subject of Discussions. The Authorized Agency may conduct Discussions for the following purposes:

- (A) Informing Proposers of deficiencies in their initial Proposals;
- (B) Notifying Proposers of parts of their Proposals for which the Authorized Agency would like additional information; and

(C) Otherwise allowing Proposers to develop revised Proposals that will allow the Authorized Agency to obtain the best Proposal based on the requirements and evaluation criteria set forth in the Request for Proposals.

(b) Conducting Discussions. The Authorized Agency may conduct Discussions with each Proposer in the Competitive Range necessary to fulfill the purposes of this Section, but need not conduct the same amount of Discussions with each Proposer. The Authorized Agency may terminate Discussions with any Proposer in the Competitive Range at any time. However, the Authorized Agency must offer all Proposers in the Competitive Range the opportunity to discuss their Proposals with the Authorized Agency

before the Authorized Agency notifies Proposers of the date and time according to this Section that revised Proposals will be due.

(A) In conducting Discussions, the Authorized Agency:

(i) Must treat all Proposers fairly and must not favor any Proposer over another;

(ii) Must not discuss other Proposers' Proposals;

(iii) Must not suggest specific revisions that a Proposer should make to its Proposal, and must not otherwise direct the Proposer to make any specific revisions to its Proposal.

(B) At any time during the time allowed for Discussions, the Authorized Agency may:

(i) Continue Discussions with a particular Proposer;

(ii) Terminate Discussions with a particular Proposer and continue Discussions with other Proposers in the Competitive Range; or

(iii) Conclude Discussions with all remaining Proposers in the Competitive Range and provide notice to the Proposers in the Competitive Range to submit revised Proposals.

(c) Revised Proposals. If the Authorized Agency does not cancel the Solicitation at the conclusion of the Authorized Agency's Discussions with all remaining Proposers in the Competitive Range, the Authorized Agency must give all remaining Proposers in the Competitive Range notice of the date and time by which they must submit revised Proposals. This notice constitutes the Authorized Agency's termination of Discussions, and Proposers must submit revised Proposals by the date and time set forth in the Authorized Agency's notice.

(A) Upon receipt of the revised Proposals, the Authorized Agency must score the revised Proposals based upon the evaluation criteria set forth in the Request for Proposals, and rank the revised Proposals based on the Authorized Agency's scoring.

(B) The Authorized Agency may conduct Discussions with and accept only one revised Proposal from each Proposer in the Competitive Range unless otherwise set forth in the Request for Proposals.

(d) Intent to Award; Protest. The Authorized Agency must provide Written notice to all Proposers in the Competitive Range of the Authorized Agency's intent to award the Contract. An unsuccessful Proposer may protest the Authorized Agency's intent to award in accordance with OAR 125-249-0450. After the protest period provided in accordance with that Rule expires, or after the Authorized Agency has provided a final response to any protest, whichever date is later, the Authorized Agency must commence final contract Negotiations.

(6) Negotiations.

(a) Initiating Negotiations. The Authorized Agency may determine to commence Negotiations with the highest-ranked Proposer in the Competitive Range following the:

(A) Initial determination of the Competitive Range; or

(B) Conclusion of Discussions with all Proposers in the Competitive Range and evaluation of revised Proposals.

(b) Conducting Negotiations and Scope. The Authorized Agency may negotiate:

(A) The statement of Work;

(B) The Contract Price as it is affected by negotiating the statement of Work; and

(C) Any other terms and conditions reasonably related to those expressly authorized for Negotiation in the Request for Proposals. Accordingly, Proposers must not submit, and the Authorized Agency must not accept, for Negotiation any alternative terms and conditions that are not reasonably related to those expressly authorized for Negotiation in the Request for Proposals.

(c) Terminating Negotiations. At any time during Discussions or Negotiations that the Authorized Agency conducts in accordance with this Rule, the Authorized Agency may terminate Discussions or Negotiations with the highest-ranked Proposer, or the Proposer with whom it is currently discussing or negotiating, if the Authorized Agency reasonably believes that:

(A) The Proposer is not discussing or negotiating in good faith; or

(B) Further Discussions or Negotiations with the Proposer will not result in the parties agreeing to the terms and conditions of a final Contract in a timely manner.

(d) Continuing Negotiations. If the Authorized Agency terminates Discussions or Negotiations with a Proposer, the Authorized Agency may then commence Negotiations with the next highest scoring Proposer in the Competitive Range, and continue the process described in this Rule until the Authorized Agency has either:

(A) Determined to award the Contract to the Proposer with whom it is currently discussing or negotiating; or

(B) Completed one round of Discussions or Negotiations with all Proposers in the Competitive Range, unless the Authorized Agency provided for more than one round of Discussions or Negotiations in the Request for Proposals.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279C.400 - 279C.410

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10

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## 125-249-0660

### RFP Pricing Mechanisms

(1) A Request for Proposals may result in a lump sum Contract Price, as in the case of competitive bidding. Alternatively, a cost reimbursement Contract may be negotiated.

(2) Economic incentives or disincentives may be included to reflect stated Authorized Agency purposes related to time of completion, safety or other Public Contracting objectives, including total least cost mechanisms such as Life Cycle Costing according to OAR 125-247-0170.

(3) A Guaranteed Maximum Price (GMP) is used as the pricing mechanism for CM/GC where a total Contract Price is provided in the design phase in order to assist the Authorized Agency in determining whether the project Scope is within the Authorized Agency's budget, and allowing for design changes during preliminary design rather than after final design Work has been completed.

(a) If this collaborative process is successful, the Contractor must propose a final GMP, which may be accepted by the Authorized Agency and included within the Contract.

(b) If this collaborative process is not successful, and no mutually agreeable resolution on GMP can be achieved with the Contractor, then the Authorized Agency must terminate the Contract. The public Authorized Agency may then proceed to negotiate a new Contract (and GMP) with the firm that was next ranked in the original selection process, or employ other means for continuing the project under ORS Chapter 279C.

(4) When cost reimbursement Contracts are utilized, regardless of whether a GMP is included, the Authorized Agency must provide for audit controls that will effectively verify rates and ensure that costs are reasonable, allowable and properly allocated.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279C.335

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10

## 125-249-0680

### Energy Savings Performance Contracts (ESPC)

(1) Generally. These OAR 125-249-0600 to 125-249-0690 Rules include a limited, efficient method for Authorized Agencies to enter into ESPCs outside the competitive bidding requirements of ORS 279C.335 for existing buildings or structures, but not for new construction. If an Authorized Agency chooses not to utilize the ESPC Procurement method provided for by these OAR 125-249-0600 to 125-249-0690 Rules, the Authorized Agency may still enter into an ESPC by complying with the competitive bidding exemption process set forth in ORS 279C.335, or by otherwise complying with the procurement requirements applicable to any Authorized Agency not subject to all the requirements of ORS 279C.335.

(2) ESPC Contracting Method. The ESPC form of contracting, as defined at OAR 125-249-0610(6), has unique technical complexities associated with the determination of what ECMS are feasible for the Authorized Agency, as well as the additional technical complexities associated with a Design-Build Contract. Authorized Agencies must only utilize the ESPC contracting method with the assistance of knowledgeable staff or Consultants who are experienced in its use. In order to utilize the ESPC contracting process, the Authorized Agency must be able to reasonably anticipate one or more of the following types of benefits:

(a) Obtaining, through an ESCO, the following types of integrated services: facility profiling, energy baseline studies, ECMS, Technical Energy Audits, project development planning, engineering design, plan preparation, cost estimating, life cycle costing, construction administration, project management, construction, quality control, operations and maintenance staff training, commissioning services, M & V services and required documentation as a fully integrated function with a single point of responsibility;

(b) Obtaining, through an ESCO, an Energy Savings Guarantee;

(c) Integrating the Technical Energy Audit phase and the Project Development Plan phase into the design and construction phase of Work on the project;

(d) Reducing the risk of design flaws, misunderstandings and conflicts inherent in the construction process, through the integration of ESPC services;

(e) Obtaining innovative design solutions through the collaboration of the members of the ESCO integrated ESPC services team;

(f) Integrating cost-effective ECMS into an existing building or structure, so that the ECMS pay for themselves through savings realized over the useful life of the ECMS;

(g) Preliminary design, development, implementation and an Energy Savings Guarantee of ECMS into an existing building or structure through an ESPC, as a distinct part of a major remodel of that building or structure that is being performed under a separate remodeling Contract; and

(h) Satisfying local energy efficiency design criteria or requirements.

(3) Authority. Authorized Agencies desiring to pursue an exemption from the competitive bidding requirements of ORS 279C.335 (and, if applicable, ORS 351.086), must utilize the ESPC form of contracting only in accordance with the requirements of these OAR 125-249-0600 to 125-249-0690 Rules.

(4) No Findings Required. An Authorized Agency is only required to comply with the ESPC contracting procedures set forth in these OAR 125-249-0600 to 125-249-0690 Rules in order for the ESPC to be exempt from the competitive bidding processes of ORS 279C.335. No Findings are required for an ESPC to be exempt from the competitive bidding process for Public Improvement Contracts according to ORS 279C.335, unless the Authorized Agency is subject to the requirements of ORS 279C.335 and chooses not to comply with the ESPC contracting procedures set forth in these OAR 125-249-0600 to 125-249-0690 Rules.

(5) Selection. ESPC selection criteria may include those factors set forth above in OAR 125-249-0640(2)(a), (b), (c) and (d). Since the Energy Savings Guarantee is such a fundamental component in the ESPC contracting process, Proposers must disclose in their Proposals the identity of any Person providing (directly or indirectly) any Energy Savings Guarantee that may be offered by the successful ESCO during the course of the performance of the ESPC, along with any financial statements and related information pertaining to any such Person.

(6) Qualifications Based Selection (QBS) Inapplicable. Because the value of construction services predominates in the ESPC method of contracting, the qualifications based selection (QBS) process mandated by ORS 279C.110 for Authorized Agencies in obtaining certain Consultant services is not applicable.

(7) Licensing. If the ESCO is not an Oregon licensed design professional, the Authorized Agency must require that the ESCO disclose in the ESPC that it is not an Oregon licensed design professional, and identify the Oregon licensed design professional(s) who will provide design services. See ORS 671.030(5) regarding the offer of architectural services, and ORS 672.060(11) regarding the offer of engineering services that are appurtenant to construction services.

(8) Performance Security. At the point in the ESPC when the parties enter into a binding Contract that constitutes a Design-Build Contract, the ESCO must provide a performance bond and a payment bond, each for 100% of the full Contract Price, including the construction and design and related professional services specified in the ESPC Design-Build Contract, according to ORS 279C.380(1)(a). For ESPC Design-Build Contracts, these "design and related professional services" include conventional design services, commissioning services, training services for the Authorized Agency's operations and maintenance staff, and any similar professional services provided by the ESCO under the ESPC Design-Build Contract before final completion of construction. M & V services, and any services associated with the ESCO's Energy Savings Guarantee are not included in these ORS 279C.380(1)(a) "design and related professional services." Nevertheless, an Authorized Agency may require that the ESCO provide performance security for M & V services and any services associated with the ESCO's Energy Savings Guarantee, if the Authorized Agency so provides in the RFP.

(9) Contracting Requirements. Authorized Agencies must conform their ESPC contracting practices to the following requirements:

(a) General ESPC Contracting Practices. An ESPC involves a multi-phase project, which includes the following contractual elements:

(A) A contractual structure which includes general contract terms describing the relationship of the parties, the various phases of the Work, the contractual terms governing the Technical Energy Audit for the project, the contractual terms governing the Project Development Plan for the project, the contractual terms governing the final design and construction of the project, the contractual terms governing the performance of the M & V services for the project, and the detailed provisions of the ESCO's Energy Savings Guarantee for the project.

(B) The various phases of the ESCO's Work will include the following:

(i) The Technical Energy Audit phase of the Work;

(ii) The Project Development Plan phase of the Work;

(iii) A third phase of the Work that constitutes a Design-Build Contract, during which the ESCO completes any plans and Specifications required to implement the ECMS that have been agreed to by the parties to the ESPC, and the ESCO performs all construction, commissioning, construction administration and related services to actually construct the project; and

(iv) A final phase of the Work, whereby the ESCO, independently or in cooperation with an independent Consultant hired by the Authorized Agency, performs M & V services to ensure that the Energy Savings Guarantee identified by the ESCO in the earlier phases of the Work and agreed to by the parties has actually been achieved.

(b) Design-Build Contracting Requirements in ESPCs. At the point in the ESPC when the parties enter into a binding Contract that constitutes a Design-Build Contract, the Authorized Agency must conform its Design-Build contracting practices to the Design-Build contracting requirements set forth in OAR 125-249-0670(7).

(c) Pricing Alternatives. The Authorized Agency may utilize one of the following pricing alternatives in an ESPC:

(A) A fixed price for each phase of the services to be provided by the ESCO;

(B) A cost reimbursement pricing mechanism, with a maximum not-to-exceed price or a GMP; or

(C) A combination of a fixed fee for certain components of the services to be performed, a cost reimbursement pricing mechanism for the con-

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struction services to be performed with a GMP, a single or annual fixed fee for M & V services to be performed for an identified time period after final completion of the construction Work, and a single or annual Energy Savings Guarantee fixed fee payable for an identified time period after final completion of the construction Work that is conditioned on certain energy savings being achieved at the facility by the ECMs that have been implemented by the ESCO during the project (in the event an annual M & V services fee and annual Energy Savings Guarantee fee is utilized by the parties, the parties may provide in the Design-Build Contract that, at the sole option of the Authorized Agency, the ESCO's M & V services may be terminated before the completion of the M & V/Energy Savings Guarantee period and the Authorized Agency's future obligation to pay the M & V services fee and Energy Savings Guarantee fee will likewise be terminated, under terms agreed to by the parties).

(d) Permitted ESPC Scope of Work. The Scope of Work under the ESPC is restricted to implementation and installation of ECMs, as well as other Work on building systems or building components that are directly related to the ECMs, and that, as an integrated unit, will pay for themselves over the useful life of the ECMs installed. The permitted Scope of Work for ESPCs resulting from a Solicitation under these OAR 125-249-0600 to 125-249-0690 Rules does not include maintenance services for the project facility.

Stat. Auth.: ORS 279C.335 & 279A.065  
Stats. Implemented: ORS 279A.065, 279C.110, 279C.335 & 351.086  
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10

## 125-249-0800

### Required Contract Clauses

Except as provided by OAR 125-249-0150 and 125-249-0160, Authorized Agencies must include in all Solicitation Documents for Public Improvement Contracts all of the ORS Chapter 279C required Contract clauses, as set forth in the checklist contained in OAR 125-249-0200(1)(c) regarding Solicitation Documents. The following series of rules provides further guidance regarding particular Public Contract provisions.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070  
Stats. Implemented: ORS 297C.505 - 279C.545, 279C.800 - 279C.870  
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10

## 125-249-0810

### Waiver of Delay Damages Against Public Policy

Authorized Agencies must not place any provision in a Public Improvement Contract purporting to waive, release, or extinguish the rights of a Contractor to damages resulting from an Authorized Agency's unreasonable delay in performing the Contract. However, Contract provisions requiring notice of delay, providing for alternative dispute resolution such as arbitration (where allowable) or mediation, providing other procedures for settling contract disputes, or providing for reasonable liquidated damages, are permissible.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070  
Stats. Implemented: ORS 279C.315  
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10

## 125-249-0815

### BOLI Public Works Bond

According to ORS 279C.830(2), the specifications for every Public Works Contract must contain a provision stating that the Contractor and every subcontractor must have a Public Works bond filed with the Construction Contractors Board before starting Work on the project, unless otherwise exempt. This bond is in addition to performance bond and payment bond requirements.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070  
Stats. Implemented: ORS 279C.830  
Hist.: DAS 5-2006, f. & cert. ef. 5-31-06; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10

## 125-249-0820

### Retainage

(1) Withholding of Retainage. Except to the extent an Authorized Agency's enabling laws require otherwise, an Authorized Agency must not retain an amount in excess of five percent (5%) of the Contract Price for Work completed. If the Contractor has performed at least fifty percent (50%) of the contract Work and is progressing satisfactorily, upon the Contractor's submission of Written application containing the surety's Written approval, the Authorized Agency may, in its discretion, reduce or eliminate retainage on any remaining progress payments. The Authorized Agency must respond in Writing to all such applications within a reasonable time. When the contract Work is ninety seven and one half percent (97-1/2%) completed, the Authorized Agency may, at its discretion and without application by the Contractor, reduce the retained amount to one hundred percent (100%) of the value of the remaining unperformed contract Work. An Authorized Agency may at any time reinstate retainage. Retainage must be included in the final payment of the Contract Price.

(2) Form of Retainage. Unless an Authorized Agency that reserves an amount as retainage finds in writing that accepting a bond or instrument described in part (a) or (b) of this Section poses an extraordinary risk that is

not typically associated with the bond or instrument, the Authorized Agency, instead of withholding moneys from payment, must accept from the Contractor:

(a) Bonds, securities or other instruments that are deposited and accepted as provided in Subsection (4)(a) of this Rule; or

(b) A surety bond deposited as provided in Subsection (4)(b) of this Rule.

(3) Deposit in Interest-bearing Accounts. Upon request of the Contractor, an Authorized Agency must deposit cash retainage in an interest-bearing account in a bank, savings bank, trust company, or savings association, for the benefit of the Authorized Agency. Earnings on such account must accrue to the Contractor. State Authorized Agencies must establish the account through the State Treasurer.

(4) Alternatives to Cash Retainage. Instead of cash retainage to be held by an Authorized Agency, the Contractor may substitute one of the following:

(a) Deposit of bonds, securities or other instruments:

(A) The Contractor may deposit bonds, securities or other instruments with the Authorized Agency or in any bank or trust company to be held for the benefit of the Authorized Agency. If the Authorized Agency accepts the deposit, the Authorized Agency must reduce the cash retainage by an amount equal to the value of the bonds and securities, and reimburse the excess to the Contractor.

(B) Bonds, securities or other instruments deposited or acquired instead of cash retainage must be of a character approved by the Department, including but not limited to:

(i) Bills, certificates, notes or bonds of the United States.

(ii) Other obligations of the United States or agencies of the United States.

(iii) Obligations of a corporation wholly owned by the Federal Government.

(iv) Indebtedness of the Federal National Mortgage Association.

(v) General obligation bonds of the State of Oregon or a political subdivision of the State of Oregon.

(vi) Irrevocable letters of credit issued by an insured institution, as defined in ORS 706.008.

(C) Upon the Authorized Agency's determination that all requirements for the protection of the Authorized Agency's interests have been fulfilled, it must release to the Contractor all bonds and securities deposited instead of retainage.

(b) Deposit of Surety Bond. An Authorized Agency, at its discretion, may allow the Contractor to deposit a surety bond in a form acceptable to the Authorized Agency instead of all or a portion of funds retained or to be retained. A Contractor depositing such a bond must accept surety bonds from its subcontractors and suppliers instead of retainage. In such cases, retainage must be reduced by an amount equal to the value of the bond, and the excess must be reimbursed.

(5) Recovery of Costs. An Authorized Agency may recover from the Contractor all costs incurred in the proper handling of retainage, by reduction of the final payment.

(6) Additional Retainage When Certified Payroll Statements Not Filed. According to ORS 279C.845(7), if a Contractor is required to file certified payroll statements and fails to do so, the Authorized Agency must retain 25 percent of any amount earned by the Contractor on a Public Works Contract until the Contractor has filed such statements with the Authorized Agency. The Authorized Agency must pay the Contractor the amount retained under this provision within 14 days after the Contractor files the certified statements, regardless of whether a subcontractor has filed such statements (but see ORS 279C.845(1) regarding the requirement for both contractors and subcontracts to file certified statements with the Authorized Agency).

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070  
Stats. Implemented: ORS 279C.560, 279C.570 & 701.420  
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10

## 125-249-0860

### Public Works Contracts

(1) Generally. ORS 279C.800 to 279C.870 regulates Public Works Contracts, as defined in ORS 279C.800(6), and requirements for payment of prevailing wage rates. Also see administrative rules of the Bureau of Labor and Industries (BOLI) at OAR chapter 839.

(2) Required Contract Conditions. As detailed in the above statutes and Rules, every Public Works Contract must contain the following provisions:

(a) Authorized Agency authority to pay certain unpaid claims and charge such amounts to Contractors, as set forth in ORS 279C.515(1).

(b) Maximum hours of labor and overtime, as set forth in ORS 279C.520(1).

(c) Employer notice to employees of hours and days that employees may be required to Work, as set forth in ORS 279C.520(2).

(d) Contractor required payments for certain services related to sickness or injury, as set forth in ORS 279C.530.

(e) Requirement for payment of prevailing rate of wage, as set forth in ORS 279C.830(1).

(3) Requirements for Specifications. The Specifications for every Public Works Contract, consisting of the procurement package (such as the

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project manual, Bid or Proposal booklets, request for quotes or similar procurement Specifications), must contain the following provisions:

(a) The prevailing rate of wage, as required by ORS 279C.830(1)(a);

(A) Physically contained within or attached to hard copies of procurement Specifications;

(B) Included by a statement incorporating the applicable wage rate publication into the Specifications by reference, in compliance with OAR 839-025-0020; or

(C) When the rates are available electronically or by Internet access, the rates may be incorporated into the Specifications by referring to the rates and providing adequate information on how to access them in compliance with OAR 839-025-0020.

(b) If applicable, BOLI determines (in a separate publication) the federal prevailing rate of wage and information concerning whether the state or federal rate is higher in each trade or occupation in each locality. The same options for inclusion of wage rate information stated in Subsection (3)(a) of this Rule apply. See BOLI rules at OAR 839-025-0020 and 0035.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070

Stats. Implemented: ORS 279C.800 - 279C.870

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10

## 125-249-0870

### Specifications; Brand Name Products

(1) Generally. The Authorized Agency's Solicitation Document must not expressly or implicitly require any product by brand name or mark, nor must it require the product of any particular manufacturer or seller, except according to an exemption granted under ORS 279C.345(2).

(2) Equivalents. An Authorized Agency may identify products by brand names as long as the following language: "approved equal"; "or equal"; "approved equivalent" or "equivalent," or similar language is included in the Solicitation Document. The Authorized Agency must determine, in its sole discretion, whether an Offeror's alternate product is "equal" or "equivalent."

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279C.345

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10

## 125-249-0900

### Contract Suspension; Termination Procedures

(1) Suspension of Work. In the event an Authorized Agency suspends performance of Work for any reason considered by the Authorized Agency to be in the public interest other than a labor dispute, the Contractor must be entitled to a reasonable extension of contract time, and to reasonable compensation for all costs, including a reasonable allowance for related overhead, incurred by the Contractor as a result of the suspension.

(2) Termination of Contract by Mutual Agreement for Reasons Other Than Default

(a) Reasons for termination. The parties may agree to terminate the Contract or a divisible portion thereof if:

(A) The Authorized Agency suspends Work under the Contract for any reason considered to be in the public interest (other than a labor dispute, or any judicial proceeding relating to the Work filed to resolve a labor dispute); and

(B) Circumstances or conditions are such that it is impracticable within a reasonable time to proceed with a substantial portion of the Work.

(b) Payment. When a Contract, or any divisible portion thereof, is terminated according to this Section (2), the Authorized Agency must pay the Contractor a reasonable amount of compensation for preparatory Work completed, and for costs and expenses arising out of termination. The Authorized Agency must also pay for all Work completed, based on the Contract Price. Unless the Work completed is subject to unit or itemized pricing under the Contract, payment must be calculated based on percent of Contract completed. No claim for loss of anticipated profits will be allowed.

(3) Public Interest Termination by the Authorized Agency. An Authorized Agency may include in its Contracts terms detailing the circumstances under which the Contractor must be entitled to compensation as a matter of right in the event the Authorized Agency unilaterally terminates the Contract for any reason considered by the Authorized Agency to be in the public interest.

(4) Responsibility for Completed Work. Termination of the Contract or a divisible portion thereof according to this Rule must not relieve either the Contractor or its surety of liability for claims arising out of the Work performed.

(5) Remedies Cumulative. The Authorized Agency may, at its discretion, avail itself of any or all rights or remedies set forth in these Rules, in the Contract, or available at law or in equity.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279C.650, 279C.655, 279C.660, 279C.665 & 279C.670

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10

## Department of Administrative Services, Human Resource Services Division Chapter 105

**Rule Caption:** Remove 15-year veterans' preference limit, redefine veteran, establish process for state injured worker reemployment.

**Adm. Order No.:** HRSD 3-2009

**Filed with Sec. of State:** 12-30-2009

**Certified to be Effective:** 1-1-10

**Notice Publication Date:** 12-1-2009

**Rules Adopted:** 105-050-0025, 105-050-0030

**Rules Amended:** 105-040-0015

**Subject:** OAR 105-050-0025: Adopt as permanent rule. Establishes process for executive branch state agencies (Except the University System) to follow in the identification and assignment of light duty work for injured workers. DAS is required to establish this rule pursuant to ORS 659A.052 as revised by HB 2778 effective 7/1/09. The revised statute provides that DAS shall establish by rule a process to identify light duty assignments for injured workers.

OAR 105-050-0030: Adopt as a permanent rule. Establishes process for executive branch state agencies (except the University System) to follow in the identification entry level positions for injured workers. DAS is required to establish this rule pursuant to ORS 659A.052 as revised by HB 2778 effective 7/1/09. The revised statute provides that DAS shall establish by rule a process to identify entry level positions for injured workers.

OAR 105-040-0015: Amend permanent rules. PER HB 2510 and SB 96 of the 2009 Legislative Assembly, amend rule to allow "5-point Veterans" to use preference regardless of discharge date and redefine "Veteran" to include individuals receiving a non-service connected pension from the military.

**Rules Coordinator:** Yvonne Hanna—(503) 378-2349, ext. 325

## 105-040-0015

### Veteran's Preference in Employment

**Applicability:** Recruitment and selection processes for all State of Oregon positions in agencies subject to ORS 240, State Personnel Relations Law, including but not limited to promotional opportunities.

(1) Definitions: (See also HRSD Rule 105-010-0000 Definitions Applicable Generally to Personnel Rules and Policies.)

(a) Initial Application Screening: An agency's process of determining whether an applicant meets the minimum and special qualifications for a position. An Initial Application Screening may also include an evaluation of skills or grading of supplemental test questions if required on the recruiting announcement.

(b) Application Examination: The selection process utilized by an agency after Initial Application Screening. This selection process includes, but is not limited to, formal testing or other assessments resulting in a score as well as un-scored examinations such as interviews and reference checks.

(c) Veteran and Disabled Veteran: As defined by ORS 408.225 and 408.235.

(2) Application of preference points upon Initial Application Screening: Qualifying Veterans and Disabled Veterans receive preference points as follows;

(a) Five Veteran's Preference points are added upon Initial Application Screening when an applicant submits as verification of eligibility a copy of the Certificate of Release or Discharge from Active Duty (DD Form 214 or 215), or a letter from the US Department of Veteran's Affairs indicating the applicant receives a non-service connected pension with the State of Oregon Application; or

(b) Ten Disabled Veteran's points are added upon Initial Application Screening when an applicant submits as verification of eligibility a copy of the Certificate of Release or Discharge from Active Duty (DD Form 214 or 215) with the State of Oregon Application. Disabled Veterans must also submit a copy of their Veteran's disability preference letter from the US Department of Veteran Affairs, unless the information is included in the DD Form 214 or 215.

(c) Veteran's and Disabled Veteran's preference points are not added when a Veteran or Disabled Veteran fails to meet the minimum or the special qualifications for a position.

(3) Following an Initial Application Screening the agency generates a list of qualified applicants to consider for Appointment. An Appointing Authority or designee may then:

(a) Determine whether or not to interview all applicants who meet the minimum and special qualifications of the position (including all Veterans and Disabled Veterans); or

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(b) Select a group of Veteran and Disabled Veteran applicants who most closely match the agency's purposes in filling the position. This group of applicants may be considered along with non-veteran applicants who closely match the purposes of the agency in filling the position as determined by:

(A) Scored Application Examinations (including scored interviews): If an agency utilizes, after an Initial Application Screening, a scored Application Examination to determine whom to consider further for Appointment, the agency will add (based on a 100-point scale) five points to a Veteran's score or 10 points to a Disabled Veteran's score or;

(B) Un-scored Application Examinations: Un-scored Application Examinations done by sorting into levels (such as "unsatisfactory," "satisfactory," "excellent") based on desired attributes or other criteria for further consideration will be accomplished by:

- (i) Advancing the application of a Veteran one level;
- (ii) Advancing an application of a Disabled Veteran two levels.

(4) Preference in un-scored interviews: A Veteran or Disabled Veteran who, in the judgment of the Appointing Authority or designee, meets all or substantially all of the agency's purposes in filling the position will continue to be considered for Appointment.

(5) If a Veteran or Disabled Veteran has been determined to be equal to the top applicant or applicants for a position by the Appointing Authority or designee then the Veteran or Disabled Veteran is ranked more highly than non-veteran applicants and, a Disabled Veteran is ranked more highly than non-veteran and Veteran applicants.

(6) Preference described in Sections 2 through 5 of this rule is not a requirement to appoint a Veteran or Disabled Veteran to a position. An agency may base a decision not to appoint the Veteran or Disabled Veteran solely on the Veteran's or Disabled Veteran's merits or qualifications.

(7) A Veteran or a Disabled Veteran applicant not appointed to a position may request an explanation from the agency. The request must be in writing and be sent within 30 calendar days of the date the Veteran or Disabled Veteran was notified that they were not selected. The agency will respond in writing with the reasons for not appointing the Veteran or Disabled Veteran.

[ED. NOTE: Forms referenced are available from the agency.]  
Stat. Auth: ORS 240.145(3) & 240.250  
Stats. Implemented: ORS 408.225, 408.230 & 408.235  
Hist.: HRSD 3-2007(Temp), f. & cert ef. 9-5-07 thru 3-3-08; HRSD 1-2008, f. 2-27-08, cert. ef. 3-1-08; HRSD 3-2009, f. 12-30-09, cert. ef. 1-1-10

## 105-050-0025 Injured Worker Preference for Light Duty Assignments Under ORS 659A.052

Applicability: All Executive Branch Agencies except the Oregon University System pursuant to ORS 351.087.

(1) Definitions:

(a) Agency-at-injury: The state agency that employed the injured worker when the compensable injury occurred.

(b) Attending Physician: The physician primarily responsible for the injured worker's care related to the compensable condition in the workers' compensation claim.

(c) Independent and semi-independent agencies: State executive branch agencies not subject to all of ORS 240.

(d) Light duty assignment: A transitional assignment of an injured worker while the worker is recovering from job-related injuries or illnesses to duties within the worker's capacities and restrictions specified in writing by the worker's attending physician.

(2) If feasible, agencies-at-injury will make light duty assignments for injured workers after an attending physician authorizes a worker to return to work with temporary restrictions that preclude the worker from performing some or all of the worker's regular job duties.

(3) To identify light duty assignments, agencies-at-injury:

(a) Where feasible, temporarily modify a worker's regular job duties by removing or modifying those duties that conflict with physical restrictions specified by an injured worker's attending physician.

(b) If it is not feasible to remove or modify the worker's regular job duties to be consistent with the worker's restrictions, the agency-at-injury considers other work the agency may temporarily assign to the injured worker.

(c) If no light duty assignments are available within the agency-at-injury, the agency-at-injury may contact the Human Resource Services Division or other executive branch agencies for assistance in locating light duty assignments.

(d) Agencies-at-injury monitor, adjust, or terminate temporary light duty assignments as appropriate.

(e) An injured worker temporarily assigned light duty work in another agency remains an employee of the agency-at-injury.

(f) In addition to this rule, agencies that are subject to ORS 240 follow State Human Resource Policy 50.020.05, Early Return to Work of Injured Workers.

Stat. Auth.: ORS 240.145, 240.250 & 659A.052  
Stats. Implemented: ORS 240.306, 659A.043, 659A.046 & 659A.052  
Hist.: HRSD 1-2009(Temp), f. 6-25-09, cert. ef. 7-1-09 thru 12-27-09; HRSD 2-2009(Temp), f. & cert. ef. 11-2-09 thru 2-28-10; HRSD 3-2009, f. 12-30-09, cert. ef. 1-1-10

## 105-050-0030 Injured Worker Preference for Entry-Level Positions Under ORS 659A.052

Applicability: All Executive Branch Agencies except the Oregon University System pursuant to ORS 351.087.

(1) Definitions:

(a) Agency-at-injury: The state agency that employed the injured worker when the compensable injury occurred.

(b) Attending Physician: The physician primarily responsible for the injured worker's care related to the compensable condition in the workers' compensation claim.

(c) Independent and semi-independent agencies: State executive branch agencies not subject to all of ORS 240.

(d) Entry-level position: All limited competitive and non-competitive appointment classifications listed in OAR 105-040-0060; all classifications defined as entry in their title; single-level classifications and the first level of a classification series.

(2) Injured workers who make a timely demand for reemployment to available, suitable employment in accordance with Oregon Administrative Rule 839-006-0135 may also request consideration for permanent appointment to entry-level positions.

(a) The injured worker, seeking such reemployment, submits a written request to the agency-at-injury noting the specific entry-level positions to which he or she seeks appointment along with an updated employment application form.

(b) An agency-at-injury, subject to ORS 240, after receiving an eligible injured worker's request for permanent reemployment in a suitable or entry-level position, places the injured worker on the injured worker list for suitable and entry-level positions in accordance with State Human Resource Policy 50.020.03 Reinstatement and Reemployment of Injured Workers, or an applicable collective bargaining agreement.

(c) The Human Resource Services Division provides relevant information to semi-independent and independent state agencies regarding the injured workers who are eligible for reemployment to available, suitable, and entry-level positions.

(d) Independent and semi-independent state agencies give priority consideration according to subsection (2)(f) of this rule, to injured workers from other executive branch agencies who make a timely demand for reemployment.

(e) The Human Resource Services Division places workers injured in an independent or semi-independent agency on the injured worker list for appropriate classifications following receipt of notice from an independent or semi-independent agency of the injured worker's timely demand for reemployment to suitable and entry-level positions.

(f) All executive branch agencies, when filling vacancies, subject to the restrictions of an applicable collective bargaining agreement, offer entry-level and suitable positions to injured workers who meet the minimum and special qualifications of the position and can perform the duties within permanent restrictions.

Stat. Auth.: ORS 240.145, 240.250 & 659A.052  
Stats. Implemented: ORS 240.306, 659A.043, 659A.046 & 659A.052  
Hist.: HRSD 1-2009(Temp), f. 6-25-09, cert. ef. 7-1-09 thru 12-27-09; HRSD 2-2009(Temp), f. & cert. ef. 11-2-09 thru 2-28-10; HRSD 3-2009, f. 12-30-09, cert. ef. 1-1-10

## Department of Administrative Services, Oregon Educators Benefit Board Chapter 111

**Rule Caption:** Amended to include new definitions and clarify existing definitions used by the Oregon Educators Benefit Board.

**Adm. Order No.:** OEBB 19-2009

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**Rules Amended:** 111-010-0015

**Rules Repealed:** 111-010-0015(T)

**Subject:** OAR 111-010-0015 is amended to include new definitions and clarify existing definitions used by the Oregon Educators Benefit Board.

**Rules Coordinator:** April Kelly — (503) 378-6588

### 111-010-0015

#### Definitions

Unless the context indicates otherwise, as used in OEBB administrative rules, the following definitions will apply:

(1) "Actuarial value" means the expected financial value for the average member of a particular benefit plan.

(2) "Affidavit of Dependency" means a document that attests that a dependent child meets the criteria in section (12)(b).



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(3) "Affidavit of Domestic Partnership" means a document that attests the eligible employee and one other eligible individual meet the criteria in section (14)(b).

(4) "Benefit plan" includes, but is not limited to, insurance or other benefits including:

- (a) Medical;
- (b) Dental;
- (c) Vision;
- (d) Life, disability and accidental death;
- (e) Long term care;
- (f) Flexible spending accounts;
- (g) Supplemental medical, dental and vision;
- (h) Any other remedial care recognized by state law, and related services and supplies;

(i) Comparable benefits for employees who rely on spiritual means of healing; and

(j) Self insurance programs managed by the Board.

(5) "Benefits" means goods and services provided under benefit plans.

(6) "Board" means the ten-member board established in the Department of Administrative Services as the Oregon Educators Benefit Board under chapter 00007, Oregon Laws 2007.

(7) "Comparable cost (Medical, Dental and Vision)" means that the total cost to a district for enrollment in OEGB plans comparable in design to the district's plan(s) do not exceed the total cost to a district for enrollment in the district's plan(s) using the rate(s) in effect or proposed for the benefit plan year.

(8) "Comparable cost (Basic and Optional Life Insurance, Accidental Death & Dismemberment, and Short and Long Term Disability)" means that the premium rates of an OEGB plan design option do not exceed the average, aggregate premium rates of a district's pre-OEGB plan design in effect the year prior to implementation.

(9) "Comparable plan design (Medical, Dental and Vision)" means that the actuarial values of two plan designs are within 2.5 percent higher or lower of each other.

(10) "Comparable plan design (Basic and Optional Life Insurance and Accidental Death & Dismemberment)" means that 90 percent of district employees can obtain a maximum benefit through an OEGB plan design that is within \$2,500 of the maximum benefit obtained through a pre-OEGB plan design in effect the year prior to implementation.

(11) "Comparable plan design (Short and Long Term Disability)" means 90 percent of the district employees can obtain the same elimination period, percentage of covered compensation, definition of covered compensation, coverage period duration, and maximum payment per benefit period through an OEGB plan design as through a pre-OEGB plan design in effect the year prior to implementation.

(12) "Dependent child," unless otherwise defined by a collective bargaining agreement or documented district policy in effect on January 31, 2008, means and includes the following:

(a) A biological child of, an adopted child of, or a child placed for adoption with the eligible employee, spouse, or domestic partner; or

(b) A legal ward by court decree, a dependent by Affidavit of Dependency, or is under legal guardianship of the eligible employee, spouse or domestic partner, and is living in the home of the eligible employee.

(c) A dependent child must meet the following conditions:

(A) Does not qualify as another person's dependent child, except for a child of divorced or separated parents meeting conditions under Internal Revenue Code Section 152(e) (A) as amended by the Working Families Tax Relief Act of 2004.

(B) Single and does not have a domestic partner; and

(C) 18 years old or younger; or

(D) Is 19 through 25 years old;

(i) Attending five months of class or on-site training per calendar year at an educational institution defined by IRC Section 170(b)(1)(A)(ii) or state or political subdivision with the following requirements:

(I) The child must be citizen or resident of the United States, Canada or Mexico; and

(II) The child must be recognized as a full time student by the educational institution or state or political subdivision; or

(iii) Living in the home of the eligible employee over six months of the calendar year, and the eligible employee provides over half the yearly support; or

(iii) Incapable of self-sustaining employment because of a developmental disability, mental illness, or physical disability.

(E) Is age 26 or older, and incapable of self-sustaining employment, because of a developmental disability, mental illness, or physical disability; and

(i) The disability existed prior to attaining age 26; and

(ii) Pre-OEGB medical insurance coverage was continuous with coverage under OEGB medical insurance.

(13) "Documented district policies" means district policies and practices that apply to an employee group and are submitted to the Oregon Educators Benefit Board during the plan selection process. District policies

and practices must be identified and submitted with the applicable employee group plan selections.

(14) "Domestic partner," unless otherwise defined by a collective bargaining agreement or documented district policy in effect on January 31, 2008, means and includes the following:

(a) An unmarried individual of the same sex who has entered into a "Declaration of Domestic Partnership" with the eligible employee that is recognized under Oregon law; or

(b) An unmarried individual of the same or opposite sex who has entered into a partnership that meets the following criteria:

(A) Both are at least 18 years of age;

(B) Are responsible for each other's welfare and are each other's sole domestic partners;

(C) Are not married to anyone and have not had a spouse or another domestic partner within the prior six months. If previously married, the six-month period starts on the final date of divorce;

(D) Share a close personal relationship and are not related by blood closer than would bar marriage in the State of Oregon;

(E) Have jointly shared the same regular and permanent residence for at least six months; and

(F) Are jointly financially responsible for basic living expenses defined as the cost of food, shelter and any other expenses of maintaining a household. Financial information must be provided if requested.

(G) The eligible employee and domestic partner must jointly complete and submit to the educational entity an Affidavit of Domestic Partnership form, within five business days of the electronic enrollment date or the date the educational entity received the enrollment/change form. If the affidavit is not received, coverage will terminate for the domestic partner retroactive to the effective date.

(c) Participating Districts must calculate and apply applicable imputed value tax for domestic partners covered under OEGB benefit plans.

(15) "Educational Entity" means public school districts (K-12), education service districts (ESDs), community colleges and public charter schools participating in OEGB.

(16) "Eligible employee" means and includes:

(a) "Active eligible employee" means an employee of an OEGB participating organization who is employed or is in a job-sharing position on a full time or greater basis or meets the definition of an eligible employee under a separate OEGB rule or under a collective bargaining agreement or documented district policy in effect on January 31, 2008.

(b) "Retired eligible employee" means a previously active eligible employee, who is:

(A) Receiving a service or disability retirement allowance or pension under the Public Employees Retirement System (PERS) or under any other retirement or disability benefit plan or system offered by an OEGB participating organization for its employees;

(B) Eligible to receive a service retirement allowance under PERS and has reached earliest retirement age under ORS Chapter 238;

(C) Eligible to receive a pension under ORS 238A.100 to 238A.245 and has reached earliest retirement age as described in ORS 238A.165; or

(D) Eligible to receive a service retirement allowance or pension under another retirement benefit plan or system offered by an OEGB participating organization and has reached earliest retirement age under the plan or system.

(17) "Employee Group" means one or more similarly situated employees (i.e., nonrepresented or represented by a specific collective bargaining contract) in a common school district, union high school district, education service district, community college district or charter school.

(18) "Members" means and includes the following:

(a) "Eligible employee" as defined by OAR 111-010-0015(16);

(b) "Dependent child" as defined by OAR 111-010-0015(12);

(c) "Domestic Partner" as defined by OAR 111-010-0015(14);

(d) "Spouse" as defined by OAR 111-010-0015(23).

(19) "Non-subject District" means a community college district or a charter school if the employees are not considered employees of a school district.

(20) "Oregon Educators Benefit Board or OEGB" means the program created under chapter 00007, Oregon Laws 2007.

(21) "OEGB participating organization" means a Subject District, Non-subject District, or Provisional Non-subject District that participates in benefit plans provided by the Oregon Educators Benefit Board (OEGB).

(22) "Provisional Non-subject District" means a common school district, a union high school district, or an education service district that:

(a) Was self-insured on December 31, 2006;

(b) Had an independent health insurance trust established and functioning on December 31, 2006; or

(c) Can provide comparable plan designs at a comparable costs as defined by sections (6) and (8) of this Rule.

(23) "Spouse" means a person of the opposite sex who is a husband or wife. Except as provided in Oregon Constitution Article XV, Section 5a, a relationship recognized as a marriage in another state will be recognized in Oregon even though such a relationship would not be a marriage if the same facts had been relied upon to create a marriage in Oregon. The definition of

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spouse does not include a former spouse and a former spouse does not qualify as a dependent.

(24) "Subject District" means a common school district, a union high school district, or an education service district that:

- (a) Did not self-insure on January 1, 2007;
- (b) Did not have a health trust in effect on January 1, 2007; or
- (c) Does not provide comparable plan designs at a comparable cost as defined by sections (7) and (9) of this Rule.

Stat. Auth.: ORS 243.860 - 243.886

Stats. Implemented: ORS 243.860

Hist.: OEBB 2-2007(Temp), f. & cert. ef. 9-21-07 thru 3-18-08; OEBB 2-2008, f. & cert. ef. 1-4-08; OEBB 10-2008(Temp), f. & cert. ef. 8-13-08 thru 2-6-09; OEBB 1-2009, f. & cert. ef. 1-30-09; OEBB 5-2009(Temp), f. & cert. ef. 3-10-09 thru 9-4-09; OEBB 8-2009, f. & cert. ef. 5-1-09; OEBB 12-2009(Temp), f. & cert. ef. 7-31-09 thru 1-26-10; OEBB 19-2009, f. & cert. ef. 12-17-09

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**Rule Caption:** Establishes Oregon Educators Benefit Board's process for developing original benefit plan designs comparable to district optional plan designs, and the process for participating districts' selection of OEBB optional benefit plans.

**Adm. Order No.:** OEBB 20-2009

**Filed with Sec. of State:** 12-17-2009

**Certified to be Effective:** 12-17-09

**Notice Publication Date:** 10-1-2009

**Rules Adopted:** 111-030-0020, 111-030-0025, 111-030-0030

**Rules Amended:** 111-030-0001, 111-030-0005

**Rules Repealed:** 111-030-0001(T), 111-030-0005(T), 111-030-0020(T), 111-030-0025(T), 111-030-0030(T)

**Subject:** 111-030-0020, 111-030-0025 and 111-030-0030 establish Oregon Educators Benefit Board's process for developing optional benefit plan designs comparable to district optional plan designs, and the process for participating districts' selection of OEBB optional benefit plans, 111-030-0001 and 111-030-0005 are being amended to update an existing OEBB process.

**Rules Coordinator:** April Kelly—(503) 378-6588

## 111-030-0001

### Development of OEBB Medical, Pharmaceutical, Dental and Vision Plan Designs

(1) As used in this section, "comparable plan design" means the actuarial value of the OEBB plan design is within 2.5 percent (higher or lower) than a current district plan.

(2) OEBB will develop plan designs for medical, pharmaceutical, dental and vision benefit plans that are comparable to the plan designs provided by Subject Districts prior to entering the OEBB.

(3) OEBB will develop comparable plan designs by:

(a) Collecting the medical, pharmaceutical, dental and vision plan designs provided by Subject Districts that will be entering OEBB on October 1, 2008, October 1, 2009, and October 1, 2010.

(4) Following initial implementation of the OEBB benefit plans on October 1, 2008, OEBB will re-evaluate its plan designs for the October 1, 2009, and October 1, 2010, plan year start dates to determine if the Subject District plan design was included in the comparability assessment performed for plan design development in 2008.

(a) If the Subject District plan design was considered during the initial plan design process no further analysis will be conducted.

(b) If the plan design was not considered during the initial plan design process OEBB will:

(A) Calculate the actuarial value for the Subject District plan design using an industry-standard actuarial model; and

(B) Identify whether a current OEBB plan design has an actuarial value 2.5 percent higher or lower than the Subject District plan design.

(5)(a) If none of the OEBB plan designs has an actuarial value within 2.5 percent higher or lower than the Subject District plan and the Subject District has 100 or more enrollees, OEBB will develop and implement a plan design with an actuarial value of 2.5 percent higher or lower than the Subject District's plan unless:

(b) There is an OEBB plan that has an actuarial value that is more than 2.5 percent higher than the Subject District's plan and it is determined that OEBB can still meet the comparable cost requirement.

Stat. Auth.: ORS 243.860 - 243.886

Stats. Implemented: ORS 243.864

Hist.: OEBB 8-2008, f. 6-25-08, cert. ef. 6-26-08; OEBB 13-2009(Temp), f. & cert. ef. 7-31-09 thru 1-26-10; OEBB 20-2009, f. & cert. ef. 12-17-09

## 111-030-0005

### Medical, Dental and Vision Benefit Plans Selection through OEBB

(1) As used in this section, "employee group" means employees of similar employment type, for example administrative, represented classified, nonrepresented classified, confidential, represented licensed, or nonrepre-

sented licensed. If one or more collective bargaining units exist within an employee group, each unit will be considered a separate employee group.

(2) OEBB will offer a range of medical, pharmaceutical, dental and vision plans that provide the flexibility to choose between a number of high quality plan options.

(3) The process for selection of medical, pharmaceutical, dental and vision plans offered by OEBB will include:

(a) Release of preliminary designs and costs for all medical, pharmaceutical, dental, and vision plan options to participating districts no later than 30 days prior to final selection date. The total number offered may vary each year.

(b) Districts select the medical, pharmaceutical, dental, and vision plan options to be offered to each employee group using the OEBB plan selection process.

(c) The specific number of allowed selections and selection parameters will be reviewed, considered and determined on an annual basis by OEBB.

(d) Plan selections for medical, pharmaceutical, dental, and vision benefit coverages must be submitted electronically and a hard copy signed by a district official must be received by OEBB no later than the date designated by OEBB policy each year.

Stat. Auth.: ORS 243.860 - 243.886

Stats. Implemented: ORS 243.864(1)(a)

Hist.: OEBB 8-2008, f. 6-25-08, cert. ef. 6-26-08; OEBB 13-2009(Temp), f. & cert. ef. 7-31-09 thru 1-26-10; OEBB 20-2009, f. & cert. ef. 12-17-09

## 111-030-0020

### Development of OEBB Basic Life and Accidental Death and Dismemberment and Optional Life and Accidental Death and Dismemberment Plan Designs

(1) As used in this section, "comparable plan design" means that 90 percent of district employees can obtain a maximum benefit through an OEBB plan design that is within \$2,500 of the maximum benefit obtained through a pre-OEBB plan design in effect the year prior to implementation.

(2) OEBB will develop plan designs for basic life and AD&D and optional life and AD&D benefit plans that are comparable to the plan designs provided by Subject Districts prior to entering the OEBB.

(3) OEBB will develop comparable plans by: Collecting plan designs for basic life and AD&D and optional life and AD&D plans provided by Subject Districts that enter OEBB on October 1, 2009, and October 1, 2010.

(4) Following initial implementation of the basic life and AD&D and optional life and AD&D benefit plans, OEBB will re-evaluate its plan designs for the October 1, 2010, plan year start date to determine if the Subject District plan design was included in the comparability assessment performed for plan design development.

(a) If the Subject District plan design was considered during the initial plan design process no further analysis will be conducted.

(b) If the plan design was not considered during the initial plan design process OEBB will:

(c) Identify whether a current OEBB plan design is within \$2,500 higher or lower than the pre-OEBB life insurance or AD&D benefit level.

(5) If none of the OEBB plan designs is within \$2,500 higher or lower than the pre-OEBB life insurance or AD&D benefit level and the Subject District has 100 or more enrollees, OEBB will develop and implement a plan design within \$2,500 higher or lower than the pre-OEBB life insurance or AD&D benefit level unless:

(6) There is an OEBB plan that provides a benefit level more than \$2,500 higher than the district's option and it is determined that OEBB can still meet the comparable cost requirement.

Stat. Auth.: ORS 243.860 - 243.886

Stats. Implemented: ORS 243.864(1)(a) & 243.868(1)

Hist.: OEBB 13-2009(Temp), f. & cert. ef. 7-31-09 thru 1-26-10; OEBB 20-2009, f. & cert. ef. 12-17-09

## 111-030-0025

### Development of OEBB Short and Long Term Disability Plan Designs

(1) As used in the section, "comparable plan design" means 90 percent of the district employees can obtain the same elimination period, percentage of covered compensation, definition of covered compensation, coverage period duration, and maximum payment per benefit period through an OEBB plan design as through a pre-OEBB plan design in effect the year prior to implementation.

(2) OEBB will develop comparable plan designs by collecting plan designs for short and long term disability plans provided by Subject Districts that enter OEBB on October 1, 2009, and October 1, 2010.

(3) Following initial implementation of the short and long term disability benefit plans, OEBB will re-evaluate its plan designs for the October 1, 2010 plan year start date to determine if the Subject District plan design was included in the comparability assessment performed for plan design development.

(a) If the Subject District plan design was considered during the initial plan design process no further analysis will be conducted.

(b)(A) If the plan design was not considered during the initial plan design process OEBB will:

(B) Identify if a current OEBB plan design offers a level of benefits, elimination period, percentage of covered compensation, coverage period

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duration, and maximum payment per benefit period available through the group contract.

(4)(a) If none of the OEBB plan designs offers a level of benefits, elimination period, percentage of covered compensation, coverage period duration, and maximum payment per benefit period available through the group contract, OEBB will develop and implement a plan option that offers the level of benefits available through the Subject District unless;

(b) There is an OEBB benefit option that provides a benefit level or elimination period more generous than the district's option and it is determined that OEBB can still meet the comparable cost requirement.

Stat. Auth.: ORS 243.860 - 243.886

Stats. Implemented: ORS 243.864(1)(a) & 243.868(1)

Hist.: OEBB 13-2009(Temp), f. & cert. ef. 7-31-09 thru 1-26-10; OEBB 20-2009, f. & cert. ef. 12-17-09

## 111-030-0030

### Optional Benefit Plans Selection through OEBB

(1) As used in the section, "optional benefit plans" means basic life and accidental death and dismemberment, optional life and AD&D, and short and long term disability.

(2) As used in the section, "employee group" means employees of similar employment type, for example administrative, represented classified, nonrepresented classified, confidential, represented licensed, or nonrepresented licensed. If one or more collective bargaining unit exists within an employee group, each unit will be considered a separate employee group.

(3) OEBB will offer a range of optional benefit plans that provide the flexibility to choose between a number of high quality plan options.

(4) The process for selection of optional benefit plans offered by OEBB will include:

(a) Release of preliminary designs and premium costs for all optional benefit plan options to participating districts no later than 30 days prior to final selection date. The total number offered may vary each year.

(b) Districts select the optional benefit plans to be offered to each employee group using the OEBB plan selection process.

(c) Plan selections for optional benefit plans must be submitted electronically and a hard copy signed by a district official must be received by OEBB no later than the date designated by OEBB policy each year.

Stat. Auth.: ORS 243.860 - 243.886

Stats. Implemented: ORS 243.864(1)(a) & 243.868(1)

Hist.: OEBB 13-2009(Temp), f. & cert. ef. 7-31-09 thru 1-26-10; OEBB 20-2009, f. & cert. ef. 12-17-09

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**Rule Caption:** Amended to update the Oregon Educators Benefit Board's policies on member enrollment in benefit plans.

**Adm. Order No.:** OEBB 21-2009

**Filed with Sec. of State:** 12-17-2009

**Certified to be Effective:** 12-17-09

**Notice Publication Date:** 10-1-2009

**Rules Amended:** 111-040-0001, 111-040-0025, 111-040-0030, 111-040-0050

**Rules Repealed:** 111-040-0001(T), 111-040-0025(T), 111-040-0030(T), 111-040-0050(T)

**Subject:** OAR 111-040-0001 is amended to include the effective date for optional benefit plans and clarify newborn and adopted children benefit coverage. OAR 111-040-0025 and 111-040-0030 are amended to cite the correct rule number. OAR 111-040-0050 is amended to include information on optional benefit plans.

**Rules Coordinator:** April Kelly—(503) 378-6588

## 111-040-0001

### Effective Dates

(1) Benefit plan changes or initial elections, unless otherwise specified in a collective bargaining agreement or documented district policy in effect on June 30, 2008, are effective on the later of:

(a) The first of the month following a completed online enrollment in the OEBB benefit management system or submission of a paper enrollment or change form,

(b) The first of the month following the date of hire or the date of eligibility; or

(c) The first of the month following the approval date of additional optional life insurance requested above the guarantee issue amount.

(2) Covered dependent changes are effective the first of the month following the date of the event causing the dependent to be eligible under OEBB administrative rules with the following exceptions:

(a) Coverage for a newborn child is effective on the date of birth. The active eligible employee must add the newborn child to their benefit plans within 60 calendar days from the date of birth in order for the newborn child to be eligible for benefit coverage.

(b) Coverage for a newly adopted child is effective the date of the adoption decree or date of placement for adoption. The active eligible employee must add the adopted child to their benefit plans within 60 calendar days from

the date of the decree or placement in order for the newly adopted child to be eligible for benefit coverage; and

(A) The active eligible employee must submit the adoption agreement with the enrollment forms to the Participating District.

(B) Claims payments will not be made for expenses incurred prior to the date of decree or placement.

(c) Coverage for a dependent child by affidavit as defined in OEBB administrative rules starts the first of the month following receipt of the affidavit by the district benefits administrator

(3) Elections made during an open enrollment period are effective on the first day of the new plan year.

Stat. Auth.: ORS 243.860 - 243.886

Stats. Implemented: ORS 243.864(1)(a), 243.868(1)

Hist.: OEBB 14-2008, f. & cert. ef. 8-15-08; OEBB 14-2009(Temp), f. & cert. ef. 7-31-09 thru 1-26-10; OEBB 21-2009, f. & cert. ef. 12-17-09

## 111-040-0025

### Correcting Enrollment and Processing Errors

(1) Employee Enrollment Errors. Enrollment errors occur when an active eligible employee provides incorrect information or fails to make correct selections when making benefit plan elections. The active eligible employee is responsible for identifying enrollment errors or omissions.

(a) OEBB authorizes Participating Districts to correct enrollment errors reported by the active eligible employee within 60 calendar days of the original eligibility date, open enrollment period end date, or midyear benefit plan change date. Corrections are retroactive to the original effective date as identified in OAR 111-040-0001.

(b) Enrollment errors identified after 60 calendar days of the eligibility date, open enrollment period end date or midyear benefit plan change date must be submitted to OEBB for review and approval based on OAR 111-080-0030. If approved, corrections are retroactive to the original effective date as identified in OAR 111-040-0001.

(2) Benefit Administrator Processing Errors. Processing errors or omissions occur when benefit plan elections are processed incorrectly in the benefit system or when a newly-eligible active eligible employee does not receive correct enrollment information or materials within 31 calendar days of the eligibility date.

(a) OEBB authorizes Participating Districts to correct processing errors identified within 60 calendar days of the eligibility date, open enrollment period end date, or midyear benefit plan change date. Corrections are retroactive to the original effective date as identified in OAR 111-040-0001. The Participating District must reconcile all premium discrepancies.

(b) Processing errors identified after 60 calendar days of the eligibility date, open enrollment period end date, or midyear benefit plan change date must be submitted to OEBB for review and approval based on OAR 111-080-0030. If approved, corrections are retroactive to the original effective date as identified in OAR 111-040-0001. The Participating District must reconcile all premium discrepancies within 30 calendar days of any adjustments made in the system.

Stat. Auth.: ORS 243.860 - 243.886

Stats. Implemented: ORS 243.864(1)(a), 243.868(1)

Hist.: OEBB 14-2008, f. & cert. ef. 8-15-08; OEBB 14-2009(Temp), f. & cert. ef. 7-31-09 thru 1-26-10; OEBB 21-2009, f. & cert. ef. 12-17-09

## 111-040-0030

### Late Enrollment

(1) Late enrollment occurs when an active eligible employee fails to enroll for benefits within 31 calendar days of:

(a) The date of hire or other benefit eligibility date as identified in OAR 111-040-0001;

(b) The date a spouse, domestic partner, or dependent child gains eligibility;

(c) The date of marriage to a spouse who was most recently enrolled as a domestic partner; or

(d) The date of birth of the employee's biological newborn dependent child.

(2) OEBB authorizes Participating Districts to approve late enrollment requests for active eligible employees and dependents when the request is reported within 60 calendar days of the eligibility dates referenced in sections 1a, 1b, 1c and 1d.

(3) OEBB must review and approve all late enrollment requests based on OAR 111-080-0030 when the request is made more than 60 calendar days after the eligibility dates referenced in sections 1a, 1b, 1c and 1d.

(4) Approved late enrollment requests, unless determined otherwise in a collective bargaining agreement or documented district policy in effect on June 30, 2008, are effective the first of the month following the date the request is received by a district benefits administrator or OEBB, except for approved requests to add newborn children which are retroactive to the month the child was born along with any premium adjustments.

Stat. Auth.: ORS 243.860 - 243.886

Stats. Implemented: ORS 243.864(1)(a), 243.868(1)

Hist.: OEBB 14-2008, f. & cert. ef. 8-15-08; OEBB 14-2009(Temp), f. & cert. ef. 7-31-09 thru 1-26-10; OEBB 21-2009, f. & cert. ef. 12-17-09

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## 111-040-0050

### Declination of Coverage

As used in this section:

“Opting out of coverage” means that an individual elects not to enroll in a medical plan and is eligible to receive a portion of the cash contribution or other type of remuneration as provided for under a collective bargaining agreement, documented district policy, or employment contract.

“Waiving benefits” means that an individual elects not to enroll in any one of the benefit plans available under the OEGBB-sponsored benefits program and is not eligible to receive any portion of a cash contribution or other type of remuneration.

(1) Unless otherwise specified in a collective bargaining agreement, documented district policy or employment contract in effect on July 1, 2008, an eligible employee may opt out of the OEGBB-sponsored medical benefit plans. Eligible employees electing to opt out must:

(a) Maintain coverage under another employer-sponsored group medical benefit plan;

(b) Meet the requirements of the district opt out program in which they are participating;

(c) Submit their election to opt out through the OEGBB benefit management system; and

(d) If requested, provide proof of current coverage under another employer-sponsored group medical benefit plan.

(2) Eligible employees electing to opt out of the OEGBB-sponsored medical benefit plans may enroll in the dental benefit plans, vision benefit plans, and optional benefit plans.

(3) The level and type of funds and allowances retained by eligible employees and districts as a result of opt out programs are determined through collective bargaining agreements and documented district policies.

(4) A participating district will provide OEGBB with a written description of its opt out program upon request.

(5) An eligible employee may waive medical, dental and vision or any combination of benefits provided under the OEGBB-sponsored benefits program.

(6) Elections to opt out of the medical benefit plans or waive benefits must be made at the time of hire, when initially meeting eligibility, during an open enrollment period, or following a midyear benefit plan change.

(7) An eligible employee previously opting out of coverage or waiving benefits may enroll in benefit plans consistent with a midyear benefit plan change or during an open enrollment period.

(a) Coverage for previously OEGBB-eligible employees or a previously OEGBB-eligible dependent enrolling in the dental and/or vision plans during an open enrollment period will be limited to routine and preventive care for the first 12 months and subject to a 12-month waiting period for orthodontia coverage.

(b) Eligible employees who enroll in the dental or vision plans, or add previously OEGBB-eligible dependents to the dental and vision plans, due to a loss of other coverage will not be subject to waiting periods.

(8) Eligible employees electing to not enroll when initially eligible for optional insurance plans will have to go through a medical review process to obtain optional life insurance.

Stat. Auth.: ORS 243.860 - 243.886

Stats. Implemented: ORS 243.864(1)(a) & 243.868(1)

Hist.: OEGBB 9-2008, f. 6-25-08, cert. ef. 6-26-08; OEGBB 14-2009(Temp), f. & cert. ef. 7-31-09 thru 1-26-10; OEGBB 21-2009, f. & cert. ef. 12-17-09

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**Rule Caption:** Amended to include the Family Health Insurance Assistance Program (FHIAP) as a qualified status change.

**Adm. Order No.:** OEGBB 22-2009

**Filed with Sec. of State:** 12-17-2009

**Certified to be Effective:** 12-17-09

**Notice Publication Date:** 11-1-2009

**Rules Amended:** 111-040-0040

**Rules Repealed:** 111-040-0040(T)

**Subject:** OAR 111-040-0040 is amended to include the Family Health Insurance Assistance Program (FHIAP) as a qualified status change that is recognized by the Oregon Educators Benefit Board.

**Rules Coordinator:** April Kelly—(503) 378-6588

## 111-040-0040

### Qualified Status Changes

(1) Active eligible employees experiencing a change in family or work status as noted below during the plan year have 31 calendar days from the date of the event to make changes unless indicated otherwise. The eligible employee may make only those changes that are consistent with the event for themselves and dependents. Please refer to the Qualified Status Change matrix for detail on what changes can occur with each event.

(2) Change in status. Events include:

(a) Gain spouse by marriage or domestic partner by meeting domestic partner eligibility;

(b) Loss of spouse or domestic partner by divorce, annulment, death or termination of domestic partnership, 60 days from the event;

(c) Gain dependent by birth, placement for/or adoption, affidavit of dependency or Domestic Partner's children (by affidavit of domestic partnership), 60 days from the event;

(d) Active eligible employee starts new employment and gains eligibility;

(e) Change in employment status by active eligible employee which affects eligibility;

(f) Active eligible employee ends employment or other change in employment status resulting in a loss of eligibility;

(g) Spouse or domestic partner starts new employment or other change in employment status which affects eligibility;

(h) Spouse or domestic partner's employment ends or other change in employment status resulting in a loss of eligibility under their employer's plan;

(i) Event by which dependent child satisfies eligibility requirements under OEGBB plans (for a list of requirements see 111-010-0015);

(j) Event by which dependent ceases to satisfy eligibility requirements under OEGBB plans (for a list of requirements see 111-010-0015), 60-days from the event;

(k) Changes in the residence of the active eligible employee or family member (i.e., moving out of the service area of an HMO);

(l) Reinstatement of coverage. Reinstatement can be used in the following situations:

(A) Military (USERRA);

(B) When coverage was continued under COBRA;

(C) When coverage was terminated in error and there is no lapse in coverage.

(m) Changes in cost or coverage do not constitute a Qualified Status Change. All changes resulting from a change in cost or coverage must be made during Open Enrollment.

(n) Related laws or court orders. For example: Qualified Medical Child Support Order (QMCSO), Medicare, HIPAA, or Family Health Insurance Assistance Program (FHIAP). Changes are determined by the applicable law or court order.

Stat. Auth.: ORS 243.860 - 243.886

Stats. Implemented: ORS 243.864

Hist.: OEGBB 14-2008, f. & cert. ef. 8-15-08; OEGBB 10-2009(Temp), f. 5-4-09, cert. ef. 5-5-09 thru 10-31-09; OEGBB 11-2009, f. & cert. ef. 7-31-09; OEGBB 17-2009(Temp), f. & cert. ef. 10-7-09 thru 4-4-10; OEGBB 22-2009, f. & cert. ef. 12-17-09

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**Rule Caption:** Amended to include the new mandatory reporting provisions.

**Adm. Order No.:** OEGBB 23-2009

**Filed with Sec. of State:** 12-17-2009

**Certified to be Effective:** 12-17-09

**Notice Publication Date:** 10-1-2009

**Rules Amended:** 111-060-0001

**Rules Repealed:** 111-060-0001(T)

**Subject:** OAR 111-060-0001 is amended to include the new Medicare Secondary Payer Mandatory Reporting Provisions and the process for which the Oregon Educators Benefit Board collects member's Social Security Numbers.

**Rules Coordinator:** April Kelly—(503) 378-6588

## 111-060-0001

### Use of Social Security Numbers

(1) The Oregon Educators Benefit Board (OEGBB) will comply with the requirements of Section 7 of the Privacy Act of 1974 and the Oregon Consumer Identity Theft Protection Act, ORS 646A.600 to 646A.628 when requesting or requiring complete or partial disclosure of an eligible employee's or family member's, as defined in ORS 243.860(4) and (5) respectively, social security number.

(2) OEGBB may request voluntary disclosure and consent to use the social security number of an eligible employee or family member for the following reasons:

(a) OEGBB's internal verification and identification of enrollments or elections for participation in benefits provided by OEGBB.

(b) Medicare Secondary Payer Mandatory Reporting Provisions in Section 111 of the Medicare, Medicaid, and SCHIP Extension Act of 2007 (Public Law 110-173).

(3) A request for disclosure of an employee's social security number will notify the eligible employee or family member:

(a) Whether disclosure is mandatory or voluntary;

(b) Under what statutory or other authority the social security number is requested;

(c) What specific use or uses will be made of the number; and

(d) What effect, if any, refusal to provide the number or to grant consent for a voluntary use as described above in (2) will have on an individual.

(4) An eligible employee's or family member's social security number may not be put to a voluntary use as described above in (2) unless the eligible employee or family member has granted consent for that use. If, after hav-

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ing provided notice and received consent to use an eligible employee's or family member's social security number for specified purposes, OEBB wishes to use the social security number for additional purposes not included in the original notice and consent, OEBB must provide the eligible employee or family member notice and receive the eligible employee's or family member's consent to use the number for those additional purposes.

(5) An eligible employee's or family member's refusal to permit voluntary use of his or her social security number will not be used as a basis to deny the eligible employee or family member a right, benefit, or privilege provided by law.

(6) The request for the disclosure of the SSN has been incorporated in the MyOEBB Benefit Management System where all OEBB benefit eligible employees select, enroll, and manage their benefits.

(7) Per guidelines established by Section 111 of the Medicare, Medicaid, and SCHIP Extension Act of 2007, an entity, a plan administrator, or a fiduciary that fails to comply with the requirements may be subject to a civil money penalty of \$1,000 for each day of noncompliance for each eligible employee. Failure by the eligible employee to supply the required information, including, but not limited to, their own or their family member's social security number, Health Insurance Claim Number (HICN) or compliance letter issued by the Centers for Medicare and Medicaid Services (CMS) could result in the termination of coverage provided by the insurance carrier or administrator.

Stat Auth: ORS 243.864; Other Auth: Sec. 1862 of the Social Security Act (42 U.S.C. 1395y(b)(7)&(b)(8))  
Stats. Implemented: ORS 243.860, 646A.600 - 646A.628 & Sec. 1862 of the Social Security Act (42 U.S.C. 1395y(b)(7)&(b)(8))  
Hist.: OEBB 6-2008(Temp), f. & cert. ef. 4-1-08 thru 9-28-08; OEBB 15-2008, f. 9-25-08, cert. ef. 9-29-08; OEBB 16-2009(Temp) f. & cert. ef. 7-31-09 thru 1-26-10; OEBB 23-2009, f. & cert. ef. 12-17-09

## Department of Agriculture Chapter 603

**Rule Caption:** Requires 2% biodiesel blends and exempts 91 octane or above gasoline from 10% ethanol mandate.

**Adm. Order No.:** DOA 16-2009

**Filed with Sec. of State:** 12-23-2009

**Certified to be Effective:** 1-1-10

**Notice Publication Date:** 11-1-2009

**Rules Amended:** 603-027-0410, 603-027-0420, 603-027-0430, 603-027-0440, 603-027-0490

**Rules Repealed:** 603-027-0410(T), 603-027-0420(T), 603-027-0430(T), 603-027-0440(T), 603-027-0490(T)

**Subject:** Implements enrolled HB 3463 and HB 3497 that were passed by the 75th Oregon Legislative Assembly, 2009 Regular Session, mandating Oregon's diesel fuel be blended with a minimum of 2% by volume biodiesel and exempting 91 octane or above gasoline from the ethanol blending mandate. Excludes other renewable diesel from meeting the biodiesel blending requirements until January 2, 2012. Updates adopted edition of ASTM standards to 2009. Updates biodiesel blend dispenser labeling to include FTC approved labels. Updates labeling requirements on E85 fuel ethanol dispensers and greater the B20 biodiesel blend dispensers into closer alignment with current NIST model regulations.

**Rules Coordinator:** Sue Gooch—(503) 986-4583

### 603-027-0410

#### Definitions

(1) "Accredited Laboratory" means a laboratory that is currently accredited by an independent laboratory accrediting body for analyzing motor fuels using American Society for Testing and Materials (ASTM) International test procedures and specifications.

(2) "Alcohol" means a volatile flammable liquid having the general formula  $C_nH_{(2n+1)}OH$  used or sold for the purpose of blending or mixing with gasoline for use in propelling motor vehicles, and commonly or commercially known or sold as an alcohol, and includes ethanol or methanol.

(3) "ASTM" means ASTM International, the national voluntary consensus standards organization formed for the development of standards on characteristics and performance of materials, products, systems, and services; and the promotion of related knowledge. ASTM when used in these rules shall mean the 2009 Annual Book of ASTM Standards, Section 5, Volumes 05.01 through 05.05.

(4) "Antiknock Index (AKI)" means the arithmetic average of the Research Octane Number (RON) and Motor Octane Number (MON):  $AKI = (RON + MON) / 2$ . This value is called by a variety of names, in addition to antiknock index, including: Octane Rating, Posted Octane, (R+M)/2 Octane.

(5) "Automotive Fuel Rating" means the automotive fuel rating determined under 16 CFR 306.5, required to be certified under 16 CFR 306.6 and 16 CFR 306.8, and required to be posted under 16 CFR 306.10. Under this Rule, sellers of liquid automotive fuels, including alternative fuels, must determine, certify, and post an appropriate automotive fuel rating. The automotive fuel rating for gasoline is the antiknock index (octane rating). The automotive fuel rating for alternative liquid fuels consists of the common name of the fuel along with a disclosure of the amount, expressed as a minimum percentage by volume, of the principal component of the fuel. For alternative liquid automotive fuels, a disclosure of other components, expressed as a minimum percentage by volume, may be included, if desired.

(6) "Automotive Gasoline, Automotive Gasoline-Oxygenate Blend" means a type of fuel suitable for use in spark-ignition automobile engines and also commonly used in marine and non-automotive applications.

(7) "Aviation Gasoline" means a type of gasoline suitable for use as a fuel in an aviation gas spark-ignition internal combustion engine.

(8) "Batch" and "Production Lot" means a homogenous production volume of finished biodiesel from one or more sources that is held in a single container where representative samples are taken and analyzed to provide an authentic certificate of analysis (COA) for the specific volume.

(9) "Bulk Facility" means a facility, including pipelines terminals, refinery terminals, rail and barge terminals and associated underground and above ground tanks connected or separate, from which motor vehicle fuels are withdrawn from bulk and delivered to retail, wholesale or nonretail facilities or into a cargo tank or barge used to transport those products.

(10) "Base Gasoline" means all components other than ethanol in a blend of gasoline and ethanol.

(11) "Biomass" means organic matter that is available on a renewable or recurring basis and that is derived from:

(a) Forest or rangeland woody debris from harvesting or thinning conducted to improve forest or rangeland ecological health and reduce uncharacteristic stand replacing wildfire risk;

(b) Wood material from hardwood timber described in ORS 321.267(3);

(c) Agricultural residues;

(d) Offal and tallow from animal rendering;

(e) Food wastes collected as provided under ORS Chapter 459 or 459A;

(f) Yard or wood debris collected as provided under ORS Chapter 459 or 459A;

(g) Wastewater solids; or

(h) Crops grown solely to be used for energy, and

(i) Biomass does not mean wood that has been treated with creosote, pentachlorophenol, inorganic arsenic, or other inorganic chemical compounds.

(12) "Biodiesel" means a motor vehicle fuel consisting of mono-alkyl esters of long chain fatty acids derived from vegetable oils, animal fats, or other nonpetroleum resources, not including palm oil, designated as B100 and complying with ASTM D6751. Biodiesel produced in or imported into Oregon for use as a blend stock shall comply with B100 biodiesel requirements including ASTM International D6751 and the Certificate of Analysis.

(13) "Biodiesel Blend" means a fuel comprised of a blend of biodiesel fuel with petroleum-based diesel fuel, designated BXX. In the abbreviation BXX, the XX represents the volume percentage of biodiesel fuel in the blend.

(14) "Certificate of analysis" means:

(a) A document verifying that B100 biodiesel has been analyzed and complies with, at a minimum, the following ASTM D 6751 biodiesel fuel test methods and specifications:

(A) Flash point (ASTM D 93);

(B) Acid number (ASTM D 664);

(C) Cloud point (ASTM D 2500);

(D) Water and sediment (ASTM D 2709);

(E) Visual appearance (ASTM D 4176);

(F) Free glycerin (ASTM D 6584);

(G) Total glycerin (ASTM D 6584);

(H) Oxidation stability (EN 14112 as per ASTM D 6751); and

(I) Sulfur (ASTM D 5453 or ASTM D 7039).

(b) The ASTM International standards referenced in ORS 646.905(3) for free and total glycerin are incorrect. The correct ASTM International standards reference for free and total glycerin is ASTM D 6584.

(15) "Cetane Index" means an approximation of the cetane number of distillate fuel, which does not take into account the effect of a cetane improver additive, calculated from the density and distillation measurements. (Ref. ASTM D 976.)

(16) "Cetane Number" means a numerical measure of the ignition performance of a diesel fuel obtained by comparing it to reference fuels in a standardized engine test. (Ref. ASTM D 613.)

(17) "Coordinating Research Council (CRC) Rating" means a standardized format for rating injector and engine deposits as developed by the CRC.

(18) "Co-solvent" means an alcohol other than methanol which is blended with either methanol or ethanol or both to minimize phase separation in gasoline.

(19) "Dealer" means any motor vehicle fuel retailer dealer, nonretail dealer or wholesale dealer.

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- (20) "Director" means the Director of Agriculture.
- (21) "Diesel Fuel" means a refined middle distillate suitable for use as a fuel in a compression-ignition (diesel) internal combustion engine.
- (22) "Distillate" means any product obtained by condensing the vapors given off by boiling petroleum or its products.
- (23) "EPA" means the United States Environmental Protection Agency.
- (24) "E85 Fuel Ethanol" means a blend of ethanol and hydrocarbons of which the ethanol portion is nominally 75 to 85 volume percent denatured fuel ethanol (Ref. ASTM D 5798).
- (25) "Ethanol" also known as "Denatured Fuel Ethanol", means nominally anhydrous ethyl alcohol meeting ASTM D 4806 standards. It is intended to be blended with gasoline for use as a fuel in a spark-ignition internal combustion engine. The denatured fuel ethanol is first made unfit for drinking by the addition of Alcohol and Tobacco Tax and Trade Bureau (TTB) approved substances before blending with gasoline.
- (26) "Ethanol facilities production capacity" means the designed and "as-constructed" rated capacity as verified by the Oregon Department of Agriculture, or the ethanol facilities production capacity as determined by an independent Professional Engineer registered in the State of Oregon that is not the design consultant and as verified by the Oregon Department of Agriculture.
- (27) "Feedstock" means the original biomass used in biofuel production.
- (28) "Gasoline" means any fuel sold for use in spark ignition engines whether leaded or unleaded.
- (29) "Gasoline-Oxygenate Blend" means a fuel consisting primarily of gasoline along with a substantial amount (more than 0.35 mass percent oxygen, or more than 0.15 mass oxygen if methanol is the only oxygenate) of one or more oxygenates.
- (30) "Lead Substitute" means an EPA-registered gasoline additive suitable, when added in small amounts to fuel, to reduce or prevent exhaust valve recession (or seat wear) in automotive spark-ignition internal combustion engines designed to operate on leaded fuel.
- (31) "Lead Substitute Engine Fuel" means a gasoline or gasoline-oxygenate blend that contains a "lead substitute."
- (32) "Low Temperature Operability" means a condition which allows the uninterrupted operation of a diesel engine through the continuous flow of fuel throughout its fuel delivery system at low temperatures.
- (33) "Lubricity" means a qualitative term describing the ability of a fluid to affect friction between, and wear to, surfaces in relative motion under load.
- (34) "Methanol" means methyl alcohol, a flammable liquid having the formula CH<sub>3</sub>OH used or sold for the purpose of blending or mixing with gasoline for use in motor vehicles.
- (35) "M100 Fuel Methanol" means nominally anhydrous methyl alcohol, generally containing small amounts of additives, suitable for use as a fuel in a compression-ignition combustion engine.
- (36) "M85 Fuel Methanol" means a blend of methanol and hydrocarbons of which the methanol portion is nominally 70 to 85 volume percent and which meets the requirements of ASTM D 5797.
- (37) "Motor Octane Number" means a numerical indication of a spark-ignition engine fuel's resistance to knock obtained by comparison with reference fuels in a standardized ASTM D 2700 Motor Method engine test.
- (38) "Motor Vehicles" means all vehicles, vessels, watercraft, engines, machines, or mechanical contrivances that are propelled by internal combustion engines or motors.
- (39) "Motor Vehicle Fuel" means gasoline, gasoline-ethanol blends, diesel, other renewable diesel, diesel-other renewable diesel blends, B100 Biodiesel, Biodiesel Blends, E85 Fuel Ethanol, M85 Fuel Methanol, or any other liquid product used for the generation of power in an internal combustion engine, except aviation jet fuels, liquefied petroleum gases or natural gases.
- (40) "Nonretail dealer" means any person who owns, operates, controls or supervises an establishment at which motor vehicle fuel is dispensed through a card or key-activated fuel dispensing device to nonretail customers.
- (41) "Octane Rating" means the rating of the anti-knock characteristics of a grade or type of gasoline determined by dividing by two the sum of the research octane number and the motor octane number.
- (42) "Octane Rating Certification Documentation" means an invoice, bill of lading, delivery ticket, letter or other documentation that specifies the actual octane rating or a rounded rating that is the largest whole number or half of a number that is less than or equal to the number determined by or certified to the person transferring the gasoline.
- (43) "Official Sample" means a motor fuel sample delivered via nozzle directly through a fuel pump, dispenser, or metering device from either a fuel delivery truck, tank wagon, above ground or below ground fuel storage tank into a suitable sealable, one litre or larger pressure-tight metal or glass container in the presence of, or drawn by, a department representative in the manner prescribed by department procedures. An official sample shall be appropriately sealed and labeled as to its identity, type, brand, grade, posted automotive fuel rating and the location, source, date, and name of official taking it at the time it is withdrawn from storage. A custody transfer receipt or record

will be completed whenever an official sample changes hands enroute to a qualified motor fuel standards laboratory.

(44) "Other renewable diesel" means a diesel fuel substitute, produced from nonfossil renewable resources, that has an established ASTM International standard, is approved by the United States Environmental Protection Agency, and meets specifications of the National Conference on Weights and Measures, designated "100% Biomass-Based Diesel".

(45) "Other renewable diesel blend" means a fuel comprised of a blend of other renewable diesel fuel with petroleum-based diesel fuel, designated "XX% Biomass-Based Diesel Blend". In the abbreviation, "XX%", the XX represents the volume percentage of other renewable diesel in the blend.

(46) "Oxygen Content of Gasoline" means the percentage of oxygen by mass contained in a gasoline.

(47) "Oxygenate" means an oxygen-containing, ashless, organic compound, such as an alcohol or ether, which can be used as a fuel or fuel supplement.

(48) "Premium Diesel" means a refined middle distillate suitable for use as a fuel in a compression-ignition (diesel) internal combustion engine and shall meet Standard Fuel Specifications OAR 603-027-0420.

(49) "Production" means the ability of a biofuel production facility to produce biofuel that is in compliance with applicable ASTM International specifications.

(50) "Production Lot" and "Batch" means a homogenous production volume of finished biodiesel from one or more sources that is held in a single container where representative samples are taken and analyzed to provide an authentic certificate of analysis (COA) for the specific volume.

(51) "Research Octane Number" means a numerical indication of a spark-ignition engine fuel's resistance to knock obtained by comparison with reference fuels in a standardized ASTM D 2699 Research Method engine test.

(52) "Retail Dealer" means any person who owns, operates, controls or supervises an establishment at which motor vehicle fuel is or offered for sale to the public.

(53) "SAE" means the SAE International, a technical organization for engineers, scientists, technicians, and others in positions that cooperate closely in the engineering, design, manufacture, use, and maintainability of self-propelled vehicles.

(54) "Sales" means volumes of biofuels measured in gallons per year, relevant consumer usage, demand, pricing, and other factors affecting sales.

(55) "Thermal Stability" means the ability of a fuel to resist the thermal stress which is experienced by the fuel when exposed to high temperatures in a fuel delivery system.

(56) "Unleaded" in conjunction with "engine fuel" or "gasoline" means any gasoline or gasoline-oxygenate blend to which no lead or phosphorus compounds have been intentionally added and which contains not more than 0.013 gram lead per liter (0.05 g lead per U.S. gal) and not more than 0.0013 gram phosphorus per liter (0.005 g phosphorus per U.S. gal).

(57) "Use" means the historic blending of biofuel in Oregon in areas using biofuel to meet Oregon's Renewable Fuel Standard (RFS) and other information relevant to industry blending of biofuel including the infrastructure capacity to blend and distribute biofuel.

(58) "Wholesale Dealer" means any person who sells motor vehicle fuel if the seller knows or has reasonable cause to believe that the buyer intends to resell the motor vehicle fuel in the same or an altered form to a retail dealer, a nonretail dealer, or another wholesale dealer.

(59) "Winter" or "Winterized" Diesel means a refined middle distillate suitable for use as a fuel in a compression-ignition (diesel) internal combustion engine which has been blended for low temperature operability and shall meet Standard Fuel Specifications OAR 603-027-0420.

(60) "Withdrawn From Bulk" means removed from a bulk facility for delivery directly into a cargo tank or a barge to be transported to a location other than another bulk facility for use or sale in this state.

[Publications referenced are available from the agency.]

Stat. Auth.: ORS 561.190, OL 1997, Ch. 310 (SB 414) & ORS 646.905 - 646.990

Stats. Implemented: OL 1997, Ch. 310 (SB 414), ORS 646.905 - 646.990 & 183

Hist.: AD 19-1997, f. 12-9-97, cert. ef. 1-1-98; DOA 5-2002, f. & cert. ef. 1-28-02; DOA 20-2004, f. & cert. ef. 6-28-04; DOA 17-2006, f. & cert. ef. 9-26-06; DOA 8-2008, f. & cert. ef. 2-15-08; DOA 12-2008(Temp), f. 3-14-08, cert. ef. 3-17-08 thru 9-12-08; DOA 21-2008, f. & cert. ef. 9-11-08; DOA 11-2009(Temp), f. & cert. ef. 7-24-09 thru 1-17-10; DOA 16-2009, f. 12-23-09, cert. ef. 1-1-10

## 603-027-0420

### Standard Fuel Specifications

(1) Gasoline and Gasoline-Oxygenate Blends, as defined in this regulation, shall meet the following requirements:

(a) The ASTM D 4814, "Standard Specification for Automotive Spark-Ignition Engine Fuel," except that volatility standards for unleaded gasoline blended with ethanol shall not be more restrictive than those adopted under the rules, regulations, and Clean Air Act waivers of the U.S. Environmental Protection Agency (which includes those promulgated by Oregon and Federally approved State Implementation Plans (SIP's)). Gasoline blended with ethanol shall be blended under any of the following three options:

(A) The base gasoline used in such blends shall meet the requirements of ASTM D 4814; or

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- (B) The blend shall meet the requirements of ASTM D 4814; or
- (C) The base gasoline used in such blends shall meet all the requirements of ASTM D 4814 except distillation, and the blend shall meet the distillation requirements of the ASTM D 4814 specification.
- (b) Blends of gasoline and ethanol shall not exceed the ASTM D 4814 vapor pressure standard by more than 1.0 psi.
- (c) Minimum Antiknock Index (AKI). The AKI shall not be less than the AKI posted on the product dispenser or as certified on the invoice, bill of lading, shipping paper, or other documentation.
- (d) Lead Substitute Gasoline. Gasoline and gasoline-oxygenate blends sold as "lead substitute" gasoline shall contain a lead substitute additive which provides a level of protection against exhaust valve seat recession which is equivalent to the level of protection provided by a gasoline containing at least 0.026 gram of lead per liter (0.10 g per U.S. gal).
- (2) Ethanol intended for blending with gasoline shall meet the requirements of ASTM D 4806, "Standard Specification for Denatured Fuel Ethanol for Blending with Gasolines for Use as Automotive Spark-Ignition Engine Fuel."
- (3) Gasoline-Ethanol Blends Required
- (a) Consistent with ORS 646.912, the Oregon Department of Agriculture shall study and monitor ethanol fuel production, use, and sales in Oregon.
- (b) Except as provided in OAR 603-027-0420(3)(c), all retail dealers, nonretail dealers, or wholesale dealers may only sell or offer for sale gasoline that contains ten percent ethanol by volume.
- (c) A retail dealer, nonretail dealer, or wholesale dealer may sell or offer for sale gasoline that is not blended with ethanol if the gasoline;
- (A) Has an octane rating, as defined in ORS 646.945, of 91 or above, or;
- (B) If it is for use in an aircraft;
- (i) With a supplemental type certificate approved by the Federal Aviation Administration that allows the aircraft to use gasoline that is intended for use in motor vehicles; or
- (ii) Issued a type certificate by an aircraft engine manufacturer that allows the aircraft to use gasoline that is intended for use in motor vehicles;
- (C) An aircraft that has been issued an experimental certificate, described in 14 C.F.R. 21.191, by the Federal Aviation Administration and that is required by the manufacturer's specifications to use gasoline that is intended for use in motor vehicles;
- (D) A light-sport aircraft, as defined in 14 C.F.R. 1.1, that is required by the manufacturer's specifications to use gasoline that is intended for use in motor vehicles;
- (E) A vintage aircraft, as defined by the Oregon Department of Aviation by rule, that is required by the manufacturer's specifications to use gasoline that is intended for use in motor vehicles;
- (F) An antique vehicle, as defined in ORS 801.125;
- (G) A Class I all-terrain vehicle, as defined in ORS 801.190;
- (H) A Class III all-terrain vehicle, as defined in ORS 801.194;
- (I) A racing activity vehicle, as defined in ORS 801.404;
- (J) A snowmobile, as defined in ORS 801.490;
- (K) Tools, including but not limited to lawn mowers, leaf blowers, and chain saws; or
- (L) A watercraft.
- (d) Gasoline-ethanol blends shall contain not less than 9.2 percent by volume of agriculturally derived ethanol, exclusive of denaturants and permitted contaminants, that complies with
- (A) OAR 603-027-0420(2) Ethanol ASTM D 4806 standards,
- (B) Denatured as specified in 27 C.F.R. parts 20 and 21, and
- (C) Complies with the volatility requirements specified in 40 C.F.R. part 80.
- (e) The ethanol shall be derived from agricultural product, woody waste or residue.
- (f) The gasoline and gasoline-ethanol blends shall comply with OAR 603-027-0420(1).
- (g) It is prohibited to blend with casinghead gasoline, absorption gasoline, drip gasoline, or natural gasoline after the gasoline has been sold, transferred, or otherwise removed from a refinery or terminal.
- (4) Gasoline Additive Restrictions.
- (a) Effective November 1, 2009, a wholesale dealer, retail dealer, or nonretail dealer may not sell or offer to sell any gasoline blended or mixed with:
- (A) Ethanol unless the blend or mixture meets the specifications or registration requirements established by the United States Environmental Protection Agency pursuant to section 211 of the Clean Air Act, 42 U.S.C. section 7545 and 40 C.F.R. Part 79, and the ethanol complies with ASTM International specification ASTM D 4806;
- (B) Methyl tertiary butyl ether in concentrations that exceed 0.15 percent by volume; or
- (C) A total of all of the following oxygenates that exceeds one-tenth of one percent, by weight, of;
- (i) Diisopropyl ether,
- (ii) Ethyl tert-butyl ether,
- (iii) Iso-butanol,
- (iv) Iso-propanol,
- (v) N-butanol,
- (vi) N-propanol,
- (vii) Sec-butanol,
- (viii) Tert-amyl methyl ether,
- (ix) Tert-butanol,
- (x) Tert-pentanol or tert-amyl alcohol, and
- (xi) Any other additive that has not been approved by the California Air Resources Board or the United States Environmental Protection Agency.
- (b) Nothing in this section shall prohibit transshipment through this state, or storage incident to the transshipment, of gasoline that contains methyl tertiary butyl ether in concentrations that exceed 0.15 percent by volume or any of the oxygenates listed in OAR 603-027-0420(4)(a)(C), provided,
- (A) The gasoline is used or disposed of outside of this state; and
- (B) The gasoline is segregated from gasoline intended for use within this state.
- (c) Notwithstanding the additives in OAR 603-027-0420(4)(a), a person may sell, supply, or offer to sell or supply gasoline in this state that contains any oxygenate other than ethanol, if the California Air Resources Board (CARB), California Environmental Policy Council (CEPC), or the United States Protection Agency (U.S. EPA) allow use of the oxygenate.
- (5) Diesel Fuel shall meet the requirements of ASTM D 975, "Standard Specification for Diesel Fuel Oils."
- (6) Winter or Winterized Diesel Fuel shall meet the requirements of ASTM D 975, "Standard Specification for Diesel Fuel Oils" and have a cold flow performance measurement which meets the ASTM D 975 tenth percentile minimum ambient air temperature charts and maps by either ASTM Standard Test Method D 2500 (Cloud Point) or ASTM Standard Test Method D 4539 (Low Temperature Flow Test, LTFT). Winter or winterized diesel (low temperature operability) is only applicable October 1–March 31 of each year.
- (7) Premium Diesel Fuel — All diesel fuels identified on retail and non-retail dispensers, bills of lading, invoices, shipping papers, or other documentation with terms such as premium, super, supreme, plus, or premier shall meet the requirements of ASTM D 975, "Standard Specification for Diesel Fuel Oils" and must conform to the following requirements:
- (a) Cetane Number — A minimum cetane number of 47.0 as determined by ASTM Standard Test Method D 613;
- (b) Low Temperature Operability — A cold flow performance measurement which meets the ASTM D 975 tenth percentile minimum ambient air temperature charts and maps by either ASTM Standard Test Method D 2500 (Cloud Point) or ASTM Standard Test Method D 4539 (Low Temperature Flow Test, LTFT). Low temperature operability is only applicable October 1–March 31 of each year;
- (c) Thermal Stability — A minimum reflectance measurement of 80 percent as determined by ASTM Standard Test Method D 6468 (180 minutes, 150 OC);
- (d) Lubricity — A maximum wear scar diameter of 520 microns as determined by ASTM D 6079. If a single test of more than 560 microns is determined, a second test shall be conducted. If the average of the two tests is more than 560 microns, the sample does not conform to the requirements of this part.
- (8) Biodiesel; B100 Biodiesel and Biodiesel intended for blending with diesel fuel shall.
- (a) Meet the requirements of ASTM D 6751, "Standard Specification for Biodiesel Fuel (B100) Blend Stock for Distillate Fuels";
- (b) Have a Certificate of Analysis for each batch or production lot produced in Oregon prior to blending with any diesel fuel sold or offered for sale in Oregon. Imported biodiesel shall have a Certificate of Analysis after entry into Oregon prior to blending, sale, or offer for sale in Oregon;
- (c) If biodiesel with a Certificate of Analysis does not comply with the specifications of ASTM International D 6751 when tested by the Department of Agriculture, then until the producer's Certificate of Analysis is verified and acceptable to the Department, the Department may require the producer of the biodiesel to test future productions by one of the following:
- (A) An accredited motor fuel laboratory, or
- (B) A non-accredited motor fuel laboratory that meets all of the following requirements;
- (i) The laboratory facilities must house and allow proper operation of all required equipment in accordance with the applicable test procedures,
- (ii) The laboratory must use personnel trained to perform and analyze ASTM International D 6751 biodiesel fuel tests and other required tests,
- (iii) The laboratory must use testing equipment that has been calibrated or verified to meet the requirements of each ASTM International test procedure used,
- (iv) The laboratory must participate in an ASTM International proficiency program or similar national proficiency program for at least three times per year with appropriate results, and
- (v) The laboratory must maintain current documentation of personnel qualifications, equipment verification, and proficiency results for at least one year. These records shall be available for inspection and reproduction upon request by the Director.

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(9) Biodiesel Blends;

(a) Biodiesel blends through B5 must meet the requirements of ASTM D 975 Standard Specification for Diesel Fuel Oils.

(b) Biodiesel blends of B6 through B20 must meet the requirements of ASTM D 7467, Standard Specification for Diesel Fuel Oil, Biodiesel Blend (B6-B20).

(c) Blends of biodiesel and diesel fuels greater than B20 must meet the following requirements:

(A) The base diesel fuel must meet the requirements of ASTM D 975, Standard Specification for Diesel Fuel Oils; and

(B) The biodiesel blend stock must meet:

(i) The requirements of ASTM D 6751, Standard Specification for Biodiesel Fuel (B100) Blend Stock for Distillate Fuels, and

(ii) The requirements in OAR 603-027-0420(8).

(d) Exception; Biodiesel may be blended with diesel fuel whose sulfur, lubricity, or aromatic levels are outside specification ASTM D 975, Standard Specification for Diesel Fuel Oils, grades 1-D S15, 1-D S500, 2-D S15, or 2-D S500 provided the finished mixture meets pertinent national and local specifications and requirements for these properties.

(10) Other Renewable Diesel must meet its established ASTM International standard, be approved by the United States Environmental Protection Agency, and comply with specifications of the National Conference on Weights and Measures.

(11) Biodiesel Blends Required.

(a) Except as provided in subsection (e) of this section, a retail dealer, nonretail dealer, or wholesale dealer may only sell or offer for sale diesel fuel in Oregon containing at least two percent by volume biodiesel.

(b) When the capacity of biodiesel production facilities in Oregon reaches a level of at least 15 million gallons on an annualized basis;

(A) The Department shall notify all retailers, nonretail dealers, and wholesale dealers in Oregon that the capacity of biodiesel production facilities in Oregon has reached a level of at least 15 million gallons on an annualized basis and that a retail dealer, nonretail dealer, or wholesale dealer may only sell or offer for sale diesel fuel in Oregon containing at least five percent by volume biodiesel within two months of the date on the notification under this subsection, and

(B) Two months after the date of the notice, a retail dealer, nonretail dealer, or wholesale dealer may only sell or offer for sale diesel fuel in Oregon containing at least five percent biodiesel by volume.

(c) Biodiesel blends and other renewable diesel blends shall contain the volume percent stated to the nearest;

(A) 1 volume percent for blends through 5 volume percent, and

(B) 2 volume percent for blends greater than 5 volume percent through 20 volume percent.

(d) Diesel fuel containing more than five percent biodiesel by volume or other renewable diesel with more than five percent renewable component by volume must be labeled as required in OAR 603-027-0430.

(e) Exemption. The minimum biodiesel fuel content requirements in OAR 603-027-0420 do not apply to diesel fuel sold or offered for sale for use by railroad locomotives, marine engines, or home heating.

(12) Aviation Gasoline shall meet the requirements of ASTM D 910, "Standard Specification for Aviation Gasoline."

(13) E85 Fuel Ethanol shall meet the requirements of ASTM D 5798, "Standard Specification for Fuel Ethanol (Ed75-Ed85) for Automotive Spark-Ignition Engines."

(14) M85 Fuel Methanol shall meet the requirements of ASTM D 5797, "Standard Specification for Fuel Methanol (M70-M85) for Automotive Spark-Ignition Engines."

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 561.190, 646.905 - 646.990, OL 1997, Ch. 310 (SB 414)

Stats. Implemented: ORS 646.905 - 646.990 & 183, OL 1997, Ch. 310 (SB 414)

Hist.: AD 19-1997, f. 12-9-97, cert. ef. 1-1-98; DOA 5-2002, f. & cert. ef. 1-28-02; DOA 17-2006, f. & cert. ef. 9-26-06; DOA 15-2007(Temp), f. & cert. ef. 10-15-07 thru 4-11-08; DOA 20-2007(Temp), f. & cert. ef. 11-29-07 thru 4-11-08; DOA 8-2008, f. & cert. ef. 2-15-08; DOA 12-2008(Temp), f. 3-14-08, cert. ef. 3-17-08 thru 9-12-08; DOA 21-2008, f. & cert. ef. 9-11-08; DOA 11-2009(Temp), f. & cert. ef. 7-24-09 thru 1-17-10; DOA 16-2009, f. 12-23-09, cert. ef. 1-1-10

## 603-027-0430

### Classification and Method of Sale of Petroleum Products

(1) General Considerations:

(a) Documentation.

(A) When gasoline; gasoline-oxygenate blends; reformulated gasoline; M85 and M100 fuel methanol; E85 and E100 fuel ethanol; B100 biodiesel and biodiesel blends; renewable diesel and diesel-renewable diesel blends; diesel fuel; winter or winterized diesel fuel; premium diesel fuel; or aviation gasoline are sold, an invoice, bill of lading, shipping paper or other documentation, must accompany each delivery other than a sale by a retail or non-retail dealer. This document must identify the:

(i) Quantity,

(ii) The name of the product,

(iii) The particular grade of the product,

(iv) The word "Winter" or "Winterized" diesel if applicable,

(v) The word "Premium" diesel if applicable,

(vi) The volume percent biodiesel and other renewable diesel, if a biodiesel, biodiesel blend, other renewable diesel, or diesel-other renewable diesel blend through 5 volume percent to the nearest 1 volume percent and for greater than 5 volume percent through 20 volume percent blends to the nearest 2 volume percent,

(vii) The applicable automotive fuel rating,

(viii) The name and address of the seller and buyer,

(ix) The date and time of the sale,

(x) For gasoline-oxygenate and gasoline-alcohol blends which contain more than 1.5 mass percent oxygen, the documentation shall state the oxygenate type and oxygenate content, in volume percent, to the nearest 0.5 volume percent, and

(xi) For non-ethanol blended gasoline the documentation shall state that the gasoline is non-ethanol blended.

(B) Each operator of a bulk facility and each person who imports motor vehicle fuels into this state for sale in this state shall keep, for at least one year, at the person's registered place of business complete and accurate records of any motor vehicle fuels sold if sold or delivered in this state.

(C) Each biodiesel producer, each operator of a biodiesel bulk facility and each person who imports biodiesel into Oregon for sale in this state shall keep, on a monthly basis for at least one year, at the person's registered place of business the certificate of analysis for each batch or production lot of biodiesel sold or delivered in Oregon.

(D) Each biodiesel producer in Oregon shall keep, on a monthly basis for at least one year, at the person's registered place of business, documentation declaring the producer's name, location address, date, and quantity of biodiesel production and sales. This documentation shall be completed on a form provided by the Department of Agriculture and mailed on a quarterly basis to the Department in Salem, Oregon.

(E) All retail dealers, nonretail dealers, and wholesale dealers in Oregon are required to provide, upon request of the Department, evidence of a certificate of analysis for the biodiesel received.

(F) Each ethanol production facility in Oregon shall keep, on a monthly basis for at least one year, at the person's registered place of business, documentation declaring the production facility's name, location address, net ethanol production capacity, the date that the net ethanol capacity was attained, quantity of ethanol produced, and sales in Oregon. This documentation shall be completed on a form provided by the Department of Agriculture and mailed on a quarterly basis to the Department in Salem, Oregon.

(G) Retail dealers and nonretail dealers shall maintain at their facilities the octane rating certification or motor vehicle fuel delivery documentation for the three most recent deliveries to the facility for each grade of gasoline, fuel ethanol, fuel methanol, biodiesel, biodiesel blends, diesel fuel, other renewable diesel fuel, and diesel-other renewable diesel fuel blends sold or offered for sale.

(b) Retail and Nonretail Gasoline Dispenser Labeling. All retail and nonretail gasoline dispensing devices must identify conspicuously on each face of the dispenser(s),

(A) The type of product,

(B) The particular grade of the product,

(C) Type of oxygenate contained if applicable,

(i) Including the specific volume percent of ethanol in gasoline-ethanol blends stating, for example,

"THIS PRODUCT CONTAINS 10% ETHANOL" or other similar language in type at least 12.7 millimeters (1/2 inch) in height, 1.5 millimeter (1/16 inch) stroke (width of type) located on each face and on the upper 50 percent of the dispenser front panels in a position clear and conspicuous from the driver's position,

(ii) Prohibited terms and phrases include but are not limited to, "Contains Up To 10% Ethanol", "May Contain Ethanol", or any other similar language,

(D) The applicable automotive fuel rating, and

(E) If non-ethanol blended gasoline, other than 91 octane or above, in compliance with OAR 603-027-0420, the dispensers shall be labeled,

"NON-ETHANOL BLENDED GASOLINE FOR EXEMPTED USE ONLY (ORS 646.913)" in capital letters and type at least 12.7 millimeters (1/2 inch) in height, 1.5 millimeter (1/16 inch) stroke (width of type) located on each face and on the upper 50 percent of the dispenser front panels in a position clear and conspicuous to the consumer.

(c) Posting of Exceptions for Non-Ethanol Blended Gasoline. The exceptions for non-ethanol blended gasoline, other than 91 octane or above, shall be posted at a business that sells or offers for sale non-ethanol blended gasoline in a position that is clear and conspicuous to the consumer. The exceptions shall be posted;

"NON-ETHANOL BLENDED GASOLINE FOR USE IN THE FOLLOWING APPLICATIONS ONLY;" in capital letters and type at least 6.4 millimeters (1/4 inch) in height, 1 millimeter (1/32 inch) stroke (width of type), followed by,

"AIRCRAFT WITH A SUPPLEMENTAL TYPE CERTIFICATE APPROVED BY THE FEDERAL AVIATION ADMINISTRATION THAT ALLOWS THE AIRCRAFT TO USE GASOLINE THAT IS INTENDED FOR USE IN MOTOR VEHICLES:

AIRCRAFT ISSUED A TYPE CERTIFICATE BY AN AIRCRAFT ENGINE MANUFACTURER THAT ALLOWS THE AIRCRAFT TO USE GASOLINE THAT IS INTENDED FOR USE IN MOTOR VEHICLES;

AN AIRCRAFT THAT HAS BEEN ISSUED AN EXPERIMENTAL CERTIFICATE, DESCRIBED IN 14 C.F.R. 21.191, BY THE FEDERAL AVIATION ADMINISTRATION AND THAT IS REQUIRED BY THE MANUFACTURER'S SPECIFICATIONS TO USE GASOLINE THAT IS INTENDED FOR USE IN MOTOR VEHICLES;



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A LIGHT-SPORT AIRCRAFT, AS DEFINED IN 14 C.F.R. 1.1, THAT IS REQUIRED BY THE MANUFACTURER'S SPECIFICATIONS TO USE GASOLINE THAT IS INTENDED FOR USE IN MOTOR VEHICLES;

A VINTAGE AIRCRAFT, AS DEFINED BY THE OREGON DEPARTMENT OF AVIATION BY RULE, THAT IS REQUIRED BY THE MANUFACTURER'S SPECIFICATIONS TO USE GASOLINE THAT IS INTENDED FOR USE IN MOTOR VEHICLES;

AN ANTIQUE VEHICLE, AS DEFINED IN ORS 801.125;

A CLASS I ALL-TERRAIN VEHICLE, AS DEFINED IN ORS 801.190;

A CLASS III ALL-TERRAIN VEHICLE, AS DEFINED IN ORS 801.194;

A RACING ACTIVITY VEHICLE, AS DEFINED IN ORS 801.404;

A SNOWMOBILE, AS DEFINED IN ORS 801.490;

TOOLS, INCLUDING BUT NOT LIMITED TO LAWN MOWERS, LEAF BLOWERS, AND CHAIN SAWS; OR A WATERCRAFT (Reference ORS 646.913) in capital letters and type at least 3 millimeters (1/8 inch) in height, 0.4 millimeter (1/64 inch) stroke (width of type).

(d) Grade Name. The sale of any product under any posted grade name that indicates to the purchaser that it is of a certain automotive fuel rating or ASTM grade indicated in the posted grade name must be consistent with the applicable standard specified in OAR 603-027-0420 "Standard Fuel Specifications".

(2) Automotive Gasoline and Automotive Gasoline-Oxygenate Blends:

(a) Posting of Antiknock Index Required. All automotive gasoline and automotive gasoline-oxygenate blends shall post the antiknock index in accordance with 16 CFR Part 306.

(b) Use of Lead Substitute Must Be Disclosed. Each dispensing device from which gasoline or gasoline oxygenate blend containing a lead substitute is dispensed shall display the grade name followed by "With a Lead Substitute" (e.g. "Unleaded With a Lead Substitute"). The lettering of the lead substitute declaration shall not be less than 12.7 millimeters (1/2 in) in height and 1.5 centimeters (1/16 in) stroke (width of type). The color of the lettering shall be in definite contrast to the background color to which it is applied.

(c) Prohibition of Terms. It is prohibited to use specific terms to describe a grade of gasoline or gasoline-oxygenate blend unless it meets the minimum antiknock index requirement shown in Table 1. [Table not included. See ED. NOTE.]

(3) Diesel Fuel:

(a) Labeling of Product and Grade Required. Diesel fuel shall be identified by "Diesel" and grades "No. 1-D S15", "No. 1-D S500", "No. 1-D S5000", "No. 2-D S15", "No. 2-D S500", "No. 2-D S5000", or "No. 4-D". Each retail or nonretail dispenser of diesel fuel shall be labeled "Diesel" and the grade being dispensed.

(b) Location of Label. These labels shall be located on each face and on the upper 50 percent of the dispenser front panels in a position clear and conspicuous from the driver's position, in a type at least 12.7 millimeter (1/2 in) in height, 1.5 millimeter (1/16 in) stroke (width of type).

(4) Winter or Winterized Diesel Fuel:

(a) Labeling of Product and Grade Required. The dispensers of winterized diesel fuel must be labeled as required in OAR 603-027-0430(3)(a) and include the words "WINTERIZED DIESEL" or "WINTER DIESEL" (e.g. "WINTERIZED DIESEL No. 2-D S15").

(b) Location of Winterized Diesel Fuel Label. The location of the winterized diesel label shall be as required in OAR 603-027-0430(3)(b) or on a "pump topper" mounted on top of each winterized diesel dispenser with lettering as specified in OAR 603-027-0430(3)(b) and must be in a position that is clear and conspicuous from the driver's position.

(5) Premium Diesel Fuel :

(a) Labeling of Premium Diesel Required. In addition to labeling requirements specified in OAR 603-027-0430(3), all retail and nonretail dispensers of premium diesel shall be labeled "Premium Diesel" (e.g. "Premium Diesel No. 2-D S15").

(b) Location of Premium Diesel Fuel Label. The location of the premium diesel fuel label shall be located on the upper 50 percent of the dispenser front panels in a position clear and conspicuous from the driver's position, in a type at least 12.7 millimeter (1/2 inch) in height, 1.5 millimeter (1/16 inch) stroke (width of type).

(6) Biodiesel and Other Renewable Diesel:

(a) Identification of Product.

(A) Biodiesel and biodiesel blends shall be identified by the capital letter B followed by the numerical value representing the volume percentage of biodiesel fuel. (Examples: B10; B20; B100)

(B) Other renewable diesel and other renewable diesel blends shall be identified by the numerical value representing the volume percentage of other renewable diesel immediately followed by the percentage symbol (%) and then the term "Biomass-Based Diesel" or "Biomass-Based Diesel Blend".

(Examples: "10% Biomass-Based Diesel Blend"; "20% Biomass-Based Diesel Blend"; "70% Biomass-Based Diesel Blend"; "100% Biomass-Based Diesel".)

(b) Labeling of Retail and Non-Retail Dispensers Containing Between 5% and Up To and Including 20% Biodiesel or Other Renewable Diesel.

(A) If containing biodiesel, the dispenser(s) shall be labeled with either:

(i) The capital letter "B" followed by the numerical value representing the volume percentage of biodiesel fuel and ending with "Biodiesel Blend" (Examples: "B10 Biodiesel Blend"; "B20 Biodiesel Blend"); or

(ii) The phrase, "Biodiesel Blend Between 5% and 20%" or similar words; or

(iii) The Federal Trade Commission (FTC) 16 CFR Part 306 approved label "Biodiesel Blend" that is appropriate for blends from 5% to 20% biodiesel, or "B20 Biodiesel Blend" that is appropriate for 20% biodiesel blends only.

(B) If containing other renewable diesel, the dispenser(s) shall be labeled with either:

(i) "XX% Biomass-Based Diesel Blend" where the abbreviation "XX" represents the volume percentage of other renewable diesel in the blend; or

(ii) The phrase, "Biomass-Based Diesel Blend Between 5% and 20%" or similar words.

(c) Labeling of Retail and Non-Retail Dispensers Containing More Than 20% Biodiesel or More Than 20% Other Renewable Diesel.

(A) If containing more than 20% biodiesel, the dispenser(s) shall be labeled:

(i) "Consult Vehicle Manufacturer Fuel Recommendations", posted on the dispenser front panels in a position clear and conspicuous from the driver's position in block letter type at least 6 mm (1/4 inch) in height by 0.8 mm (1/32) stroke (width of type) and the color must be in definite contrast to the background color to which it is applied; and in addition,

(ii) Separately labeled with the capital letter "B" followed by the numerical value representing the volume percentage of biodiesel fuel and ending with either "Biodiesel" or "Biodiesel Blend" (Examples: "B100 Biodiesel"; "B60 Biodiesel Blend"); or

(iii) The Federal Trade Commission (FTC) 16 CFR Part 306 approved label for biodiesel blends greater than 20% biodiesel.

(B) If containing more than 20% other renewable diesel, the dispenser(s) shall be labeled with the numerical value representing the volume percentage of other renewable diesel immediately followed by the percentage symbol (%) and then the term "Biomass-Based Diesel" or "Biomass-Based Diesel Blend" (Examples: "100% Biomass-Based Diesel"; "70% Biomass-Based Diesel Blend").

(d) Documentation for Biodiesel, Biodiesel Blends, Other Renewable Diesel, and Other Renewable Diesel Blends. The operator of retail and non-retail dispensers shall be provided, at the time of delivery of the fuel, with a declaration of the volume percent biodiesel, other renewable diesel, or any combination thereof on an invoice, bill of lading, shipping paper, or other document in compliance with OAR 603-027-0430(1)(a).

(e) Exemption.

(A) Biodiesel blends containing 5% or less biodiesel by volume or 5% or less other renewable diesel by volume are exempted from the dispenser labeling requirements in OAR 603-027-0430(6) except.

(B) If a dispenser is labeled with any reference to biodiesel or other renewable diesel and the fuel contains 5% or less biodiesel or 5% or less other renewable diesel, then it shall be labeled either:

(i) "5% Or Less Biodiesel Blend", or

(ii) "5% Or Less Biomass-Based Diesel Blend".

(f) Size of Labeling Type. Except for the FTC 16 CFR Part 306 approved labels and the "Consult Vehicle Manufacturer Fuel Recommendations" labels as specified, all labeling required in OAR 603-027-0430(6), shall be in type at least 12 mm (1/2 inch) in height and 1.5 mm (1/16 inch) stroke (width of type)

(7) Aviation Gasoline: Labeling of Grade Required. Aviation gasoline and dispensers shall be identified by and labeled with Grade 80, Grade 100, or Grade 100LL.

(8) E85 Fuel Ethanol:

(a) How to Identify E85 Fuel Ethanol. Fuel ethanol shall be identified as E85. (Example: E85)

(b) Retail or Nonretail E85 Fuel Ethanol Dispenser Labeling.

(A) Fuel ethanol dispensers shall be labeled with its automotive fuel rating in accordance with 16 Code of Federal Regulations Part 306.

(B) A label shall be posted which states, "For Use in Flexible Fuel Vehicles (FFV) Only". This information shall be posted on the upper 50% of the dispenser front panels in a position clear and conspicuous from the driver's position, in a type at least 12.7 mm (1/2 inch) in height, 1.5 mm (1/16 inch) stroke (width of type).

(C) A label must be posted that states, "Consult Vehicle Manufacturer Fuel Recommendations". This label must be posted on the dispenser front panels in a position clear and conspicuous from the driver's position in block letter type at least 6 mm (1/4 inch) in height by 0.8 mm (1/32 inch) stroke (width of type) and the color must be in definite contrast to the background color to which it is applied.

(9) Fuel Methanol:

(a) Identification of Fuel Methanol. Fuel methanol shall be identified by the capital letter M followed by the numerical value volume percentage of methanol. (Example: M85)

(b) Retail or Nonretail Dispenser Labeling. Each retail or nonretail dispenser of fuel methanol shall be labeled in type at least 12 mm (1/2 inch) in height and 1.5 mm (1/16 inch) stroke (width of type) with the capital letter M followed by the numerical value volume percent methanol and ending with the word "methanol". (Example: M85 Methanol).

(c) Additional Labeling Requirements. Fuel methanol shall be labeled with its automotive fuel rating in accordance with 16 CFR Part 306.

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

# ADMINISTRATIVE RULES

Stat. Auth.: ORS 561.190, OL 1997, Ch. 310 (SB 414) & 646.905 - 646.990  
Stats. Implemented: OL 1997, Ch. 310 (SB 414), ORS 646.905 - 646.990 & 183  
Hist.: AD 19-1997, f. 12-9-97, cert. ef. 1-1-98; DOA 5-2002, f. & cert. ef. 1-28-02; DOA 17-2006, f. & cert. ef. 9-26-06; DOA 15-2007(Temp), f. & cert. ef. 10-15-07 thru 4-11-08; DOA 20-2007(Temp), f. & cert. ef. 11-29-07 thru 4-11-08; DOA 8-2008, f. & cert. ef. 2-15-08; DOA 12-2008(Temp), f. 3-14-08, cert. ef. 3-17-08 thru 9-12-08; DOA 21-2008, f. & cert. ef. 9-11-08; DOA 11-2009(Temp), f. & cert. ef. 7-24-09 thru 1-17-10; DOA 16-2009, f. 12-23-09, cert. ef. 1-1-10

## 603-027-0440

### Storage Tanks

(1) Water in Motor Vehicle Fuel Storage:

(a) Water in Gasoline-Alcohol Blends, Biodiesel, Biodiesel Blends, E85 Fuel Ethanol, M85 Fuel Methanol, and Aviation Gas. No water or water-alcohol phase greater than six millimeters (1/4 in) as determined by an appropriate detection paste is allowed to accumulate in any tank utilized in the storage of gasoline-alcohol blend, biodiesel, biodiesel blends, E85 fuel ethanol, M85 fuel methanol, and aviation fuel.

(b) Water in Gasoline, Diesel, Other Renewable Diesel, Other Renewable Diesel Blends, Gasoline-Ether, and Other Fuels. Water phase shall not exceed 25 mm (1 inch) in depth when measured with water indicating paste in any tank utilized in the storage of diesel, gasoline, gasoline-ether blends at retail or nonretail except as required in OAR 603-027-0440(1)(a).

(2) Product Storage Identification:

(a) Fill Connection Labeling.

(A) The fill connection for any motor vehicle fuel or aviation fuel storage tank from which the fuels are dispensed directly into motor vehicle or aircraft fuel tanks shall be permanently, plainly, and visibly marked as to the grade of product contained therein.

(B) In addition, storage tank fill connections of non-ethanol blended gasoline shall be permanently, plainly, and visibly marked that the product contained therein is non-ethanol blended gasoline.

(b) Declaration of Meaning of Color Code. When the fill connection device is marked by means of a color code, the color code key shall be conspicuously displayed at the place of business.

Stat. Auth.: ORS 561.190, OL 1997, Ch. 310 (SB 414) & 646.905 - 646.990  
Stats. Implemented: OL 1997, Ch. 310 (SB 414), ORS 646.905 - 646.990 & 183  
Hist.: AD 19-1997, f. 12-9-97, cert. ef. 1-1-98; DOA 17-2006, f. & cert. ef. 9-26-06; DOA 8-2008, f. & cert. ef. 2-15-08; DOA 12-2008(Temp), f. 3-14-08, cert. ef. 3-17-08 thru 9-12-08; DOA 21-2008, f. & cert. ef. 9-11-08; DOA 11-2009(Temp), f. & cert. ef. 7-24-09 thru 1-17-10; DOA 16-2009, f. 12-23-09, cert. ef. 1-1-10

## 603-027-0490

### Enforcement Proceedings; Civil Penalties

(1) Consolidation of Proceedings: Notwithstanding that each and every violation of these rules and/or 1997 Oregon Laws Chapter 310 is a separate and distinct act and in cases of continuing violations, each day's continuance is a separate and distinct violation, proceedings for a Stop Use, Hold and/or Removal Order, or for the assessment of civil penalties arising from the same conduct or failure to act may be consolidated into a single proceeding.

(2) The Director or the Director's designate shall prescribe a reasonable time for the elimination of the violation prior to imposing a civil penalty, except that if a party fails to abide by the terms of any Stop Use, Hold and/or Removal Order, the Director or the Director's designate may immediately impose a civil penalty in addition to any other remedies provided by law.

(3) Violations occurring after the time prescribed for the elimination of the violation shall be considered repeat violations.

(4) Civil penalties shall be due and payable when the person incurring the penalty receives a Civil Penalty Assessment Notice in writing from the Director or the Director's designate.

(5) A Civil Penalty Assessment Notice, Stop Use Order, Hold Order and/or Removal Order shall be in writing. In addition to the posting providing for by OAR 603-207-0470 for Stop Use, Hold and Removal Orders, these documents shall be served on the owner or operator of the facility by registered mail, certified mail, or in person. The notice shall include, but not be limited to:

(a) A reference to the particular section of the statute and/or administrative rule involved and;

(b) A short and plain statement of the matters asserted or charged;

(c) A statement of the amount of the penalty or penalties imposed, if any;

(d) A statement of the person's right to request a hearing if such request is made within ten days of mailing of the notice and an explanation of how a hearing may be requested;

(e) A statement that the notice becomes a final order unless the person upon whom the Stop Use, Hold and/or Removal Order, and/or civil penalty is assessed makes a written request for a hearing within ten days from the date of the mailing of the notice.

(6) A civil penalty imposed under the applicable statutes or these regulations may be remitted or reduced at the Director's discretion upon such terms and conditions that are proper and consistent with public safety and welfare.

(7) Hearing Procedures: All hearings shall be conducted pursuant to the applicable contested case procedures as outlined in ORS 183.310 to 183.550, and the Attorney General's Uniform and Model Rules of Procedure (OAR chapter 137).

(8) Entry of Order and Appeal Rights: If a person notified of the Stop Use, Hold, and/or Removal Order and/or civil penalty fails to request a hearing as specified in OAR 603-027-0490(5)(e), or if after the hearing the person is found to be in violation of the provisions of these rules, a final order may be entered by the Department as follows:

(a) The order shall be signed by the Director or the Director's designate;

(b) If the order is not appealed, or if it is appealed and the order is sustained on appeal, the order shall constitute a judgment and may be recorded with the county clerk in any county of this state. Any penalty provided in the order so recorded becomes a lien upon the title of any interest and real property in the county owned by the person against whom the order is entered.

(9) Penalty schedule: In addition to any other penalty provided by law, the Director may assess a civil penalty for violation of any provision of Oregon Laws 1997, chapter 310 section (7) relating to Motor Fuel Standards Regulation. The amount of any civil penalty shall be determined using the following table and shall not exceed \$10,000. In establishing penalty assessments within the table (Table 2), the department will consider factors such as the type of violation, the cause(s) of the violation, the economic impact on fuel purchasers, prior history of violations, repetition of violations, and the degree of demonstrated cooperativeness of the fuel seller. [Table not included. See ED. NOTE.]

(10) The commission of each violation has been categorized as to its magnitude of violation as follows:

(a) Gravity 1 (Minor):

(A) Labeling of Dispenser(s) (Ref. OAR 603-027-0430):

(i) Gasoline dispenser(s) not labeled with the identity of the product dispensed;

(ii) Gasoline dispenser(s) not labeled with the identity of the grade dispensed;

(iii) Gasoline dispenser(s) not labeled with the identity of oxygenates;

(iv) Gasoline-ethanol blend dispensers not labeled that the product contains 10% by volume ethanol in compliance with OAR 603-027-0430.

(v) Gasoline dispenser(s) of non-ethanol blended gasoline, other than 91 octane or above, not labeled for exempted use only in compliance with OAR 603-027-0430.

(vi) Exceptions for non-ethanol blended gasoline, other than 91 octane or above, not posted in compliance with OAR 603-027-0430.

(vii) Use of Prohibited Terms. Prohibited terms used to describe the grade of gasoline or gasoline-oxygenate blends. (Ref. OAR 603-027-0430);

(viii) Gasoline dispenser(s) not labeled with the Antiknock Index (AKI) number;

(ix) Gasoline dispenser(s) for lead substitute motor vehicle fuels not properly identified;

(x) Diesel dispenser not labeled with either the identity of the product and/or grade dispensed;

(xi) Location of either the diesel product and/or grade label not on each face and on the upper 50 percent of the dispenser front panels;

(xii) Winter or winterized diesel fuel dispenser(s) not labeled in compliance with OAR 603-027-0430;

(xiii) Premium diesel fuel dispenser(s) not labeled in compliance with OAR 603-027-0430;

(xiv) Aviation gasoline dispenser(s) not labeled with the identity of the grade dispensed;

(xv) Fuel ethanol dispenser(s) not labeled with the correct automotive fuel rating, "For Use In Flexible Fuel Vehicles (FFV) Only", or "Consult Vehicle Manufacturer Fuel Recommendations" in compliance with OAR 603-027-0430;

(xvi) Fuel methanol dispenser(s) not labeled with the correct automotive fuel rating and the identity of the product dispensed;

(xvii) Biodiesel, biodiesel blend, other renewable diesel, or other renewable diesel blend fuel dispenser(s) not labeled in compliance with OAR 603-027-0430.

(B) Storage Tank(s); Motor vehicle fuel storage tank(s);

(i) Not correctly identified as to the product contained;

(ii) Not correctly identified that the product contained therein is non-ethanol blended gasoline. (Ref. OAR 603-027-0440)

(C) Documentation, Wholesale Dealer and Bulk Facility (Ref. OAR 603-027-0430):

(i) Incorrect, incomplete, or no documentation of motor vehicle fuels provided to the retail dealer or nonretail dealer at the time of motor vehicle fuel delivery;

(ii) Motor vehicle fuel delivery documentation not maintained for at least one year at the person's registered place of business.

(D) Certificate of Analysis Documentation, Biodiesel Producer, Operator of a Biodiesel Bulk Facility, and each Person Who Imports Biodiesel not keeping on a monthly basis for at least one year, at the person's registered place of business the certificate of analysis for each batch or production lot of biodiesel sold or delivered in Oregon (Ref. OAR 603-027-0430);

(E) Documentation, Biodiesel Production Facility not keeping, on a monthly basis for at least one year, at the person's registered place of business, documentation declaring the producer's name, location address, date and quantity of biodiesel production and sales (Ref. OAR 603-027-0430);

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14-08, cert. ef. 3-17-08 thru 9-12-08; DOA 21-2008, f. & cert. ef. 9-11-08; DOA 11-2009(Temp), f. & cert. ef. 7-24-09 thru 1-17-10; DOA 16-2009, f. 12-23-09, cert. ef. 1-1-10

(F) Documentation not delivered on a quarterly basis to the Oregon Department of Agriculture declaring the biodiesel producer's name, location address, date and quantity of biodiesel production and sales in compliance with OAR 603-027-0430;

(G) Documentation, Retail Dealer, Nonretail Dealer, and Wholesale Dealer not providing, upon request of the Department, evidence of a certificate of analysis for the biodiesel received (Ref. OAR 603-027-0430);

(H) Documentation, Ethanol Production Facility not keeping, on an annual basis by month, at the person's registered place of business, documentation declaring the production facility's name, location address, net ethanol production capacity, the date that the net ethanol capacity attained, quantity of ethanol produced, and sales in Oregon.

(I) Documentation declaring the ethanol facility's name, location address, net ethanol production, date, quantity of ethanol produced, and sales in Oregon not delivered to the Oregon Department of Agriculture on a quarterly basis in compliance with OAR 603-027-0430;

(J) Documentation, Retail Dealer and Nonretail Dealer (Ref. OAR 603-027-0430); Octane rating certification or motor vehicle fuel delivery documentation not maintained at their facilities for the three most recent deliveries to the facility for each grade of gasoline, fuel ethanol, fuel methanol, biodiesel, biodiesel blends, diesel fuel, other renewable diesel fuel, and other renewable diesel fuel blends sold or offered for sale.

(b) Gravity 2 (Moderate):

(A) Storage Tank(s);

(i) Water phase in motor vehicle fuel storage tank(s) for gasoline-alcohol blends, B100 Biodiesel, Biodiesel Blends, E85 fuel ethanol, M85 fuel methanol, and aviation fuel exceed allowable limits (Ref. OAR 603-027-0440);

(ii) Water phase in motor vehicle fuel storage tank(s) for gasoline, diesel, other renewable diesel, other renewable diesel blends, gasoline-ether, and other fuels exceed allowable limits (Ref. OAR 603-027-0440).

(c) GRAVITY 3 (Major):

(A) Automotive fuel rating of the gasoline does not meet the minimum antiknock index (AKI) posted on the dispenser or certified on the invoice, bill of lading, shipping paper, or other documentation. (Ref. OAR 603-027-0420 and 603-027-0430);

(B) Gasoline does not meet ASTM standards (Ref. OAR 603-207-0420);

(C) Gasoline offered for sale with a lead substitute that does not meet requirements for a lead substitute gasoline. (Ref. OAR 603-027-0420);

(D) Ethanol intended for blending with gasoline does not meet the requirements of ASTM D 4806, "Standard Specification for Denatured Fuel Ethanol for Blending with Gasolines for Use as Automotive Spark-Ignition Engine Fuel". (Ref. OAR 603-027-0420);

(E) Gasoline sold or offered for sale does not meet gasoline-ethanol blend requirements (Ref. OAR 603-027-0420);

(F) Gasoline Additive Restrictions: A wholesale dealer, retail dealer, or nonretail dealer selling or offering for sale gasoline blended or mixed with prohibited additives. (Ref. OAR 603-027-0420);

(G) Diesel fuel offered for sale does not meet ASTM standards (Ref. OAR 603-027-0420);

(H) Winter or Winterized diesel fuel offered for sale does not meet Standard Fuel Specifications (Ref. OAR 603-027-0420);

(I) Premium diesel fuel offered for sale does not meet Standard Fuel Specifications (Ref. OAR 603-027-0420);

(J) Biodiesel intended for blending with diesel fuel does not meet ASTM Standard Fuel Specifications (Ref. OAR 603-027-0420);

(K) Biodiesel blend offered for sale does not meet fuel specifications (Ref. OAR 603-027-0420);

(L) Certificate of analysis not provided for each batch or production lot of biodiesel produced in Oregon or imported into Oregon prior to blending with any diesel fuel sold or offered for sale in Oregon. (Ref. OAR 603-027-0420);

(M) Other renewable diesel sold or offered for sale does not meet fuel specifications (Ref. OAR 603-027-0420);

(N) Diesel fuel sold or offered for sale does not meet diesel-biodiesel blend requirements. (Ref. OAR 603-027-0420);

(O) Biodiesel, biodiesel blends, other renewable diesel, other renewable diesel blends, or any combination thereof content not to nearest 1 volume percent for blends through 5 percent by volume or not to nearest 2 volume percent for blends greater than 5 percent by volume through 20 percent by volume (Ref. OAR 603-027-0420);

(P) Aviation gasoline does not meet the requirements of ASTM D 910, "Standard Specification for Aviation Gasolines". (Ref. OAR 603-027-0420);

(Q) E85 Fuel Ethanol offered for sale does not meet ASTM Standard Fuel Specifications (Ref. OAR 603-027-0420);

(R) M85 Fuel Methanol offered for sale does not meet ASTM Standard Fuel Specifications (Ref. OAR 603-027-0420).

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

Stat. Auth.: ORS 561.190, OL 1997, Ch. 310 (SB 414) & 646.905 - 646.990

Stats. Implemented: OL 1997, Ch. 310 (SB 414), ORS 646.905 - 646.990 & 183

Hist.: AD 19-1997, f. 12-9-97, cert. ef. 1-1-98; DOA 5-2002, f. & cert. ef. 1-28-02; DOA 17-2006, f. & cert. ef. 9-26-06; DOA 8-2008, f. & cert. ef. 2-15-08; DOA 12-2008(Temp), f. 3-

**Rule Caption:** Establishes cost recovery charge for determining the adequacy of fencing to keep livestock out.

**Adm. Order No.:** DOA 1-2010

**Filed with Sec. of State:** 1-7-2010

**Certified to be Effective:** 1-7-10

**Notice Publication Date:** 12-1-2009

**Rules Adopted:** 603-010-0056

**Subject:** If cattle or equines break through a fence on open range and a determination of the adequacy of the fence is necessary in order to determine whether the cattle or equines are unlawfully trespassing, the State Department of Agriculture shall make the determination of the adequacy of the fence and shall consider, among other things, the customs and practices of good animal husbandry in the particular area with references to fences. Effective on January 1, 2010, the Oregon Revised Statute 607, through passing of HB 3417, gives authority to the Agency to enact rules that establish a fee for determining the adequacy of a fence to keep open range cattle or equines out of private property. The charge for such service shall be the sum of the mileage to and from the site of the fence in question at the state mileage charge plus \$30.00 per hour for the actual determination of adequacy at that location.

**Rules Coordinator:** Sue Gooch—(503) 986-4583

## 603-010-0056

### Fee for Determining Adequacy of a Fence

(1) If requested to, or when cattle or equines break through a fence on the open range and a determination of the adequacy of the fence is necessary in order to determine whether the cattle or equines are unlawfully trespassing, the State Department of Agriculture shall make the determination of the adequacy of the fence and shall consider, among other things, the customs and practices of good animal husbandry in the particular area with reference to fences.

(2) The charge for such service shall be the sum of the mileage to and from the site of the fence in question, at the state mileage charge, plus \$30.00 per hour for the time spent traveling to and from the site and time for the determination of the adequacy of the fence in question.

Stat. Auth.: ORS 607

Stats. Implemented: ORS 607

Hist.: DOA 1-2010, f. & cert. ef. 1-7-10

**Rule Caption:** Permanent rules for state supervision of blackberry pricing.

**Adm. Order No.:** DOA 2-2010

**Filed with Sec. of State:** 1-13-2010

**Certified to be Effective:** 1-15-10

**Notice Publication Date:** 11-1-2009

**Rules Adopted:** 603-076-0101, 603-076-0106

**Subject:** This rule makes permanent the temporary rule, with modifications developed through an advisory committee, public input, public hearing, and hearings officer report. The rule provides the supervisory structure for the department and the industry to convene a price negotiation prices that would recommend a price (or series of prices), for approval by the director of the department, for blackberries to be sold by producer members of the blackberry bargaining association to processors.

**Rules Coordinator:** Sue Gooch—(503) 986-4583

## 603-076-0101

### Definitions

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

(1) "Blackberry dealer" and "blackberry packer" means dealer as defined in ORS 646.515(3)(a), or a licensed food processor that is a cooperative.

(2) "Grower Bargaining Association" refers to any growers association legally organized in accordance with Federal Capper-Volstead Laws (7 U.S.C. 291-292) and state law (ORS 646.515 to 646.545) for incorporation as a grower cooperative or bargaining unit for blackberries.

(3) "Mediate" or "mediation" has the same meaning as ORS 36.110(5).

(4) "Price negotiation," "negotiate," or "bargain" means to discuss the terms of a contract price and related issues, and attempt to come to agreement.

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(5) "Director" means the Director of Agriculture or a designee of the Director of Agriculture.

(6) "Department" means the Oregon Department of Agriculture.

(7) "Active supervision," "active state supervision," and "actively supervise" means the Department's regulatory oversight of the price discussions among dealers, and price negotiations between dealers and grower representatives of a grower bargaining association for the purpose of arriving at a negotiated price for the sale of blackberries under production contracts or other arrangements that meet standards established by the Blackberry Bargaining Council.

(8) "Negotiated price" means the proposed price for blackberries agreed upon by representatives of a grower bargaining association and blackberry dealers.

(9) "Established price" means the price set and approved by the Director as the price at which blackberries produced by grower members of the bargaining association shall be sold to dealers.

(10) "State action immunity" means immunity liability under the federal antitrust laws and the Oregon Antitrust Act for conduct that is carried out pursuant to a regulatory program in which competition in certain areas of the blackberry industry in Oregon is displaced by regulations and active state supervision in accordance with ORS 62.845, 62.848, 646.535 and 646.740.

(11) "Parties" or "party" means blackberry producers, blackberry grower associations, blackberry processing or marketing cooperatives, or blackberry dealers who are participants in the state regulatory program for establishing prices on blackberries produced in Oregon.

(12) "Blackberry Bargaining Council" means the collective group of blackberry dealers and blackberry growers from the bargaining association, who voluntarily meet under the auspices of the department for the purposes of price negotiations.

(13) "Regulatory program" means the state regulatory program described in ORS 62.015, 62.845, 62.848, 646.535 and 646.740 that is actively supervised by the Director of Agriculture, and that authorizes parties to engage in bargaining and negotiations to establish the price and terms of blackberry products produced under contract or other terms and sold to blackberry dealers.

[Publications referenced are available from the agency.]

Stat. Auth.: SB 409 (2009); ORS 62.015, 62.848, 646.535 & 646.740

Stats. Implemented: ORS 62.015, 62.845, 62.848, 646.535, 646.740

Hist.: DOA 2-2010, f. 1-13-10, cert. ef. 1-15-10

## 603-076-0106

### Active State Supervision of Blackberry Price Negotiations

(1) Where more than one blackberry dealer is agreeable to meet with a grower bargaining association, it is the intent of the department that the process of state supervised price negotiations for blackberries will assist in good faith negotiations by all parties, the generation of credible data on which to make pricing decisions, and the efficiency and efficacy of price discovery.

(2) To ensure that the Director is actively supervising the conduct of the grower representatives and the blackberry dealers under the regulatory program in accordance with the requirements of the federal antitrust laws and the Oregon Antitrust Act (ORS 646.740):

(a) The Director or the director's designee shall attend all meetings between the grower association and blackberry dealer representatives pursuant to the regulatory program and shall monitor, and if necessary, mediate the price negotiations between the representatives at these meetings.

(b) The Director or the director's designee will ask each party who participates in the negotiations to sign a pre-mediation agreement with the following commitments:

(A) Negotiate in good faith, arm's length transactions, considering all relevant data presented;

(B) Develop, share, document, and evaluate all information requested by the department for consideration and deliberation by the Blackberry Bargaining Council, to include, but not limited to: by variety or other appropriate categories — acres under production, inventory, yields, import/export data, and market information (the department shall aggregate all data sources and not reveal any proprietary data to any other party);

(C) Actively participate and contribute toward common interests and reasonable pricing agreements; and,

(D) Comply with applicable state laws pertaining to non-discrimination in pricing based on membership in a grower bargaining association (ORS 646.535), payment term requirements (ORS 585.213, unless otherwise negotiated), and other considerations of Oregon's contract laws (ORS 72.3050).

(E) Pay the fees described in these rules.

(c) The parties to the supervised blackberry pricing negotiations shall, to the extent practical, aggregate blackberry varieties into three categories: early varieties, late varieties, and Boysenberries.

(d) The Blackberry Bargaining Council may, under the direct supervision of the Department, conduct individual negotiations each year for categories of blackberries as described in section (c), and how berries are packed (i.e., IQF, straight pack, puree, juice, etc.)

(e) Meetings of the Bargaining Council are not subject to Oregon's public meeting laws. However, minutes of all meetings between representatives of the growers association and the blackberry dealers will be created and maintained by the Department and are subject to the provisions of ORS 192.

(f) Within two (2) days after the final meeting of the Blackberry Bargaining Council, the Council shall either:

(A) Submit to the Director, for review and approval, a negotiated price or price range effective for the upcoming crop year; or,

(B) Notify the Director that the bargaining representatives cannot arrive at a negotiated price or price range, and suggest to the Director a specified price range for consideration, from which the Director shall approve a price that represents the interests of the state and the industry based on the information and facts available; or,

(C) Terminate the negotiations.

(g) Within two (2) days after the Blackberry Bargaining Council's submission under section (f), the Director shall approve an established price, or reject the parties' negotiated price and direct the parties to continue their negotiations. The Director may request any information deemed necessary from the parties to understand, review and approve the established price. The Director may notify the parties of the decision under this section in writing.

(h) In approving the established price, the Director shall consider the negotiated price reached by the representatives of the growers' association and the blackberry dealers. The Director shall ensure the parties have considered, to the extent practical, blackberry inventories for the respective type of berry under consideration; acres in production; production factors; competitive factors; local, national and world market prices; the influence of imported product on prices; and any other factors the Director deems necessary to approve the established price.

(i) The Director must approve the established price and any adjustments to established prices previously approved by the Director before the established prices shall be implemented by the parties.

(j) The Director shall collect fees from the parties who are participants in the blackberry regulatory program as follows:

(A) Fees may include reimbursement of costs for Department consultation with the Attorney General as this consultation directly relates to the Department's supervision of the regulatory program. Such fees shall be divided evenly between the parties and reimbursed to the Department

(B) The Department shall assess a flat rate fee of \$1,000 for each yearly negotiation meeting supervised by the Department. This fee shall be assessed evenly across all parties or otherwise fairly divided between the parties, such that the dealers pay half of the fee and the growers association pays half of the fee. Other equitable arrangements may be allowed as approved by the Director. The Department may assess additional fees to reimburse the Department any cost or expense that exceeds the flat rate fee. The costs will be documented by the Department, evenly divided between the parties, and collected from the parties. Payment of all fees is to the Department of Agriculture.

Stat. Auth.: SB 409 (2009); ORS 62.846(2)(3)(4)

Stats. Implemented: ORS 62.015, 62.845, 646.535 & 646.740

Hist.: DOA 2-2010, f. 1-13-10, cert. ef. 1-15-10

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

**Rule Caption:** Updates board references and the division's mailing list rule as a result of HB 2950 (2009).

**Adm. Order No.:** BCD 9-2009

**Filed with Sec. of State:** 12-30-2009

**Certified to be Effective:** 1-1-10

**Notice Publication Date:** 12-1-2009

**Rules Amended:** 918-001-0210, 918-005-0010, 918-040-0000

**Subject:** The rules are necessary housekeeping changes to the division's rules as a result of the passage of House Bill 2950 during the 2009 legislative session. The rules update references to the division's seven statutory boards and make changes to the division's mailing list rule, which is required by ORS 183.335(8). The rules also include some non-substantive housekeeping changes that provide clarity and consistency among the division's rules.

**Rules Coordinator:** Shauna M. Parker—(503) 373-7438

### 918-001-0210

#### Division Mailing Lists

This rule governs procedures for placement on the various mailing lists maintained by the division and boards. The procedures in this rule are created under ORS 183.335(8) and the general rulemaking authority of the director in ORS 455.030 and 455.100.

(1) Creation of Interested Parties Mailing Lists for Board Activities. Mailing lists are created for interested people and organizations who want to receive notices and agendas of board meetings for the following:

(a) Electrical and Elevator Board;

(b) Building Codes Structures Board;

(c) Residential and Manufactured Structures Board;

(d) State Plumbing Board;

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- (e) Board of Boiler Rules;
- (f) Mechanical Board; and
- (g) Construction Industry Energy Board.

(2) Creation of Interested Parties Mailing Lists for Rulemaking. Mailing lists are created for interested people and organizations wanting to receive notices of the division's rulemaking activities. The mailing lists are divided into the following program areas:

(a) Electrical List. This list covers rulemaking activities of the Electrical and Elevator Board and Construction Industry Energy Board, where applicable, relating to electrical matters, including the Electrical Safety Law, the Oregon Electrical Specialty Code, and the electrical provisions of the Oregon Residential Specialty Code.

(A) Building officials and members of the boards are automatically on this list.

(B) All municipalities with authority to administer the building code are served notice when the rulemaking involves the adoption or amendment of the code.

(C) Interested parties requesting placement on this list per section (3) of this rule will also be served notice.

(b) Elevator List. This list covers the rulemaking activities of the Electrical and Elevator Board relating to elevators and the **Oregon Elevator Specialty Code**.

(A) Building officials and members of the board are automatically on this list.

(B) All municipalities with authority to administer the building code are served notice when the rulemaking involves the adoption or amendment of the code.

(C) Interested parties requesting placement on this list per section (3) of this rule will also be served notice.

(c) Commercial Structures List. This list covers rulemaking activities of the Building Codes Structures Board and the Construction Industry Energy Board, where applicable, relating to commercial structures and the Oregon Structural Specialty Code.

(A) Building officials and members of the boards are automatically on this list.

(B) All municipalities with authority to administer the building code are served notice when the rulemaking involves the adoption or amendment of the code.

(C) Interested parties requesting placement on this list per section (3) of this rule will also be served notice.

(d) Mechanical List. This list covers the rulemaking activities of the Mechanical Board relating to mechanical matters and the Oregon Mechanical Specialty Code.

(A) Building officials and members of the board are automatically on this list.

(B) All municipalities with authority to administer the building code are served notice when rulemaking involves the adoption or amendment of the code.

(C) Interested parties requesting placement on this list per section (3) of this rule will also be served notice.

(e) Residential Structures List. This list covers rulemaking activities of the Residential and Manufactured Structures Board and the Construction Industry Energy Board, where applicable, relating to residential structures and the Oregon Residential Specialty Code.

(A) Building officials and members of the boards are automatically on this list.

(B) All municipalities with authority to administer the building code are served notice when rulemaking involves the adoption or amendment of the code.

(C) Everyone entitled to notice on the electrical and plumbing lists are also served notice when Oregon Residential Specialty Code rules are involved.

(D) Interested parties requesting placement on this list per section (3) of this rule will also be served notice.

(f) Manufactured Structures and Parks List. This list covers the rulemaking activities of the Residential and Manufactured Structures Board and the Construction Industry Energy Board, where applicable, relating to manufactured dwellings, recreational vehicles, manufactured dwelling parks, recreation parks, organizational camps, and picnic parks.

(A) Building officials and members of the boards are automatically on this list.

(B) All municipalities with authority to administer the building code are served notice when the rulemaking involves the adoption or amendment of the code.

(C) Interested parties requesting placement on this list per section (3) of this rule will also be served notice.

(g) Plumbing List. This list covers rulemaking activities of the State Plumbing Board relating to plumbing activities, including the **Oregon Plumbing Specialty Code** and the plumbing provisions of the **Oregon Residential Specialty Code**.

(A) Building officials and members of the board are automatically on this list.

(B) All municipalities with authority to administer the building code are served notice when the rulemaking involves the adoption or amendment of the code.

(C) Interested parties requesting placement on this list per section (3) of this rule will also be served notice.

(h) Boiler List. This list covers rulemaking activities of the Board of Boiler Rules relating to boiler and pressure vessel activities and the Oregon Boiler and Pressure Vessel Specialty Code.

(A) Building officials and members of the board are automatically on this list;

(B) All municipalities with authority to administer the building code are served notice when the rulemaking involves the adoption or amendment of the code.

(C) Interested parties requesting placement on this list per section (3) of this rule will also be served notice.

(i) Amusement Ride and Device List. This list includes amusement device and ride owners and amusement parks.

(A) All municipalities with authority to administer the building code are served notice when rulemaking involves the adoption or amendment of the code.

(B) Interested parties requesting placement on this list per section (3) of this rule will also be served notice.

(j) General Rulemaking List. This list covers the rulemaking activities of the division that are not specific to a code or program.

(A) Building officials are automatically on this list.

(B) All municipalities with authority to administer the building code are also on this list.

(C) Interested parties requesting placement on this list per section (3) of this rule will also be served notice.

(k) Illegal Drug Manufacturing Site List. Interested parties referenced in OAR chapter 918, division 10 are automatically on this list.

(3) Mailing List Subscription. The division will add a person or organization to its interested parties mailing lists if the person or organization:

(a) Subscribes to the division's online e-mail notification system through the division's Web site at [www.bcd.oregon.gov](http://www.bcd.oregon.gov); or

(b) Requests in writing to receive notification materials by mail. The request must include the full name of the person or organization, a mailing address, and must indicate the board or rulemaking program mailing list the interested party would like to subscribe to.

(4) The division will send notices to those on the e-mail notification list described in (3)(a) of this rule and mail paper copies to those on the hard-copy notification list described in (3)(b) of this rule. These notification materials are also available on the division's Web site at [www.bcd.oregon.gov/rules.html](http://www.bcd.oregon.gov/rules.html).

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 455.110

Stats. Implemented: ORS 183.335

Hist.: BCA 23-1992, f. 12-24-92, cert. ef. 1-1-93; BCD 1-1998, f. 1-28-98, cert. ef. 4-1-98; BCD 18-2004, f. 9-30-04, cert. ef. 10-1-04; BCD 9-2009, f. 12-30-09, cert. ef. 1-1-10

## 918-005-0010

### Division Organization

(1) The Building Codes Division coordinates the activities of and has general supervision over seven advisory boards, as follows:

(a) Board of Boiler Rules, established under ORS 480.535;

(b) Electrical and Elevator Board, established under ORS 455.138;

(c) Residential and Manufactured Structures Board, established under ORS 455.135;

(d) State Plumbing Board, established under ORS 693.115;

(e) Building Codes Structures Board, established under ORS 455.132;

(f) Mechanical Board, established under ORS 455.140; and

(g) Construction Industry Energy Board, established under chapter 567, 2009 Oregon Laws.

(2)(a) Appointing authority for the six boards listed in subsections (1)(a) through (f) of this rule rests with the Governor and requires Senate confirmation.

(b) Membership for the Construction Industry Energy Board includes two members selected by the Electrical and Elevator Board, two members selected by the Residential and Manufactured Structures Board, two members selected by the Building Codes Structures Board, and one member appointed by the director of the State Department of Energy.

(3) The division is located at 1535 Edgewater N.W., Salem, OR 97304.

Stat. Auth.: ORS 455.110

Stats. Implemented: ORS 455.110

Hist.: BCA 22-1989, f. 7-19-89, cert. ef. 8-1-89; BCD 1-1998, f. 1-28-98, cert. ef. 4-1-98; BCD 9-2009, f. 12-30-09, cert. ef. 1-1-10

## 918-040-0000

### Purpose and Scope

The rules in OAR chapter 918, division 40 establish consistent protocols for the administration of activities carried out by the boards covered under these rules. These rules apply to the Electrical and Elevator Board, the Building Codes Structures Board, the Mechanical Board, the Residential and Manufactured Structures Board, the Board of Boiler Rules, the State Plumbing Board, and the Construction Industry Energy Board.

# ADMINISTRATIVE RULES

Stat. Auth: ORS 183.335  
Stats. Implemented: ORS 455.144  
Hist.: BCD 14-2006, f. & cert. ef. 12-29-06; BCD 9-2009, f. 12-30-09, cert. ef. 1-1-10

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**Rule Caption:** Aligns boiler and elevator inspection and permit fee rules with changes implemented in HB 2200.

**Adm. Order No.:** BCD 10-2009

**Filed with Sec. of State:** 12-30-2009

**Certified to be Effective:** 1-1-10

**Notice Publication Date:** 12-1-2009

**Rules Adopted:** 918-400-0662

**Rules Amended:** 918-225-0240, 918-225-0600, 918-225-0620, 918-225-0630, 918-400-0270, 918-400-0280, 918-400-0340, 918-400-0380, 918-400-0390, 918-400-0395, 918-400-0445, 918-400-0525, 918-400-0630, 918-400-0660, 918-400-0740, 918-400-0800

**Rules Repealed:** 918-225-0605, 918-225-0610

**Subject:** The rules implement statutory changes that resulted from the passage of House Bill 2200 during the 2009 legislative session by updating the boiler and elevator permitting and inspection fees to align with the new statutory fee amounts and requirements. The rules also include housekeeping changes that improve readability and provide clarity and consistency among the division's rules.

**Rules Coordinator:** Shauna M. Parker—(503) 373-7438

## 918-225-0240

### Definitions

As used in OAR chapter 918, division 225, unless the context requires otherwise:

(1) "Agricultural Purposes" means:

(a) Sowing, tending, and harvesting of products of the soil grown under natural conditions;

(b) Raising of poultry or fowl;

(c) Pasturage or raising of livestock or other animals; or

(d) Original processing of the farm product, but not the processing of the product of a different operator, or reprocessing work as freezing, canning, or packing if performed substantially for commercial purposes.

(2) "Available" to determine inspection fees at cost, means the vessels must be due for inspection in the year the notification is applicable, and must all be ready for inspection at the time designated by the inspector.

(3) "Board" is defined in ORS 480.515(2).

(4) "Boiler Room" means any enclosed room or designated space within a building, intended by design or by usage to contain a boiler that is connected and available for use. A boiler located in an area not meeting the definition of "boiler room" under OAR 918-225-0465 shall apply to any space within 20 feet of any burner.

(5) "Building Service Piping" means piping systems operating at or less than 150 psig steam; and water at or less than 160 psig and 250o F as described in ANSI/ASME Standard B31.9.

(6) "Chief Inspector" means the inspector appointed by the director pursuant to ORS 480.565(1).

(7) "Farm" means an area of land:

(a) Located in a rural district;

(b) Of sufficient size to generally be considered as a farm in its locale; and

(c) Devoted primarily to tillage and raising crops under natural conditions, or to raising animals, fowl, or poultry.

(8) "Emergency" as used in ORS 480.630(6) means an unplanned circumstance requiring immediate repair, installation, replacement, or shutdown because of risk to health, life, or property.

(9) "Hobby" or "Demonstration" means recreational or other noncommercial use.

(10) "Immediate Safety Hazard" means hazardous conditions exist requiring immediate correction to a boiler, pressure vessel, or pressure piping system to preserve the safety of people or property.

(11) "Installer," as used in the boiler or pressure vessel laws and rules, means the person making the water, steam, air, refrigerant, or other product piping connection to the boiler or pressure vessel. A person who transports or merely positions the boiler or pressure vessel is not an "installer." An electrician making electrical connections is not an "installer."

(12) "National Board" means the National Board of Boiler and Pressure Vessel Inspectors.

(13) "Operating" means any vessel connected and ready for service.

(14) "Person" means any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character.

(15) "Place of Public Assembly" means a building used or held for use, in whole or in part, for worship; health treatment; rest, recuperation, or retirement living; child care nurseries or institutions; public meetings; education; instruction; entertainment; eating; recreation; or awaiting transportation.

(16) "Pressure Piping" means piping systems and components under the scope of ASME B31.1, B31.3, B31.5, and B31.9.

(17) "Pressure Relief Valve" means a valve activated by inlet static pressure which opens in proportion to the increase in pressure over the opening pressure range. Only ASME approved valves are allowed under the boiler rules.

(18) "Pressure Vessel" is defined in ORS 480.515(12).

(19) "Process Piping Inspector" means the owner's inspector, for the inspection of ASME B31.3 Process Piping, Category "M" fluid service only.

(20) "Psig" means pounds per square inch gauge pressure.

(21) "Related Appurtenance" is defined in ORS 480.515(13).

(22) "Safety Valve" means a valve activated by inlet static pressure and characterized by rapid opening or pop action. Only ASME approved valves are allowed under the boiler rules.

(23) "Same Location," to determine inspection fees at cost, means that all vessels are within 2,000 feet of one another.

(24) "Service of Process" means deposit in the U.S. mail a copy of a notice addressed to the respondent at the respondent's last known address.

(25) "Single Family Dwelling" means a one-family dwelling structure.

(26) "Structure" means a building or shed with a roof and enclosed on the sides 75 percent or more.

(27) "Traction Boiler" means a boiler constructed before January 1, 1961, designed to operate or pull equipment, or to convert steam power into a flywheel energy driving apparatus such as a thresher, road roller, or grinding equipment.

(28) "Vessel That is Considered Subject to Corrosion or Erosion" means the vessel contains or is intended to contain contents having a corrosive or erosive effect on any portion of the vessel. The use of glass linings leaves a vessel subject to corrosion unless all portions of the vessel are impervious to the corrosive or erosive effects of the contents.

Stat. Auth.: ORS 455.030 & 480.545

Stats. Implemented: ORS 480.525, 480.545, 480.550, 480.560 & 480.565

Hist.: DC 17, f. 7-31-72, ef. 8-15-72; DC 3-1982, f. & ef. 2-3-82; DC 1-1984, f. & ef. 1-5-84; BCA 4-1989, f. & cert. ef. 4-17-89; Renumbered from 814-025-0003; BCA 4-1989, f. & cert. ef. 4-17-89; BCA 5-1991, f. & cert. ef. 3-15-91; BCA 36-1993, f. 12-30-93, cert. ef. 1-1-94; Renumbered from 918-225-0005; BCD 18-1997, f. 12-3-97, cert. ef. 1-1-98; BCD 26-1998, f. 12-30-98, cert. ef. 1-1-99; BCD 36-2000, f. 12-29-00, cert. ef. 1-1-01; BCD 4-2003, f. & cert. ef. 3-14-03; BCD 17-2005(Temp), f. & cert. ef. 7-12-05 thru 9-30-05; BCD 20-2005, f. 9-15-05, cert. ef. 10-1-05; BCD 14-2007, f. 12-28-07 cert. ef. 1-1-08; BCD 10-2009, f. 12-30-09, cert. ef. 1-1-10

## 918-225-0600

### Permits

(1) An installation permit is required before installing, altering, or repairing a nonexempt boiler or pressure vessel. Fees for installation permits are non-refundable.

(2) An operating permit or a temporary operation authorization is required before placing a nonexempt vessel into operation.

(3) An installation permit fee includes two inspections of the boiler or pressure vessel. An operating permit fee includes one external inspection of the boiler or pressure vessel and one internal inspection when both are required. If an inspection is scheduled, and the inspector is at the site but the boiler or pressure vessel is not ready or cannot be accessed, the rescheduled inspection will be at an additional cost. The fee for such inspections is the hourly rate specified in ORS 480.605.

(4) Permits to operate boilers or pressure vessels shall be issued periodically according to vessel type, based on the schedule established by the division in Table 1-A.

(5) Operating and installation permit fees are as shown in Table 3-B.

(6)(a) Operating permit fees not received within 90 days of the billing date may be considered delinquent and subject to a late penalty of double the fee amount. It is the equipment owner's responsibility to maintain a current operating permit. This responsibility includes notifying the division of address and other billing information changes. Late penalties may only be waived under exceptional circumstances.

(b) All waiver requests must be submitted in writing and must clearly state the reason for the request. A waiver may be granted for all or part of the additional fee.

(7) Prepaid permit application forms do not authorize work until the contractor provides the required information to the division for review and approval. Prior to beginning the intended installation, repair, or alteration, the contractor must notify the deputy or special inspector who will inspect the work. Work may not begin until the inspector has reviewed and approved the work to be performed.

(8) Upon receipt of permit approval:

(a) The permit must be posted at the job site before beginning the work; or

(b) The approved permit number must be posted at the job site and signed by the contractor.

(9) A permit issued under this rule is not transferable.

(10) This rule does not change the provisions for emergency permits in ORS 480.630(6). It is recommended, but not required, that emergency permits be reviewed and coordinated with the inspector responsible for inspecting the completed work.

NOTE: Table 1-A, Boiler and Pressure Vessel Operating Permit Periods, and Table

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3-B, Boiler and Pressure Vessel Permit Fees, are available on the division's Web site at <<http://www.bcd.oregon.gov/rules.html#oar>>.  
Stat. Auth.: ORS 480.585, 480.595 & 480.605  
Stats. Implemented: ORS 480.585, 480.595, 480.605 & 480.630  
Hist.: BCA 36-1993, f. 12-30-93, cert. ef. 1-1-94; BCD 18-1997, f. 12-3-97, cert. ef. 1-1-98; BCD 14-2007, f. 12-28-07, cert. ef. 1-1-08; BCD 4-2009(Temp), f. & cert. ef. 7-16-09 thru 1-1-10; BCD 10-2009, f. 12-30-09, cert. ef. 1-1-10

## 918-225-0620

### Bulk Rate Permits

(1) Bulk rate permits may be granted if there is a quantity of either six (6) or more boilers or six (6) or more pressure vessels at the same location.

(2) To obtain bulk rate permits, the owner or user must make a written request to the division at least 30 days before the expiration of existing operating permits.

(3) If a bulk rate site requires two or more inspections during an inspection cycle, the division may rescind bulk rate permits and charge the full operating permit fees, as provided in Table 3-B. Inspection cycles are listed in Table 1-B.

**NOTE:** Table 1-B, Boiler & Pressure Vessel Inspection Cycles, and Table 3-B, Boiler & Pressure Vessel Permit Fees, are available on the division's Web site at <<http://www.bcd.oregon.gov/rules.html#oar>>  
Stat. Auth.: ORS 480.600  
Stats. Implemented: ORS 480.600  
Hist.: DC 17-1982, f. 7-31-72, ef. 8-15-72; Renumbered from 814-025-0050; BCA 36-1993, f. 12-30-93, cert. ef. 1-1-94; Renumbered from 918-225-0120; BCD 10-2009, f. 12-30-09, cert. ef. 1-1-10

## 918-225-0630

### Special Fee for Dryer Permits

The operating permit fee for dryer rolls for a paper machine is \$5.50 per roll, if the machine is under the inspection requirements of ORS 480.600(2).

Stat. Auth.: ORS 480.600  
Stats. Implemented: ORS 480.600  
Hist.: DC 10-1981, f. & ef. 7-6-81; Renumbered from 814-025-0051; BCA 36-1993, f. 12-30-93, cert. ef. 1-1-94; Renumbered from 918-225-0125; BCD 18-1997, f. 12-3-97, cert. ef. 1-1-98; BCD 36-2000, f. 12-29-00, cert. ef. 1-1-01; BCD 4-2009(Temp), f. & cert. ef. 7-16-09 thru 1-1-10; BCD 10-2009, f. 12-30-09, cert. ef. 1-1-10

## 918-400-0270

### Definitions, Cross Reference

- (1) Statutory definitions for the elevator laws are in ORS 460.005.
- (2) Electrical definitions are in ORS 479.530.
- (3) Code definitions are in Section 1.3 of the adopted Oregon Elevator

Specialty Code (ASME A17.1).

Stat. Auth.: ORS 460.085  
Stats. Implemented: ORS 460.085  
Hist.: BCD 18-1995, f. & cert. ef. 12-15-95; BCD 2-2005, f. 3-16-05, cert. ef. 4-1-05; BCD 10-2009, f. 12-30-09, cert. ef. 1-1-10

## 918-400-0280

### Board-Created Definitions

For the purposes of OAR chapter 918, division 400, unless the context requires otherwise, the following definitions are adopted:

(1) "Alteration" means a change of original design or operation through modernization, replacement of components or assemblies, or upgrade to existing equipment.

(2) "ANSI" means the American National Standards Institute.

(3) "Apprentice" means any person who is enrolled in an approved elevator apprenticeship program.

(4) "ASME" means the American Society of Mechanical Engineers.

(5) "Board" means the Electrical and Elevator Board.

(6) "BOLI" means the Bureau of Labor and Industries Apprenticeship and Training Division.

(7) "Conveyance" is the industry term for elevator and includes, but is not limited to, escalator, man lift, inclined elevator, dumbwaiter, lowerator, platform hoist, material lift, moving walk, platform or wheelchair lift, and chair lift.

(8) "Electrical equipment" means any device or group of components that is connected to a source of electrical power. Such devices include, but are not limited to, electro-mechanical switches, controllers, motors, car and hall fixtures, lighting fixtures, or any other component that has exposed electrical parts or connections either by design or when protective covers are removed.

(9) "Elevator Lobby" means the area in front of an elevator for waiting, boarding, disembarking, loading, and unloading.

(10) "Equipment testing" means safety tests required by the adopted safety standard and required to be performed by properly licensed elevator technicians.

(11) "Industrial plant" means a facility engaged in a manufacturing endeavor to make a finished product using raw materials, especially on a large industrial scale wherein elevators are located and maintained by authorized plant personnel.

(12) "Interactive testing and maintenance" means that which requires interaction with the technical components of controllers and machinery and except where allowed by law, interactive testing and maintenance checks must only be performed by licensed elevator personnel. This includes, but is not limited to, car and counterweight safety tests, pressure relief tests, buffer

tests, brake tests, unintended car movement, and ascending car over speed tests.

(13) "License" means a document that signifies competency to install, repair, alter, or maintain elevator mechanical equipment within a particular field in the elevator industry.

(14) "Maintenance" means the renewal of operating parts, cleaning, lubricating, and adjusting existing elevator equipment to ensure proper and safe operation as required by code.

(15) "Mitigating Circumstances" are caused by a lack of materials or labor and are beyond the reasonable control of a building owner or contractor.

(16) "Modernization" means replacing elevator equipment with equipment that is not of the same design.

(17) "Operational testing and maintenance" means that which requires measurement, observation, cleaning, and lubricating equipment that does not require disassembly or opening the equipment and must be permitted to be performed by authorized or licensed elevator personnel. This includes, but is not limited to, fire service tests, step/skirt index tests, cleaning and lubricating exposed surfaces, starting and stopping of equipment through normal means, smoke and heat detector tests, relamping and repairing car lighting fixtures, and monthly monitoring of hydraulic oil levels.

(18) "Operator" means an individual employed by a general contractor, elevator contractor, or owner to operate an elevator under a construction use permit.

(19) "Reciprocating conveyor" means:

(a) A self contained, power driven stationary device that moves objects on a platform equipped with safety guards; or

(b) A prepackaged, self contained unit, that moves individuals in a residence on a motorized chair, along a predetermined horizontal, inclined, or vertical path between loading and discharge points.

(A) "Prepackaged" means a reciprocating conveyor sold as a unit that:

(i) Requires no electrical installations as defined by ORS 479.530;

(ii) Requires minimal assembly; and

(iii) Is installed on a straight run stairway.

(B) For the purposes of this section, the definition does not include vertical wheelchair lifts.

(20) "Repair" means the restoration of an elevator to its original intended design, but not changing its operation or intended use.

(21) "Term" means a set period for each phase of training within an approved apprenticeship program.

(22) "Transferable experience" means experience, knowledge, and aptitude gained on equipment not governed by the Elevator Safety Law but is similar in construct and application to the types of equipment associated with the licensing requirements herein.

(23) "Vertical Reciprocating Lift" means a power driven, isolated, self contained stationary lift that meets the requirements of the **Oregon Elevator Specialty Code, Vertical Reciprocating Lift Code.**

(24) "Waiver" or "Variance" means a site-specific exception from code requirement granted under ORS 460.085.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 460.085

Stats. Implemented: ORS 460.085

Hist.: DC 25-1982, f. & ef. 12-16-82; Renumbered from 814-030-0003; BCD 18-1995, f. & cert. ef. 12-15-95; Renumbered from 918-400-005; BCD 13-1999, f. & cert. ef. 10-1-99; BCD 25-2000, f. 9-29-00, cert. ef. 10-1-00; BCD 21-2002(Temp), f. 8-30-02, cert. ef. 9-1-02 thru 2-27-03; BCD 34-2002, f. 12-20-02, cert. ef. 1-1-03; BCD 3-2003, f. 2-28-03, cert. ef. 3-1-03; BCD 17-2007, f. 12-28-07, cert. ef. 1-1-08; BCD 17-2008, f. 9-26-08, cert. ef. 10-1-08; BCD 10-2009, f. 12-30-09, cert. ef. 1-1-10

## 918-400-0340

### Elevator Contractor License

A person seeking issuance or renewal of an elevator contractor license must:

(1)(a) Provide a list of the company's employees and their license numbers issued under ORS 460.057, 460.059, 460.061, or 479.630 who will be performing the installation, alteration, repair, and maintenance of elevator mechanical equipment; or

(b) Provide a list of employees who have applied and qualify for licensure under ORS 460.057, 460.061, or 479.630.

(2) Provide written documentation from the company's insurance carrier that the applicant is insured as an elevator contractor. The certificate of insurance, or its equivalent, required by this section must:

(a) Be a certified copy or original on the standard form issued by the insurance carrier;

(b) Include the insurance policy number, the insured's name, and the insurance company's name, address, and telephone number;

(c) Have clear information that the insurance company recognizes the insured as an elevator contractor and that the policy will cover the scope of elevator-related work in which the contractor is engaged; and

(d) Show proof of authorization from the insurance carrier that the division will be given notice upon any change to or cancellation of the insurance policy.

(3) Provide verification of the State Construction Contractors Board registration as an elevator company; and

(4) Pay applicable fees as required by OAR 918-400-0800.

# ADMINISTRATIVE RULES

Stat. Auth. ORS 460.085  
Stats. Implemented: ORS 460.045 & 479.630  
Hist.: BCD 25-2000, f. 9-29-00, cert. ef. 10-1-00; BCD 21-2002(Temp), f. 8-30-02, cert. ef. 9-1-02 thru 2-27-03; BCD 34-2002, f. 12-20-02, cert. ef. 1-1-03; BCD 12-2004, f. 8-20-04, cert. ef. 10-1-04; BCD 12-2004, f. 8-20-04, cert. ef. 10-1-04; BCD 17-2007, f. 12-28-07, cert. ef. 1-1-08; BCD 10-2009, f. 12-30-09, cert. ef. 1-1-10

## 918-400-0380

### Limited Elevator and Reciprocating Conveyor Licenses

#### (1) Limited Elevator Mechanic License

(a) Pursuant to ORS 460.057, any person installing, altering, repairing, or maintaining elevator mechanical equipment prior to October 23, 1999, and who does not otherwise qualify for licensure herein, may be issued a limited elevator mechanic's license commensurate with their prior verifiable work experience if they apply in the manner established by the division in OAR chapter 918, division 30.

(b) The following may not be used to determine prior experience:

(A) Work on equipment not regulated by the Elevator Safety Law unless such prior experience is considered to be transferable experience gained prior to October 23, 1999;

(B) The installation, alteration, repair, or maintenance of equipment installed in Oregon that was not lawfully permitted as required by the Elevator Safety Law;

(C) Work in Oregon while employed by a company not lawfully licensed as an elevator contractor in Oregon or not lawfully registered with the Construction Contractors Board; or

(D) Experience gained in violation of any other state law.

(c) Experience gained may be considered based on the following. Applicants must have been regularly engaged in the installation, alteration, repair, or maintenance on the type, or types, of equipment commensurate with the license being sought based on:

(A) Minimum of 4,000 hours "substantial experience" lawfully obtained on equipment covered by a limited elevator mechanic's license;

(B) "Substantial experience" for purposes of this rule, means verified evidence in the form of two separate notarized affidavits. One from an Oregon business attesting the person has been involved in 40 or more elevator projects and one from a CPA attesting that the business had at least \$75,000 of gross business prior to October 23, 1999. Nothing in this rule prevents an applicant from faxing or scanning and e-mailing documents.

(d) A license under this rule is limited to the scope of work for which the person has provided work experience acceptable to the division.

(2) Reciprocating Conveyor Mechanic License. Applicant must demonstrate 3,000 hours of "lawful work experience," as defined in OAR chapter 918, division 30, in the installation, alteration, repair, and maintenance of reciprocating conveyors. An applicant must apply for the license as required under OAR chapter 918, division 30.

(3) Restricted Reciprocating Conveyor Mechanic License. Applicant must apply to the division as required under OAR chapter 918, division 30.

(4) Exemption from Limited Elevator and Reciprocating Conveyor Licensing Requirements. A person installing the mechanical portion of a reciprocating conveyor defined in OAR 918-400-0280(19)(b) is not required to hold any kind of mechanic's license under the Elevator Safety Law. This section does not exempt the installation of reciprocating conveyors defined in OAR 918-400-0280(19)(b) from other applicable provisions of the Elevator Safety Law, including ORS 460.045.

Stat. Auth.: ORS 460.057, 460.061 & 460.085

Stats. Implemented: ORS 460.057 & 460.061

Hist.: BCD 21-2002(Temp), f. 8-30-02, cert. ef. 9-1-02 thru 2-27-03; BCD 34-2002, f. 12-20-02, cert. ef. 1-1-03; BCD 12-2004, f. 8-20-04, cert. ef. 10-1-04; BCD 8-2005, f. & cert. ef. 4-1-05; BCD 16-2006(Temp), f. 6-30-06, cert. ef. 7-1-06 thru 12-28-06; BCD 13-2006, f. 9-29-06, cert. ef. 10-1-06; BCD 17-2007, f. 12-28-07, cert. ef. 1-1-08; BCD 10-2009, f. 12-30-09, cert. ef. 1-1-10

## 918-400-0390

### Apprentice Scope of Work

A person with an apprentice license issued under OAR 918-400-0385 must:

(1) Work consistent with the apprenticeship committee's requirements under ORS chapter 660 and these rules; and

(a) Engage only in cleaning, lubrication, painting, relamping fixtures, and replacing of comb plate teeth of existing installations with limited supervision after completing:

(A) At least 2,000 hours (12 months) of work experience;

(B) The appropriate related instruction for two periods; and

(C) Is evaluated and authorized to do this type of work by the apprenticeship committee; or

(b) The apprentice engages only in installation, alteration, maintenance, and repair with limited supervision after completing:

(A) 4,000 hours of work experience;

(B) The appropriate related classroom instruction; and

(C) Is evaluated and authorized by the committee.

(2) As apprentices progress through each phase, they may be authorized to participate in work processes of the preceding phase provided they have been evaluated and authorized by the apprenticeship committee to do the specific type of work.

(3) A person enrolled in a board-approved apprenticeship program, who has been issued an apprentice card by BOLI, shall be considered licensed under ORS 460.059.

Stat. Auth.: ORS 460.059 & 660

Stats. Implemented: ORS 460.059, 460.085, & 479.630

Hist.: BCD 21-2002(Temp), f. 8-30-02, cert. ef. 9-1-02 thru 2-27-03; BCD 34-2002, f. 12-20-02, cert. ef. 1-1-03; BCD 12-2004, f. 8-20-04, cert. ef. 10-1-04; BCD 10-2009, f. 12-30-09, cert. ef. 1-1-10

## 918-400-0395

### Apprenticeship Program Requirements

In order to obtain board approval of an individual elevator apprentice program, the following requirements must be met:

(1)(a) On-the-job training installing, repairing, altering, and maintaining elevator mechanical equipment in the following work categories and minimum hours:

(A) Basic construction and maintenance safety and tools — 150 hours;

(B) Blue print reading — 150 hours;

(C) Material handling — hoisting and rigging — 150 hours;

(D) Guide rail systems installation and maintenance — 150 hours;

(E) Drive machines and systems; overhead equipment including beams and sheaves — 150 hours;

(F) Hydraulic systems and control valves — 150 hours;

(G) Car frames, platforms, and enclosures — 150 hours;

(H) Doors, entrances, and operators — 150 hours;

(I) Adjusting elevator systems — 150 hours;

(J) Maintenance and periodic testing requirements — 150 hours;

(K) Alteration of existing equipment — 150 hours;

(L) Structure and operation of escalators and moving walks — 150 hours; and

(M) Installing related equipment such as dumbwaiters, wheelchair lifts, and material lifts — 150 hours.

(b) Total Hours Required. Total work experience must be at least 4,000 hours. No more than 300 percent credit is allowed under paragraphs (A) through (M) for any one subject.

(2) Required Educational Training. 144 hours of classroom instruction must be provided each year covering the following subjects. Individuals are required to obtain grades of "C" or better in graded classes and a "pass" in non-graded classes for the following subjects:

(a) Basic construction and maintenance safety;

(b) Blueprint reading;

(c) Code-related requirements;

(d) Equipment testing procedures;

(e) Guide rail systems installation and maintenance;

(f) Pit equipment and maintenance;

(g) Car frames, platforms, and enclosures;

(h) Hoisting and rigging;

(i) Overhead equipment including beams and sheaves;

(j) Hoist ropes and roping procedures;

(k) Structure and operation of escalators and moving walks;

(l) Drive machines and components;

(m) Hydraulic systems and control valves; and

(n) Traction machines and components.

Stat. Auth.: ORS 460.059

Stats. Implemented: ORS 460.059, 460.085, & 479.630

Hist.: BCD 21-2002(Temp), f. 8-30-02, cert. ef. 9-1-02 thru 2-27-03; BCD 34-2002, f. 12-20-02, cert. ef. 1-1-03; BCD 12-2004, f. 8-20-04, cert. ef. 10-1-04; BCD 10-2009, f. 12-30-09, cert. ef. 1-1-10

## 918-400-0445

### Code References

(1) Where an **Oregon Elevator Specialty Code** refers to the latest edition of another code, has words of similar import, or does not provide a fixed edition adoption date, the reference must be to the applicable code in place on the same date the same provision of the **Oregon Elevator Specialty Code** was adopted.

(2) References to the following codes in the Oregon Elevator Specialty Code mean:

(a) "**NFPA 70, National Electrical Code**" is replaced by the "Oregon Electrical Specialty Code";

(b) "**International Residential Code**" is replaced by the "Oregon Residential Specialty Code"; and

(c) "**International Building Code**" is replaced with the "**Oregon Structural Specialty Code.**"

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 455.030 & 460.085

Stats. Implemented: ORS 460.085

Hist.: BCD 181995, f. & cert. ef. 12-15-95; BCD 13-1999, f. & cert. ef. 10-1-99, Renumbered from 918-400-0510; BCD 10-2009, f. 12-30-09, cert. ef. 1-1-10

## 918-400-0525

### Plan Review Requirements

Plans and pertinent data submitted to the department under ORS 460.048 must include proof that the elevator equipment meets the **Oregon Elevator Specialty Code** by providing the following information:

(1) Electrical product certification by providing;



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(a) The listing or certification number and identification of the approved laboratory that tested the equipment;

(b) When applicable, date and identification of the electrical special deputy who certified the equipment to the Oregon Elevator Specialty Code electrical requirement; or

(c) Proof that requests for listing or certification are pending.

(2) For the purpose of complying with plan submittal requirements of ORS 460.048, and when applicable to the type of equipment being proposed, a complete set of drawings must include:

(a) Elevation view;

(b) Plan view;

(c) Machine room layout (when applicable to the type of equipment);

(d) Cab and fixture detail;

(e) Hoistway entrance detail; and

(f) Electrical straight line wiring diagrams showing, as a minimum, safety circuits, normal and final limit circuits, and door lock circuits, which must include circuitry required by the **Oregon Elevator Specialty Code**.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 460.085

Stats. Implemented: ORS 460.048

Hist.: BCD 21-1994, f. 9-13-94, cert. ef. 9-15-94; BCD 18-1995, f. & cert. ef. 12-15-95; Renumbered from 918-400-0120; BCD 13-1999, f. & cert. ef. 10-1-99, Renumbered from 918-400-0610; BCD 3-2003, f. 2-28-03, cert. ef. 3-1-03; BCD 2-2005, f. 3-16-05, cert. ef. 4-1-05; BCD 10-2009, f. 12-30-09, cert. ef. 1-1-10

## 918-400-0630

### Provisional Permits for Elevators Under Construction

(1) A construction-use (workman's) permit is only issued to an elevator contractor while the elevator is under construction and may be granted under the following conditions:

(a) The elevator must only be used for transportation of workers and materials necessary for the physical construction and inspection of the site and may not be used by the general public;

(b) Notification must be given to the division before making any elevator changes, except those necessary to complete construction of the elevator;

(c) The installation meets all requirements of the **Oregon Elevator Specialty Code**;

(d) An operator is provided for all elevator operations unless the elevator meets all requirements for normal operations; and

(e) The provisional permit must be:

(A) Specific to a particular elevator; and

(B) Attached to the car enclosure in plain view.

(2) Notwithstanding any expiration date placed on a provisional permit, the permit automatically terminates upon issuance of an operating permit.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 460.085

Stats. Implemented: ORS 460.055

Hist.: BCD 18-1995, f. & cert. ef. 12-15-95; BCD 13-1999, f. & cert. ef. 10-1-99, Renumbered from 918-400-0450; BCD 3-2003, f. 2-28-03, cert. ef. 3-1-03; BCD 2-2005, f. 3-16-05, cert. ef. 4-1-05; BCD 10-2009, f. 12-30-09, cert. ef. 1-1-10

## 918-400-0660

### Operating Permits

Operating permits that expire on or before September 30, 2007 are not affected by these rules.

(1) Operating permits are issued periodically based on the inspection intervals established by the division in **Table 1-A**, effective October 1, 2007.

(2) The division uses the following criteria to set elevator inspection intervals, which may include but are not limited to the following:

(a) Accidents and injuries;

(b) Commercial and public assembly structures;

(c) Special residency occupancies, schools, hospitals;

(d) Type of elevator;

(e) Passenger or freight conveyances;

(f) Construction only purpose elevators; and

(g) Environmental conditions.

(3) The division may refuse to issue an operating permit if:

(a) Inspections are not satisfactorily completed; or

(b) Permit fees have not been received.

(4) The elevator-operating permit, or copy of the permit, must be posted in clear view in the elevator. A sign may be substituted providing the sign indicates the on-site location where the actual operating permit may be inspected during normal business hours.

**NOTE:** Table 1-A, Elevator Inspection Frequencies, is available on the division's

Web site at <<http://www.bcd.oregon.gov/rules.html#oar>>.

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

Stat. Auth.: ORS 460.085

Stats. Implemented: ORS 460.055, 460.065, 460.085, 460.125

Hist.: DC 25-1982, f. & ef. 12-16-82; Renumbered from 814-030-0040; BCA 41-1991(Temp), f. 12-13-91, cert. ef. 12-15-91; BCA 7-1992, f. & cert. ef. 4-10-92; BCD 18-1995, f. & cert. ef. 12-15-95; Renumbered from 918-400-0065; BCD 13-1999, f. & cert. ef. 10-1-99, Renumbered from 918-400-0420; BCD 8-2006, f. 6-30-06, cert. ef. 7-1-06; BCD 8-2007, f. 7-13-07, cert. ef. 10-1-07; BCD 10-2009, f. 12-30-09, cert. ef. 1-1-10

## 918-400-0662

### Renewals

(1) Operating permit fees not received within 90 days of the billing date may be considered delinquent and subject to a late penalty of double the fee

amount. It is the equipment owner's responsibility to maintain a current operating permit. This responsibility includes notifying the division of address and other billing changes. Late penalties may only be waived under exceptional circumstances.

(2) All waiver requests must be submitted in writing and must clearly state the reason for the request. A waiver may be granted for all or part of the additional fee.

Stat. Auth.: ORS 460.085

Stats. Implemented: ORS 460.165

Hist.: BCD 10-2009, f. 12-30-09, cert. ef. 1-1-10

## 918-400-0740

### Taking Elevators Out of Service

Except as provided in OAR 918-400-0275, a person wishing to take an elevator out of service must:

(1) Within 30 days of taking an elevator out of service, notify the division in writing of the date the elevator was taken out of service; and

(2) Within 12 months from the date the elevator is taken out of service, disable it as an "installation placed out of service," described in the **Oregon Elevator Specialty Code**.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 460.085

Stats. Implemented: ORS 460.085

Hist.: BCD 18-1995, f. & cert. ef. 12-15-95; BCD 13-1999, f. & cert. ef. 10-1-99, Renumbered from 918-400-0560; BCD 3-2003, f. 2-28-03, cert. ef. 3-1-03; BCD 2-2005, f. 3-16-05, cert. ef. 4-1-05; BCD 10-2009, f. 12-30-09, cert. ef. 1-1-10

## 918-400-0800

### Fees

(1) Subject to section (2) of this rule, the following elevator fees are adopted effective July 1, 2009 under ORS 460.165:

(a) Elevator contractor's license, \$585 for application or renewal;

(b) Plan reviews, when required, \$78;

(c) Operating permits for:

(A) Dumbwaiters, sidewalk elevators, residential elevators, residential inclinators, or subveyors, \$60;

(B) Escalators, lowerators, manlifts, stagelifts, inclined elevators, platform hoists, or moving walks, \$98;

(C) Power-driven elevators with a four-floor rise or under, \$88;

(D) Power-driven elevators with over a four-floor rise, but under a 10-floor rise, \$108;

(E) Power-driven elevators with a 10-floor rise or over, but under a 20-floor rise, \$134;

(F) Power-driven elevators with a 20-floor rise or over, \$157.

(d) Reinspections on a mechanism in section (1)(c) of this rule made by request or in continued existence of a defect, \$75;

(e) For special inspections, testing, consultations, site visits, or other services for which no fee is otherwise specified, \$75 per hour for travel and inspection time;

(f) For the installation or alteration of an elevator, if the total cost of the installation or alteration other than the inspection fee, is:

(A) \$1,000 or under — \$98;

(B) \$1,001 to \$14,999 — \$98, plus \$13 for each \$1,000 or fraction of \$1,000 by which the cost exceeds \$1,000;

(C) \$15,000 to \$49,999 — \$280, plus \$8 for each \$1,000 or fraction of \$1,000 by which the cost exceeds \$15,000;

(D) \$50,000 or over — \$553, plus \$3 for each \$1,000 or fraction of \$1,000 by which the cost exceeds \$50,000.

(2) Elevator alterations.

(a) No fee shall be charged when an alteration is limited to fixture upgrades to meet state-adopted accessibility standards;

(b) No fee shall be charged where the alteration is limited to the car interior upgrades that do not alter the gross weight of the car more than five percent;

(c) When a group of elevators under common group control is proposed for an upgrade, and the same upgrade is proposed for all cars in the group, the inspection fee shall be the contract valuation for the entire elevator upgrade project rather than the higher separate inspection fee for each elevator in the group; and

(d) Where the upgrade for a group of elevators is not identical for each elevator, the fees shall be calculated separately based on the contract valuation for each elevator.

(3) Plan Review Fees. Where a complete set of drawings shows all elevators affected by the proposed installation or alteration, only one plan review fee shall be required rather than a separate fee for each elevator.

(4) Limited Elevator Mechanic's License. The following fee applies to the license issued under OAR 918-400-0380(1): \$60 for application or renewal.

(5) Reciprocating Conveyor Mechanic's Licenses. The following fees apply to licenses issued under OAR 918-400-0380(2) and (3):

(a) Reciprocating Conveyor Mechanic's license, \$300 for application or renewal;

(b) Restricted Reciprocating Conveyor Mechanic's license, \$50 for application or renewal.

Stat. Auth.: ORS 460.085

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Stats. Implemented: ORS 460.061 & 460.165  
Hist.: DC 25-1982, f. & ef. 12-16-82; Renumbered from 814-030-0030; BCA 21-1991(Temp), f. 6-14-91, cert. ef. 7-1-91 thru 12-27-91; BCA 29-1991, f. & cert. ef. 8-30-91; BCD 18-1995, f. & cert. ef. 12-15-95; Renumbered from 918-400-0050; BCD 11-1996(Temp), f. & cert. ef. 7-1-96; BCD 27-1996, f. & cert. ef. 12-4-96; BCD 10-1998(Temp), f. 6-2-98, cert. ef. 7-1-98 thru 12-27-98; BCD 25-1998, f. 12-22-98, cert. ef. 12-27-98; BCD 13-1999, f. & cert. ef. 10-1-99; BCD 14-2000(Temp), f. 7-20-00, cert. ef. 8-1-00 thru 1-27-01; BCD 25-2000, f. 9-29-00, cert. ef. 10-1-00; BCD 21-2002(Temp), f. 8-30-02, cert. ef. 9-1-02 thru 2-27-03; BCD 34-2002, f. 12-20-02, cert. ef. 1-1-03; BCD 12-2004, f. 8-20-04, cert. ef. 10-1-04; BCD 17-2007, f. 12-28-07, cert. ef. 1-1-08; BCD 4-2009(Temp), f. & cert. ef. 7-16-09 thru 1-1-10; BCD 10-2009, f. 12-30-09, cert. ef. 1-1-10

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

**Rule Caption:** Implements and clarifies registration requirements for debt management service providers.

**Adm. Order No.:** FCS 13-2009

**Filed with Sec. of State:** 12-18-2009

**Certified to be Effective:** 1-1-10

**Notice Publication Date:** 12-1-2009

**Rules Adopted:** 441-910-0005, 441-910-0091, 441-910-0094, 441-910-0099, 441-910-0135, 441-910-0145, 441-910-0150, 441-910-0151, 441-910-0200

**Rules Amended:** 441-910-0000, 441-910-0010, 441-910-0030, 441-910-0050, 441-910-0055, 441-910-0080, 441-910-0092

**Rules Repealed:** 441-910-0020, 441-910-0040, 441-910-0090, 441-910-0093, 441-910-0095, 441-910-0110, 441-910-0120, 441-910-0092(T)

**Subject:** In 2009, the legislature enacted House Bill 2191. HB 2191 created a comprehensive registration system for persons engaged in debt management services. The bill requires that persons engaging in debt management activities register with the Department of Consumer and Business Services as debt management service providers. These permanent rules implement the registration requirement from the bill. These permanent rules also clarify the scope of the exemptions from registration and implement an additional counseling fee authorized by the bill until January 2012.

**Rules Coordinator:** Shelley Greiner—(503) 947-7484

### 441-910-0000

#### Definitions

The definitions of terms used in ORS 697.602 and the rules of OAR chapter 441, division 910 are:

(1) "Act as a broker" or "brokering" includes any of the following activities undertaken for the payment of money or other valuable consideration:

- Soliciting or receiving an application from a consumer for a debt management service;
- Providing a consumer's name, address or other information that identifies the consumer to a debt management service provider for the purpose of arranging the provision of a debt management service;
- Referring a consumer to another debt management service provider, if the person is a debt management service provider; or
- Forwarding or providing a completed application for a debt management service to a debt management service provider.

(2) "Advantageous to the consumer" means a plan for a debt management service that places a consumer in a more favorable or beneficial position in relation to the consumer's debt than if the consumer did not agree to debt management services, taking into consideration the suitability of the proposed services and the customer's ability to pay for services. A plan under this section includes, but is not limited to, the following:

- A plan that improves or preserves a consumer's credit record, history or rating;
- A plan that enables a consumer to obtain or use credit in the future; or
- A plan that obtains favorable or beneficial changes to the principal, interest, loan term, or other key terms of an existing debt obligation.

(3) "An activity for which a person receives money or other valuable consideration or expects to receive money or other valuable consideration" under ORS 697.602 does not include a negotiation, an offer, an attempt or an agreement to negotiate the sale, exchange, purchase, rental or leasing of real estate by a licensed real estate broker if:

- The sale price of the real estate is for an amount that is less than the amount of the seller's outstanding obligation on the home loan, commonly known as a short sale; and
  - The real estate broker receives compensation that is usual and customary for a real estate broker and under the terms of an executed real estate contract with the debtor as a real estate seller.
- (4) "Counseling" means discussions with a consumer that:

- Occurs after a consumer signs a contract for debt management services;
- Covers meaningful services provided by the debt management service provider, as described in the contract for debt management services; and
- Advises the consumer on particular topics with respect to the services as described in the contract for debt management services, including:
  - Causes and conditions of the consumer's current financial situation;
  - The consumer's financial goals and responsibilities;
  - Options available to the consumer;
  - Development of a spending plan or budget;
  - Possible referrals to outside organizations or agencies; and
  - Review and revisions necessary to implement the budget plan.

(d) If a debt management service provider improves, offers to improve or preserves a consumer's credit record, credit history or credit rating, "counseling" includes reviewing results from credit reporting agencies regarding the consumer's credit records, credit history, or credit rating.

(e) For purposes of subsections (a) through (d), "counseling" does not include routine customer contact or administrative functions.

(5) "Counseling session" means a discussion between the consumer and the debt management service provider:

- (A) Conducted in person, by telephone or by similarly immediate electronic means;
  - (B) Conducted in 45 minute increments or intervals equivalent to two 45-minute counseling sessions occurring within a 30-day period; and
  - (C) Covering topics defined in section (4)(c) of this rule; or
  - (b) Conducted in person, by telephone or by similarly immediate electronic means, and covering services provided under section (4)(d) of this rule.
- (6) "Director" means the Director of the Department of Consumer and Business Services.

(7) "Trust account" means an account held at an insured institution taking deposits at its headquarters in Oregon or a branch in Oregon into which all funds received or handled on behalf of Oregon consumers by the debt management service provider are initially deposited.

Stat. Auth.: ORS 697, 2009 OL ch. 604, § 21

Stats. Implemented: ORS 697.632

Hist.: DC 2-1984, f. & ef. 1-16-84; Renumbered from 814-106-0000; FCS 4-2005, f. 12-8-05, cert. ef. 1-1-06; FCS 5-2009(Temp), f. & cert. ef. 8-14-09 thru 2-9-10; FCS 13-2009, f. 12-18-09, cert. ef. 1-1-10

### 441-910-0005

#### Exemptions from Debt Management Service Provider Registration

(1) An attorney provides debt management services only incidentally to the practice of law if:

- The attorney only provides the services to a client of the attorney and only while acting as an attorney on behalf of the client;
- The attorney does not act as a broker for debt management services;

(c) If the attorney refers a consumer who is a client of the attorney to a third party debt management services provider, the attorney does not receive compensation, directly or indirectly, for the referral and in the attorney's professional judgment the attorney believes the referral will be beneficial to the client;

(d) The attorney does not provide debt management services to a third party on behalf of a consumer who is a client of the attorney; and

(e) Any advertisement used by the attorney concerning debt management services complies with the Oregon Rules of Professional Conduct and formal ethics opinions published by the Oregon State Bar applicable to advertising.

(2) An individual licensed as a real estate broker under ORS 696.020 may negotiate, offer, attempt or agree to negotiate the sale, exchange, purchase, rental or leasing of real estate without being registered as a debt management service provider if the licensed real estate broker only receives the usual and customary fees of a real estate broker under the terms of an executed real estate contract with the debtor as a real estate seller.

(3) A nonprofit budget and credit counseling agency approved by the United States trustee overseeing the administration of bankruptcy cases may claim the exemption in ORS 697.612(3)(L) if:

(a) The nonprofit budget and credit counseling agency provides an individual or group briefing that outlines the opportunities for available credit counseling and assisted such individual in performing a related budget analysis that is not a budget analysis under OAR 441-910-0140;

(b) An individual or group briefing is provided only for persons likely to become debtors under 11 U.S.C. § 109(h); and

(c) The nonprofit budget and credit counseling agency does not otherwise engage in any activity constituting debt management services or act as a broker for debt management services.

(4) A nonprofit entity that only provides advice, assistance, instruction or instructional materials to a consumer in return for a fee reasonably calculated to pay the cost of making the advice, assistance, instruction or instructional materials available may claim the exemption in ORS 697.612(3)(m) if:

(a) The nonprofit entity does not conduct any activities constituting debt management services or act as a broker for debt management services;

(b) The nonprofit entity does not advise a consumer in whole or in part by conducting a budget analysis described in OAR 441-910-0415; and

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(c) The nonprofit entity's reasonably calculated fee to pay the cost of making the advice, assistance, instruction or instructional materials available does not in any case exceed \$25.

(5) An organization or a counselor approved by the United States Department of Housing and Urban Development may claim the exemption in ORS 697.612(3)(n) if the organization or counselor:

(a) Is under contract or receiving a grant through the Department of Housing and Urban Development's Housing Counseling program;

(b) The contract or grant under subsection (a) of this section is made or funded only for the purposes of:

(A) Providing assistance to eligible homebuyers to find and purchase homes;

(B) Helping renters locate and qualify for assisted rental units;

(C) Helping eligible homebuyers obtain affordable housing;

(D) Assisting homeowners to avoid or mitigate foreclosures;

(E) Assisting renters to avoid evictions;

(F) Helping the homeless find temporary or permanent shelter;

(G) Reporting fair housing and discrimination complaints; or

(H) Addressing housing problems; and

(c) The organization or counselor does not otherwise engage in any activity constituting debt management services or act as a broker for debt management services.

Stat. Auth.: 2009 Or Laws ch. 604, § 21

Stat. Implemented: ORS 697.612

Hist.: FCS 13-2009, f. 12-18-09, cert. ef. 1-1-10

## 441-910-0010

### Registration Requirements

(1) All persons performing debt management services shall apply for registration on a form provided by the director. The application form shall require the person to supply the information required by ORS 697.632 and the following:

(a) The identification number of the applicant's Oregon issued certified public accountant or law license, if the applicant holds a certified public accountant or law license;

(b) The name and identifying number, if any, of an applicant's license, registration, or similar indicia of permission as a debt management service provider or similar form of license or registration in any other state;

(c) A description of any other business activities not constituting debt management services and a description or depiction of the debt management service provider's organizational structure;

(d) Any assumed business name registered with the Secretary of State under which the applicant will conduct business as a debt management service provider; and

(e) The name and the location of the insured institution the applicant establishes to keep the consumer funds that the debt management service provider holds.

(2) The person shall attach to the application for registration as a debt management service provider the following:

(a) A correct and true copy of the surety bond required by ORS 697.642 in a form and on terms approved by the director in the amount of \$25,000.

(b) A copy of any disclosure documents, agreements, or contracts to be signed by a consumer for any debt management services.

(c) A sample budget analysis conforming to the minimum requirements in OAR 441-910-0415.

(d) A copy of the applicant's proposed fee schedule.

(e) A resume of the debt management service provider's managing members, managing partners, executive officers, directors, principals, or persons authorized to enter into contracts or make changes in policy for a debt management service provider.

(f) Financial statements prepared in accordance with generally accepted accounting principles, consisting of a balance sheet and a statement of income or operations and are dated not more than 12 months prior to submission of the application; and

(g) A signed disclosure for the applicant and each person identified in subsection (e) of this section of the following occurring within the five year period prior to application:

(A) Any adverse judgment by a state or federal court;

(B) Any pending bankruptcy proceedings or any bankruptcy judgments;

(C) Any injunctions issued to stop an act involving a debt management practice;

(D) Any arbitration award made in favor of another person;

(E) Any adverse final order issued by a federal or state agency;

(F) Any cease and desist order issued by the director; and

(G) Any criminal convictions, if an essential element of the crime involved fraud.

(2) An application for registration as a debt management service provider shall be considered abandoned if:

(a) The director has had one or more incomplete documents as part of an application for a minimum of 60 days; and

(b) The applicant has not responded within 30 days following a written notice from the director requesting submission of all fees, documents, or information necessary to make the application complete.

(3) The director shall not issue a registration as a debt management service provider unless the applicant pays any applicable fee specified in OAR 441-910-0605.

(4) A debt management services provider registration expires on December 31 two years after issuance.

Stat. Auth.: 2009 OL Ch. 604, § 21

Stats. Implemented: ORS 697.632 & 697.752

Hist.: DC 16-1983(Temp), f. & ef. 6-28-83; DC 2-1984, f. & ef. 1-16-84; Renumbered from 814-106-0005; FCS 9-1988, f. 4-12-88, cert. ef. 5-1-88; FCS 5-2000, f. & cert. ef. 3-9-00; FCS 4-2005, f. 12-8-05, cert. ef. 1-1-06; FCS 13-2009, f. 12-18-09, cert. ef. 1-1-10

## 441-910-0030

### Renewal

A debt management service provider shall renew a registration by completing the following on or before December 31 of the year the debt management service provider's registration expires:

(1) Completing the renewal form supplied by the director; and

(2) Paying any required fee for renewal under OAR 441-910-0600.

Stat. Auth.: 2009 OL Ch 604, § 21

Stats. Implemented: ORS 697.632

Hist.: DC 16-1983(Temp), f. & ef. 6-28-83; DC 2-1984, f. & ef. 1-16-84; Renumbered from 814-106-0015; FCS 9-1988, f. 4-12-88, cert. ef. 5-1-88; FCS 4-2005, f. 12-8-05, cert. ef. 1-1-06; FCS 13-2009, f. 12-18-09, cert. ef. 1-1-10

## 441-910-0050

### Update Filings

(1) At least ten days prior to a change in ownership, address, bonding company, or information relating to the trust or operating account, the debt management service provider shall notify the director in writing of the changes.

(2) Within ten days after learning of an arrest of any debt management service provider owner, supervisor, or employee on a charge an essential element of which is fraud, the debt management service provider shall notify the director in writing of the known allegations.

Stat. Auth.: 2009 OL Ch 604, § 21

Stats. Implemented: ORS 697.632

Hist.: DC 16-1983(Temp), f. & ef. 6-28-83; DC 2-1984, f. & ef. 1-16-84; Renumbered from 814-106-0030; FCS 9-1988, f. 4-12-88, cert. ef. 5-1-88; FCS 4-2005, f. 12-8-05, cert. ef. 1-1-06; FCS 13-2009, f. 12-18-09, cert. ef. 1-1-10

## 441-910-0055

### Fees Payable to the Director

(1) A debt management service provider shall pay to the director the following fees:

(a) At the initial application for a registration, a nonrefundable application fee of \$350.

(b) On or before the date in which a debt management service provider's registration expires, a nonrefundable renewal fee of \$350.

(2) When the director conducts an examination under ORS 697.732, the debt management service provider shall pay an examination fee of \$75 per hour for each person conducting the examination.

(3) Notwithstanding section (2) of this rule:

(a) When the director conducts an examination under ORS 697.732 outside of Oregon, the debt management service provider shall pay an examination fee of \$75 per hour for each person conducting the examination plus the actual cost associated with the examination, including travel.

(b) If the work described in section (2) of this rule is performed by a consultant hired by contract for the particular work, the charge payable by the debt management service provider is the actual cost to the director for the contract consultant.

Stat. Auth.: 2009 OL Ch 604, § 21

Stats. Implemented: ORS 697.732

Hist.: DC 2-1984, f. & ef. 1-16-84; Renumbered from 814-106-0055; FCS 9-1988, f. 4-12-88, cert. ef. 5-1-88; Renumbered from 441-910-0100, FCS 4-2005, f. 12-8-05, cert. ef. 1-1-06; FCS 8-2008, f. & cert. ef. 8-28-08; FCS 13-2009, f. 12-18-09, cert. ef. 1-1-10

## 441-910-0080

### Joint Trust Accounts

An account at an insured institution may not be used jointly as a trust account and an operating account.

Stat. Auth.: 2009 OL Ch 604, § 21

Stats. Implemented: ORS 697.682

Hist.: DC 2-1984, f. & ef. 1-16-84; Renumbered from 814-106-0045; FCS 4-2005, f. 12-8-05, cert. ef. 1-1-06; FCS 13-2009, f. 12-18-09, cert. ef. 1-1-10

## 441-910-0091

### Initial Counseling Fees

If a debt management service provider charges an initial fee for debt management services as allowed under ORS 697.692(1)(a), the debt management service provider shall charge the fee within 120 days of signing a contract with the consumer for debt management services.

Stat. Auth.: 2009 OL Ch 604, § 21

Stats. Implemented: ORS 697.692

Hist.: FCS 13-2009, f. 12-18-09, cert. ef. 1-1-10

## 441-910-0092

### Additional Counseling Fee

(1) In addition to the fees allowed to be charged for debt management services under ORS 697.692, a debt management service provider may

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charge a consumer under contract for debt management services a fee of up to \$25 per counseling session.

(2) A debt management service provider shall not charge a consumer more than \$50 for all instances of additional counseling occurring within a 30-day period.

(3) A debt management service provider must consider the consumer's ability to pay the fee described in section (1) of this rule, and if appropriate, reduce or waive the fee.

Stat. Auth.: 2009 OL Ch 604 § 21

Stats. Implemented: ORS 697.692

Hist.: FCS 4-2005, f. 12-8-05, cert. ef. 1-1-06; Suspended by FCS 5-2009(Temp), f. & cert. ef. 8-14-09 thru 2-9-10; FCS 13-2009, f. 12-18-09, cert. ef. 1-1-10

## 441-910-0094

### Contracts for Debt Management Services

(1) A debt management service provider may not enter into separate contracts for each debt or obligation due by a consumer. A debt management service provider may enter into a single contract with a consumer for debt management services that specifies the provision of different debt management services for each debt or obligation. If a debt management service provider enters into an agreement with more than one consumer for debt management services, each consumer party to the agreement shall be considered one consumer.

(2) For purposes of this rule, "consumer" means an individual that has entered into a contract for debt management services.

(a) However, when a contract covers jointly-held debt and the services will be provided to the co-debtors, such as husband and wife or domestic partners, then "consumer" shall be both of the co-debtors and they shall only be charged a single set of fees.

(3) Notwithstanding subsection (2)(a), a debt management provider may enter into separate debt management service contracts and charge separate fees for each spouse and domestic partners if the spouses or domestic partners seek services for individually held debt. The burden will be upon the debt management service provider to establish the basis for charging two sets of fees.

Stat. Auth.: 2009 OL Ch 604, § 21

Stat. Implemented: ORS 697.652

Hist.: FCS 13-2009, f. 12-18-09, cert. ef. 1-1-10

## 441-910-0099

### Fee Schedules

Appendix A is incorporated by reference for the purpose of illustrating the fee structure in ORS 697.692 and OAR 441-910-0092.

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

Stat. Auth.: 2009 OL Ch 604, § 21

Stat. Implemented: ORS 697.692

Hist.: FCS 13-2009, f. 12-18-09, cert. ef. 1-1-10

## 441-910-0135

### Loan Modifications

(1) A person registered as a debt management service provider may modify or offer to modify the terms and conditions of a consumer's existing loan or obligation as described in ORS 697.602 if the modification meets all the following conditions:

(a) The existing loan or obligation is in default, is in imminent danger of default, or there is an objectively reasonable basis to believe that the loan or obligation will default;

(b) The borrower is not required to pay fees normally assessed for a new loan or obligation to receive the modification; and

(c) The contract or agreement makes or is anticipated to make permanent or long-term changes to the principal, interest, length of the loan or obligation, or other key terms of the existing loan or obligation.

(2) A debt management service provider meeting the requirements of section (1) of this rule may charge the fees allowed under ORS 697.692.

(3) Section (1) of this rule shall not be construed to allow a debt management service provider to make or offer to make a new loan or obligation, including residential mortgage loans.

(4) Notwithstanding section (3) of this rule, a mortgage loan originator regulated by the director under applicable law may modify or offer to modify the terms and conditions of an existing residential mortgage loan without a registration as a debt management service provider.

(5) The term "modifying or offering to modify terms and conditions of an existing loan or obligation" does not include an individual who negotiates with a consumer to modify a loan if:

(a) The individual is either an employee or has contracted to represent a lender or loan servicer;

(b) The loan modification activity is within the scope of the individual's responsibilities for the lender or loan servicer; and

(c) The individual receives no direct compensation from the consumer for the individual's services.

Stat. Auth.: 2009 OL Ch 604, § 21

Stat. Implemented: ORS 697.602

Hist.: FCS 13-2009, f. 12-18-09, cert. ef. 1-1-10

## 441-910-0145

### Budget Analysis

(1) A debt management service provider shall not enter into an agreement for debt management services with a consumer until the debt management service provider completes a budget analysis that conforms to the requirements of this rule and determines that debt management services will be feasible and advantageous to the consumer. The budget analysis shall be in writing or be in a form easily reducible to written form. The budget analysis shall include, but not be limited to, the following information:

(a) The name and address of the consumer;

(b) The consumer's number of dependents;

(c) All wages, salary, and other income;

(d) The number of exemptions claimed for federal income tax withholding;

(e) Any payroll deductions and net take-home pay;

(f)(A) Housing costs, including rents, leases or other consideration paid for the use of property; or

(B) If the consumer is the owner of a home, any liens, mortgages or other claims or liabilities attached to the consumer's property other than taxes and monthly payment on the residence;

(g) The type and amount of other fixed periodic payments;

(h) A complete list of reasonable and necessary living expenses for food, clothing, utilities, transportation, insurance, and other items;

(i) A complete list of creditors, showing accounts subject to debt management services and accounts not subject to debt management services;

(j) Information on any existing garnishments and judgments;

(k) Periodic amount available for payment toward the plan; and

(L) Anticipated near-term changes in the consumer's economic circumstances.

(2) If a debt management service provider enters into an agreement for debt management services with a consumer to improve or preserve a consumer's credit record, history or rating, the budget analysis shall include, but not be limited to, the following information:

(a) The name and address of the consumer;

(b) All wages, salary, and other income;

(c)(A) Housing costs, including rents, leases or other consideration paid for the use of property; or

(B) If the consumer is the owner of a home, any liens, mortgages or other claims or liabilities attached to the consumer's property other than taxes and monthly payment on the residence;

(d) The type and amount of other fixed periodic payments;

(e) A complete list of creditors, showing accounts subject to debt management services and accounts not subject to debt management services; and

(f) Anticipated near-term changes in the consumer's economic circumstances.

(3) A debt management service provider that completes a budget analysis shall give the consumer a written document that:

(a) Informs the consumer that the budget analysis is conditioned on the information provided by the consumer;

(b) Includes a statement that discusses the options for debt management services that may be advantageous for the consumer.

(c) Includes a copy of the budget that formed the basis for the analysis

(d) Warns the consumer that a creditor may not accept a plan for debt management services based on the budget analysis.

Stat. Auth.: 2009 OL Ch 604, § 21

Stat. Implemented: ORS 697.652

Hist.: FCS 13-2009, f. 12-18-09, cert. ef. 1-1-10

## 441-910-0150

### Disclosure of Pass-Through Charges by Debt Management Service Providers

(1) When a debt management service provider is required to disclose information under ORS 697.707(3)(b), the debt management service provider must disclose

(a) Any credit report costs that they will pass on to the consumer.

(b) Any actual insufficient funds fees the debt management service provider is charged and that they will pass on to the consumer, but in no case may a debt management service provider pass on to a consumer more than \$25 in insufficient fund fees.

(2) If a debt management service provider does not disclose the information required by section (1) of this rule, a consumer shall not be obligated to pay such costs.

Stat. Auth.: 2009 OL Ch 604 § 21

Stat. Implemented: ORS 697.707

Hist.: FCS 13-2009, f. 12-18-09, cert. ef. 1-1-10

## 441-910-0151

### Advertisements

(1) A debt management service provider shall disclose the debt management service provider's registration number on an advertisement, presentation or other communication or promotional material designed or made to promote the debt management provider's services.

(2) Failure to meet the requirements of section (1) of this rule constitutes a misrepresentation of the debt management service provider's quali-

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cations under ORS 697.662 and a dishonest, fraudulent or illegal practices or conduct in a business or profession, or unfair or unethical practices or conduct in connection with a debt management service under ORS 697.752.

Stat. Auth.: 2009 OL Ch 604 § 21

Stat. Implemented: ORS 697.662

Hist.: FCS 13-2009, f. 12-18-09, cert. ef. 1-1-10

## 441-910-0200

### Records Retained by Registrants

(1) In addition to any records required to be kept and maintained under applicable law, a debt management service provider shall retain records on consumers that paid fees and signed a contract for debt management services. Documents that a debt management services must keep under this rule include, but is not limited to, the following:

(a) Copies of disclosure documents signed by the consumer prior to entering into a contract for debt management services.

(b) Copies of all written agreements for debt management services with a consumer.

(c) Copies of written authorizations by a consumer to withdraw fees for debt management services.

(d) Copies of contract cancellation notices by either a consumer or the debt management service provider.

(e) Copies of budget analyses performed for a consumer and kept in the consumer's file.

(f) Copies of all correspondence or notes of conversations between the debt management service provider and a consumer's creditor.

(g) Copies of all correspondence between the debt management service provider and the consumer.

(2) In addition to any records required to be kept and maintained under applicable law, a debt management service provider shall retain general records related to their debt management services. Documents that a debt management services must keep under this rule include, but is not limited to, the following:

(a) Copies of the debt management service provider fee schedule for debt management services.

(b) A accounting ledger separately showing each consumer trust account, including entries for debits, credits and any interest in excess of banking fees to maintain the trust account.

(c) An account ledger separately recording the receipt of all funds the debt management service provider agrees to remit to the creditors of a consumer.

(d) An account ledger separately recording the disbursement of all funds the debt management service provider agrees to remit to the creditors of a consumer.

(e) The original surety bond that the debt management service provider certifies as correct and true under OAR 441-910-0010.

(f) Copies of all advertisements for debt management services.

(g) Copies of all consumer complaints and notes, correspondence and memoranda generated as a result of the consumer complaint.

(3) A debt management service provider shall maintain records in written form or in a format that can be easily reduced to written form.

(4) A debt management service provider shall maintain records for a period of three years after the last entry is made into the record. After the three year period, a debt management service provider may dispose of the records in accordance with applicable law.

Stat. Auth.: 2009 OL Ch 604, § 21

Stat. Implemented: ORS 697.672, 697.682

Hist.: FCS 13-2009, f. 12-18-09, cert. ef. 1-1-10

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**Rule Caption:** Implements coordination of mortgage lending licensing under the federal S.A.F.E. Act and HB 2189.

**Adm. Order No.:** FCS 14-2009

**Filed with Sec. of State:** 12-30-2009

**Certified to be Effective:** 1-4-10

**Notice Publication Date:** 12-1-2009

**Rules Adopted:** 441-850-0050, 441-880-0021, 441-880-0022, 441-880-0200, 441-880-0205, 441-880-0210, 441-880-0300, 441-880-0310

**Rules Amended:** 441-850-0005, 441-850-0035, 441-860-0020, 441-860-0025, 441-860-0030, 441-860-0040, 441-860-0050, 441-860-0060, 441-860-0070, 441-860-0080, 441-860-0130, 441-865-0010, 441-865-0020, 441-865-0025, 441-865-0030, 441-865-0040, 441-865-0050, 441-865-0080, 441-865-0090, 441-870-0030, 441-870-0040, 441-870-0050, 441-870-0070, 441-870-0080, 441-875-0020, 441-875-0030, 441-875-0040, 441-880-0010, 441-880-0030, 441-880-0040, 441-885-0010

**Rules Repealed:** 441-860-0010, 441-875-0010

**Rules Ren. & Amend:** 441-880-0050 to 441-860-0045, 441-880-0020 to 441-880-0215

**Subject:** In November, the division proposed administrative rules to implement 2009 House Bill 2189, itself Oregon's implementation of the federal S.A.F.E. Act (Pub. L. 110-289). This rulemaking activity adopts rules for a new license for mortgage loan originators. This rulemaking activity also makes conforming amendments to the rules governing mortgage bankers and mortgage brokers. These rules require mortgage loan originators to apply for and renew licenses with the NMLSR. These rules also adjust the criminal background check for mortgage bankers and brokers and update supervision requirements. These rules also make many technical changes to differentiate the new mortgage loan originator license from the mortgage banker and mortgage broker licenses.

**Rules Coordinator:** Shelley Greiner—(503) 947-7484

## 441-850-0005

### Definitions

As used in OAR chapter 441, divisions 850 to 885, unless the context otherwise requires:

(1) "Advertising" means any distribution of information regarding loan products by or in the name of a mortgage banker or mortgage broker to members of the public, which may appear:

(a) In newspapers, magazines, leaflets, flyers, catalogs, direct mail literature, or other printed material;

(b) On radio or television;

(c) On an inside or outside sign or display, or a window display;

(d) In a facsimile;

(e) In point-of-sale literature, price tags, signs, and billboards; or

(f) Online, such as on the Internet, or via email.

(2) "At least as prominently disclosing" means displaying in the same or most similar type, size, font, color, and general location in the advertisement as the featured term.

(3) "Branch office" means a location, separate from the principal place of business of a mortgage banker or mortgage broker, where a mortgage banker, mortgage broker or mortgage loan originator performs the activities described in ORS 59.840(5)(a) and 59.840(7)(a).

(4) "Certified Authority" is an organization certified by the director to approve or provide, or both, mortgage loan originator entry level and continuing education and tests.

(5) "Clients' Trust Account" means an account held in a federally-insured financial institution into which trust funds are deposited.

(6) "Compensation or gain" means anything of economic value that is paid, loaned, granted, given, donated, or transferred to a person or entity for or in consideration of services, personal or real property, or another thing of value.

(7) "Control person" means a managing partner, director, principal, executive officer or other person occupying a similar position or performing similar functions for a person licensed as a mortgage banker or a mortgage broker.

(8) "Director" means the Director of the Department of Consumer and Business Services.

(9) "Department" means the Department of Consumer and Business Services.

(10) "Employee" means any employment relationship, acknowledged by both the employed individual and the mortgage banker or mortgage broker, which meets the following conditions:

(a) The employee receives payment through the mortgage banker or mortgage broker in a manner wherein deductions for Federal Unemployment Tax, Federal Insurance Contributions Act, and other such federal and state taxes have been withheld by the mortgage banker or mortgage broker;

(b) The mortgage banker or mortgage broker has the right to hire and terminate the employee, and hire and terminate the employee's assistants;

(c) The mortgage banker or mortgage broker provides the methods and procedures for performing the employee's services;

(d) The mortgage banker or mortgage broker supervises the employee in the conduct of the employed individual's business and supervises the employee's compliance with applicable statute and rules; and

(e) The employee does not act in any capacity as an employee or independent contractor for another mortgage banker or mortgage broker.

(11) "Experienced person" means the control person that possesses the required experience under ORS 59.850(2) in the mortgage business, negotiating loans, or in lending.

(12) "Financial institution" has the same meaning given to that term in 706.008.

(13) "Independent accountant" means a certified public accountant or a public accountant who holds an Oregon permit under ORS 673.150 or similar permit or license from another state or province.

(14) "Mortgage loan originator employed by the mortgage banker or mortgage broker" means every mortgage loan originator operating under the authority of a mortgage banker or mortgage broker's license, regardless of whether the mortgage loan originator is an employee of the mortgage banker

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or mortgage broker or purports to act as an agent or independent contractor for the mortgage banker or mortgage broker;

(15) "Loan terms" include, but are not limited to:

(a) The provisions related to the payment amounts, expressed either as a percentage or dollar amount;

(b) The length of the loan;

(c) The market or fully indexed rate;

(d) The start rate;

(e) The life cap rate; and

(f) Whether the loan permits negative amortization.

(16) "Loan-to-value ratio" means the ratio between the amount of a mortgage loan and the value of the property pledged as security, expressed as a percentage.

(17) "Lock agreement" means an agreement with a borrower made by a mortgage banker, mortgage broker or mortgage loan originator, in which the mortgage banker, mortgage broker or mortgage loan originator agrees that, for a specified period of time, a specific interest rate or other financing term will be the rate or term at which it will make a loan available to that borrower.

(18) "Material litigation" means any past or pending litigation, which would be relevant to the director's action on an application for a mortgage broker or mortgage banker license, including but not limited to the following types of litigation:

(a) Any civil action within the previous ten years from the date of the application, including suits filed in civil court, administrative actions, arbitration proceedings, or alternative dispute resolutions, resulting in damages or penalties of \$10,000 or more assessed against the applicant;

(b) Any pending civil action including suits filed in civil court, administrative actions, arbitration, or alternative dispute resolution, seeking damages or penalties of \$10,000 or more against the applicant; and

(c) Any bankruptcy filing or declaration of bankruptcy within the previous ten years from the date of the application regardless of final disposition.

(19) "Neutral escrow depository" means the deposit of money with an escrow agent licensed under ORS 696.511.

(20) "Principal place of business" means that location, designated by the mortgage banker or mortgage broker, where the owners, officers, directors or other control persons conduct business and maintain books and records.

(21) "Savings statement" means written material given to the consumer which outline how much a consumer may save in interest costs if they make additional payments above the required minimum monthly payment on their proposed or current mortgage.

(22) "Supervisor" means a partner, officer, branch manager, or other experienced person with management or supervisory responsibilities who is an employee of the mortgage banker or mortgage broker.

(23) "Trust Funds" mean those funds deposited into a trust account or with a neutral escrow depository. Trust funds shall include, but are not limited to:

(a) All funds received by a licensee or persons authorized to act on behalf of the licensee from or on behalf of a client for payment of services to be provided by persons other than the licensee in connection with processing, arranging, or making a mortgage banking loan or mortgage loan;

(b) All funds received by a licensee or persons authorized to act on behalf of a licensee from or on behalf of a borrower for payment of principal, interest or taxes on a mortgage banking loan or mortgage loan, but shall not include such funds where the licensee and the lender have an agreement providing for the disposition of such funds, and the financial statements of licensee are audited on an annual basis in accordance with generally accepted auditing standards; and

(c) All funds received by a licensee or persons authorized to act on behalf of a licensee from or on behalf of a client for payment of services to be provided by a licensee in connection with processing, arranging, or making a mortgage banking loan or mortgage loan by the licensee, except for those funds received by a licensee on a nonrefundable basis under the provisions of OAR 441-875-0030(9).

(d) For purposes of this section, "licensee" means a mortgage banker, a mortgage broker or a mortgage loan originator.

Stat. Auth.: ORS 59.900, 2009 OL Ch 863, § 13a

Stats. Implemented: ORS 59.840, 2009 OL Ch 863, § 1

Hist.: FCS 3-1993, f. & cert. ef. 11-15-93; FCS 11-1994, f. 11-4-94, cert. ef. 11-15-94; FCS 14-2009, f. 12-30-09, cert. ef. 1-4-10

## 441-850-0035

### Records and Reports Retention Period

All books and records required under the provisions of ORS 59.840 through 59.980 and OAR chapter 441, divisions 850 to 885 shall be maintained for a five year period beginning from the date of a residential mortgage loan is closed, denied or withdrawn:

(1) At the principal place of business as designated by the mortgage banker or mortgage broker;

(2) At the branch office of the mortgage banker or mortgage broker if the mortgage banker or mortgage broker provides notice to the director; or

(3) At a remote storage location if the file is more than six months old, the mortgage broker or banker provides notice to the director, and the mort-

gage broker or banker institutes an archiving system which provides for identification of the off site file drawer, box or storage container and exact location.(2) An electronically produced or microphotographic duplicate of each document may be substituted for the original document at any time..

Stat. Auth.: ORS 59.860(1)

Stats. Implemented: ORS 59.860

Hist.: FCS 3-1993, f. & cert. ef. 11-15-93; FCS 11-1994, f. 11-4-94, cert. ef. 11-15-94; FCS 1-1996, f. 11-20-96, cert. 12-1-96; FCS 14-2009, f. 12-30-09, cert. ef. 1-4-10

## 441-850-0050

### Process to Challenge Information Entered into the National Mortgage Licensing System and Registry

(1) A person applying for a mortgage loan originator license or a person licensed as a mortgage loan originator has standing to challenge information regarding that person submitted to the National Mortgage Licensing System and Registry and transmitted to the director for the approval or denial of a mortgage loan originator license.

(2) Information subject to challenge by a person with standing under section (1) of this rule is limited to information that is factually inaccurate or incomplete.

(3) A challenge of information shall be made to the director in writing and shall include any documentation that supports the information subject to the challenge is factually inaccurate or incomplete. The director may limit the use of or reject information not relevant to the challenge.

(4) If the director determines that information is factually inaccurate or incomplete, the director may exclude the factually inaccurate or incomplete information in determining whether to issue or deny a mortgage loan originator license. The director may also notify the Nationwide Mortgage Licensing System and Registry of the factually inaccurate or incomplete information.

(5) Any person adversely affected or aggrieved by a decision may request the division reconsider its determination in accordance with OAR 137-004-0080.

Stat. Auth.: 2009 OL Ch 863, § 13a

Stats. Implemented: 2009 OL Ch 863, § 10

Hist.: FCS 14-2009, f. 12-30-09, cert. ef. 1-4-10

## 441-860-0020

### Application Procedure

(1) Each person applying for a mortgage banker or mortgage broker license shall submit to the director the following:

(a) A completed application on a form approved by the director;

(b) A form approved by the director completed by the applicant and any individual the applicant designates as a control person;

(c)(A) A corporate surety bond if the applicant acts as the applicant's sole mortgage loan originator or employs a mortgage loan originator; or

(B) A corporate surety bond or irrevocable letter of credit if the applicant is a mortgage banker and the applicant is either not a mortgage loan originator or the applicant is not required to employ a mortgage loan originator;

(d) Financial statements prepared in accordance with generally accepted accounting principles, including a balance sheet and a statement of income or operations, dated not more than six months prior to submission of the application:

(A) The financial statements may be prepared by the mortgage banker or mortgage broker, except that if the director finds it in the public interest, the director may require that a mortgage banker or mortgage broker submit financial statements prepared by an independent accountant;

(B) If the financial statements are more than six months old, interim period financial statements prepared by the mortgage banker or mortgage broker for the period ending the last full month prior to the date of application shall also be submitted.

(e) Written authorization to examine the applicant's Clients' Trust Account under ORS 59.935(3) or, in the case of a neutral escrow depository, a copy of the escrow agreement under OAR 441-875-0040(4);

(f) A copy of the written Notice to Financial Institution of Establishment of Clients' Trust Accounts under ORS 59.940. In the event the applicant does not receive client funds except at the time of closing, an Affidavit and Undertaking in the form and on terms approved by the director;

(g) The name of the registered agent of the mortgage banker or mortgage broker appointed under ORS 60.111 to accept process, notices or demands served upon the mortgage banker or mortgage broker;

(h)(A) Each of the following persons listed in paragraph (B) of this subsection shall submit the information:

(i) A biographical statement including name, address, Social Security number, date of birth, and a description of any material litigation;

(ii) A description of pending charges and convictions within the previous seven years from the date of the application of a misdemeanor, an essential element of which is fraud;

(iii) A description of pending charges and convictions for any felony for the preceding seven years; or

(iv) A description of pending charges and convictions a felony at any time if an element of the felony was an act of fraud, dishonesty, a breach of trust or laundering a monetary instrument.

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(v) If more than one name or Social Security number has been used by any of the persons submitting the biographical statement, all names and Social Security numbers must be submitted;

(vi) A statement listing the revocations by another jurisdiction of a license as a mortgage banker, mortgage broker, or mortgage loan originator or a license substantially similar to a mortgage banker, a mortgage broker, or a mortgage loan originator; and

(vii) An employment history for the ten years prior to the date of the application which shall include the name of each employer, job position and title, date each employment began and date each employment ended.

(B) Paragraph (A) of this section applies to—

(i) Any director, officer, and shareholder with direct or indirect ownership of greater than or equal to ten percent of outstanding shares of a corporate applicant;

(ii) The owner, if the applicant is an unincorporated sole proprietorship;

(iii) Each managing partner of a limited partnership or a partner in a general partnership with a partnership interest greater than or equal to ten percent of the total partnership interests in the general or limited partnership;

(iv) A member or managing member in a limited liability company with an ownership interest greater than or equal to ten percent of the total membership interests in the limited liability company; and

(v) The person identified in ORS 59.850 (2) as having the requisite experience in the mortgage business, negotiating loans in a related business satisfactory to the director, or lending experience in a related business satisfactory to the director.

(j) Each branch supervisor shall submit an employment history for the ten years prior to the date of the application, or the date of employment as a supervisor. The employment history shall include the name of each employer, job position and title, date each employment began and date each employment ended.

(k) The information required under OAR 441-860-0030 for each branch office;

(l) Payment of fees for application or renewal, as applicable, under OAR 441-860-0100.

(m) The following information concerning the applicant's mortgage loan originators, including the applicant if the applicant is a licensed mortgage loan originator:

(A) The name and unique identifier of each individual employed by the applicant;

(B) A signed statement attesting that at the time the applicant submits information under this rule each individual employed by the applicant has a valid mortgage loan originator license; and

(C) A signed statement that the applicant conducted the state criminal background check required by OAR 441-860-0045 and found no disqualifying convictions.

(2) If an applicant for a license submits an application which is incomplete in any respect, the director shall notify the applicant of the deficiencies through the National Mortgage Licensing System and Registry. The applicant has 30 days from the date of the notice to correct the deficiencies to complete the application. If the applicant fails to complete the application, the application will be considered abandoned.

Stat. Auth.: ORS 59.850, 59.855 & 59.900, 2009 OL Ch 863, § 4, 13a, 15

Stats. Implemented: ORS 59.845 & 59.850, 2009 OL Ch 863, § 4, 15

Hist.: FCS 3-1993, f. & cert. ef. 11-15-93; FCS 11-1994, f. 11-4-94, cert. ef. 11-15-94; FCS 1-1996, f. 11-20-96, cert. ef. 12-1-96; Administrative correction 8-4-97; FCS 4-1999, f. & cert. ef. 12-23-99; FCS 10-2000, f. & cert. ef. 9-13-00; FCS 10-2001, f. 12-24-01, cert. ef. 1-1-02; FCS 7-2003, f. 12-30-03 cert. ef. 1-1-04; FCS 6-2004, f. 12-14-04, cert. ef. 1-1-05; FCS 3-2005, f. & cert. ef. 9-6-05; FCS 1-2007, f. & cert. ef. 1-17-07; FCS 12-2009, f. 12-2-09, cert. ef. 1-1-10; FCS 14-2009, f. 12-30-09, cert. ef. 1-4-10

## 441-860-0025

### Rules for Use of Assumed Business Names

(1) In addition to any requirements for registering an assumed business name with the Secretary of State, a mortgage banker or mortgage broker who intends to use an assumed business name to identify the person's mortgage banker or mortgage broker business shall also comply with the following before doing business under the assumed business name:

(a) If the assumed business name contains words or phrases described in ORS 56.023, the mortgage banker or mortgage broker must obtain specific written approval from the director under ORS 705.635.

(b) The assumed business name must be added to the corporate surety bond of the mortgage banker or mortgage broker under either OAR 441-860-0085 or 441-860-0090.

(c) The mortgage banker or mortgage broker may purchase a separate corporate surety bond for the assumed business name if:

(A) The separate corporate surety bond contains the name of the principal mortgage banker or mortgage; and

(B) The separate corporate surety bond complies with either OAR 441-860-0085 or 441-860-0090, as applicable.

(d) Any corporate surety bond must be in force as of the date of the addition of the assumed business name, and must be forwarded to the director within two weeks from the addition of the assumed business name; and

(e) The assumed business name must be placed upon any client trust account maintained by the mortgage banker or mortgage broker.

(2) Regardless of the lack of any ownership interest in the assumed business name, the mortgage banker or mortgage broker is responsible for all actions of those acting under the assumed business name which relate to mortgage banking loans or mortgage loans.

Stat. Auth.: ORS 59.850 & 59.900

Stats. Implemented: ORS 59.850

Hist.: FCS 4-1999, f. & cert. ef. 12-23-99; FCS 14-2009, f. 12-30-09, cert. ef. 1-4-10

## 441-860-0030

### Branch Office Licensing

If a mortgage banker or mortgage broker intends to operate a branch office, the mortgage banker or mortgage broker shall obtain a license for the branch office prior to originating loans from the branch office by submitting the licensing fee specified in OAR 441-860-0100 and providing the following information through the Nationwide Mortgage Licensing System and Registry or on a form approved by the director:

(1) The address of the location of each branch office, and the mailing address if different, and the branch office telephone number email address and facsimile number.

(2) The information required under OAR 441-860-0020 regarding the branch supervisor who will supervise the activities of the employees of the branch to insure compliance with all applicable rules and regulations.

(3) Upon satisfaction of the requirements listed in sections (1) and (2), a separate branch office license will be issued by the director for posting in the branch office location.

Stat. Auth.: ORS 59.850 & 59.900

Stats. Implemented: ORS 59.845

Hist.: FCS 3-1993, f. & cert. ef. 11-15-93; FCS 11-1994, f. 11-4-94, cert. ef. 11-15-94; FCS 4-1999, f. & cert. ef. 12-23-99; FCS 1-2007, f. & cert. ef. 1-17-07; FCS 12-2009, f. 12-2-09, cert. ef. 1-1-10; FCS 14-2009, f. 12-30-09, cert. ef. 1-4-10

## 441-860-0040

### Supervision of Branch Offices and Mortgage Loan Originators

(1) A mortgage banker or a mortgage broker must diligently supervise and control every mortgage loan originator employed by the mortgage banker or the mortgage broker in the mortgage banker or mortgage broker's principal place of business and at each branch office.

(2) A mortgage banker or mortgage broker must personally supervise or designate a control person to supervise each branch office to ensure compliance with ORS 59.840 through 59.980 and OAR 441-850-0005 through 441-885-0500.

(3) To diligently supervise and control a mortgage loan originator employed by the mortgage banker or the mortgage broker, the mortgage banker or mortgage broker shall:

(a) Ensure that mortgage loan originators, and persons required to be licensed as mortgage loan originators, employed by the mortgage banker or mortgage broker obtain and maintain a license under 2009 Or Laws ch. 863, §§ 1 to 13 and OAR 441, division 880.

(b) Establish, maintain and enforce written procedures to supervise the activities of mortgage loan originators employed by the mortgage banker or mortgage broker and other associated persons that are subject to its supervision and to supervise the operation of each office of the mortgage banker or mortgage broker transacting loans with Oregon consumers. The procedures shall be reasonably designed to achieve compliance with applicable Oregon and federal lending laws and rules, including ORS 59.840 to 59.980.

(c) Review the activities of each office transacting loans with Oregon consumers, which shall include the examination of customer loan files, including closed and opened files. The reviews shall be reasonably designed to assist in detecting violations of, preventing violations of and achieving compliance with applicable mortgage lending laws, regulations and rules, as well as detecting and preventing irregularities or abuses. Each mortgage broker shall retain a record of the dates and findings of each review. The duties of this rule may be delegated to a qualified supervisor.

(d) Provide a copy of the procedures required by this rule to every mortgage loan originator employed by the mortgage banker or mortgage broker in written or electronic format.

(e) Ensure that mortgage loan originators obtain training to address deficiencies identified by the mortgage banker or mortgage broker in loan file and operations reviews or make up deficiencies in continuing education as necessary.

(f) Establish procedures for handling consumer complaints and develop procedures to identify the types of consumer complaints that must be forwarded to a supervisor for review. Complaints that must be forwarded to a supervisor include complaints about material changes in loan terms, fees or expenses, or material omissions about loan terms, fees or expenses. The mortgage banker or mortgage broker shall also develop procedures for investigating, responding to and keeping a record of complaints forwarded to a supervisor.

(g) Visit at least annually each branch the mortgage banker or mortgage broker licenses in Oregon to review compliance with the procedures listed in this section.

(3) In establishing the procedures in section (2) of this rule and in determining the frequency of office reviews, the mortgage banker or mortgage broker shall consider the following:

# ADMINISTRATIVE RULES

- (a) The number of loan transactions made by the mortgage banker or mortgage broker;
- (b) The number of office locations transacting loans with Oregon consumers;
- (c) The number of affiliated persons assigned to each location;
- (d) The nature and complexity of the loan transactions that the mortgage banker or mortgage broker predominantly makes;
- (e) The number of mortgage loan originators assigned to a location;
- (f) The number of mortgage loan originators assigned to the supervision of an individual supervisor; and
- (g) The results of previous office reviews.

(4) In establishing the procedures in section (2) of this rule and in determining the number of files from each mortgage loan originator to be reviewed, the mortgage banker or mortgage broker shall consider the following:

- (a) The knowledge and years of lending experience of a mortgage loan originator;
- (b) The disciplinary history of and the number of complaints received about a mortgage loan originator;
- (c) The experience and level of sophistication of the borrowers of a mortgage loan originator, if the mortgage banker, mortgage broker or mortgage loan originator predominantly serves specific segments of society;
- (d) The nature and complexity of the loan transactions that the mortgage banker or mortgage broker predominantly makes; and
- (e) The results of previous file reviews for a particular mortgage loan originator.

(5) The mortgage banker or mortgage broker is subject to disciplinary action of the director for any violation of the Oregon Mortgage Lender Law or corresponding rules committed by a mortgage loan originator authorized to make or negotiate residential mortgage loans for the mortgage banker or mortgage broker, whether or not that accountability is documented in any written agreement.

Stat. Auth.: ORS 59.900  
Stats. Implemented: ORS 59.865  
Hist.: FCS 3-1993, f. & cert. ef. 11-15-93; FCS 11-1994, f. 11-4-94, cert. ef. 11-15-94; FCS 1-2007, f. & cert. ef. 1-17-07; FCS 14-2009, f. 12-30-09, cert. ef. 1-4-10

## 441-860-0045

### State Criminal Records Check

(1) In addition to the criminal records check required for submission to the National Mortgage Licensing System and Registry under 2009 Or Laws ch. 863, §§ 4 and 10, a mortgage banker or mortgage broker must conduct a state criminal records check of each individual employed by the mortgage banker or mortgage broker as a mortgage loan originator.

(a) The mortgage banker or mortgage broker shall search state records of all states where the individual has resided in the past 10 years using the person's full legal name, date of birth, place of birth and Social Security number.

(b) The mortgage banker or mortgage broker must use the services of law enforcement agencies or an independent private company that complies with the federal Fair Credit Reporting Act to conduct the state criminal records check.

(2) An applicant for a mortgage loan originator license may not be employed and a currently employed mortgage loan originator must be terminated immediately if the state criminal records check discloses a conviction for a felony or a misdemeanor if an essential element of the misdemeanor involved false statements or dishonesty:

(a) During a period of seven years before the date the applicant submits an application for a license as a mortgage loan originator; or

(b) At any time before the date the applicant submits an application a license as a mortgage loan originator if the conviction or plea involved a felony and an element of the felony was an act of fraud, dishonesty, a breach of trust or laundering a monetary instrument.

(3) State criminal records check documents received by the mortgage banker or mortgage broker shall be maintained in a secure location separate from personnel records, and shall be made available to the director for examination at any reasonable time and may require, without subpoena, the production of such records at the office of the director as often as is reasonably necessary. These records shall be preserved for three years after the mortgage banker or mortgage broker terminates the mortgage loan originator's employment. After the retention period, the records shall be destroyed in a secure manner.

Stat. Auth.: ORS 59.971 & 59.972  
Stats. Implemented: ORS 59.971 & 59.972  
Hist.: FCS 5-2003, f. 12-30-03 cert. ef. 1-1-04; FCS 2-2004, f. & cert. ef. 8-5-04; Renumbered from 441-880-0050 by FCS 14-2009, f. 12-30-09, cert. ef. 1-4-10

## 441-860-0050

### Renewal of Mortgage Banker and Mortgage Broker License

(1) A mortgage banker or a mortgage broker license shall expire on December 31 of each calendar year. At least 30 days prior to the expiration of a mortgage banker or mortgage broker license, an application for renewal of the license shall be submitted to the director and shall include the following:

- (a) A completed license renewal form approved by the director.

(b) Financial statements prepared in accordance with generally accepted accounting principles, including a balance sheet and a statement of income or operations, dated not more than six months prior to submission of the application. If the financial statements are more than six months old, interim period financial statements prepared by the mortgage banker or mortgage broker for the period ending the last full month prior to the date of the application must also be submitted.

(c) Any applicable renewal fees prescribed under OAR 441-860-0100.

(d) A mortgage banker or mortgage broker shall file with the director as a condition of renewal a corporate surety bond conforming to the requirements of OAR 441-860-0085 or a corporate surety bond or irrevocable letter of credit conforming to the requirements of OAR 441-860-0090.

(2) The director may refuse to renew a license if a reason exists under ORS 59.840 to 59.980 or 2009 Or Laws ch 863, §§ 1 to 13.

(3) If a mortgage banker or mortgage broker submits an application for renewal which is incomplete in any respect, the director shall notify the mortgage banker or broker of the deficiencies on the application. The mortgage banker or mortgage broker shall have 15 days from the date of the notice or the end of the renewal period, whichever occurs first, to complete the application for renewal. If the mortgage banker or mortgage broker fails to complete the application for renewal, and the license shall be terminated on the expiration date by reason of failure to renew.

Stat. Auth.: ORS 59.850, 59.855, 59.900, 2009 OL Ch 863, § 13a  
Stats. Implemented: ORS 59.855 & 59.969  
Hist.: FCS 3-1993, f. & cert. ef. 11-15-93; FCS 11-1995, f. 11-4-94, cert. ef. 11-15-94; FCS 4-1999, f. & cert. ef. 12-23-99; FCS 10-2000, f. & cert. ef. 9-13-00; FCS 10-2001, f. 12-24-01, cert. ef. 1-1-02; FCS 7-2003, f. 12-30-04, 1-1-04; FCS 6-2004, f. 12-14-04, cert. ef. 1-1-05; FCS 12-2009, f. 12-2-09, cert. ef. 1-1-10; FCS 14-2009, f. 12-30-09, cert. ef. 1-4-10

## 441-860-0060

### Equivalent and Related Experience

(1) An applicant or an applicant's control person who has experience in the following categories shall be given full credit for such experience toward meeting the experience requirement under ORS 59.850:

- (a) Origination of loans secured by lien interests in real estate;
- (b) Negotiation of loans secured by lien interests in real estate;
- (c) Underwriting of loans secured by lien interests in real estate; or
- (d) Persons who supervise the activities of those persons enumerated in subsections (a) through (c) of this section.

(2) An applicant who has experience in the following categories, within the five year period preceding the application date, may receive partial credit for such experience toward the experience requirement contained in ORS 59.840 through 59.980. Credit may be given in only one category listed and for not more than three years actual experience. Credit given shall be in the ratios of actual years of experience to equivalent years credited toward qualification for a mortgage banker and mortgage broker license as set forth below. The remaining years of experience required to qualify for a mortgage banker or mortgage broker license shall be obtained from experience in categories listed in section (1) of this rule. The categories of possible alternative experience for which partial credit is available, and the ratios of actual years of experience to equivalent years credited toward qualification for a mortgage banker or mortgage broker license are:

- (a) Escrow officer, 3:2;
- (b) Loan processor with responsibility primarily for loans secured by lien interests on real estate, 3:2;
- (c) Branch manager of lender with responsibilities primarily for loans not secured by lien interests on real estate, 3:1.5;
- (d) Loan officer with responsibility primarily for loans not secured by lien interests on real estate, 3:1.5;
- (e) Paralegal with demonstrated experience in real estate financing matters, 3:1;
- (f) Real estate broker with an Oregon license or a license from a state with substantially equivalent real estate licensing requirements, 3:1;
- (g) Title officer with a title company, 3:1;
- (h) Real estate broker, not within subsection (f) of this section, 3:1;
- (i) Real estate salesperson with an Oregon license or a license from a state with substantially equivalent licensing requirements, 3:1;
- (j) Licensed real estate appraiser, 3:1; and
- (k) Real estate salespersons not included in subsection (i) of this section, 3:0.5.

(3) An applicant who does not originate loan applications or negotiate loan terms but who is in the business of selling real estate paper whether as issuer, agent or principal, to persons other than persons enumerated in ORS 59.035(4), or who engages all or part of the time, for the account of others or for the person's own account, in the business of accepting funds from one or more persons other than persons enumerated in ORS 59.035(4) for investment in real estate paper, shall be given full credit for experience toward meeting the three of the past five year experience requirement contained for:

- (a) Experience as a licensed securities salesperson under the provisions of ORS 59.165; or
- (b) Experience as a securities salesperson effecting transactions in securities which are exempt from registration under the provisions of ORS 59.025 and 59.035.



# ADMINISTRATIVE RULES

(4) The individual listed as the experienced person, as described in ORS 59.850, on the applicant's licensing application may not work, as an employee or independent contractor as the experienced person, for another mortgage banker or mortgage broker.

Stat. Auth.: ORS 59.850(2) & 59.900  
Stats. Implemented: ORS 59.840  
Hist.: FCS 3-1993, f. & cert. ef. 11-15-93; FCS 11-1994, f. 11-4-94, cert. ef. 11-15-94; FCS 4-1999, f. & cert. ef. 12-23-99; FCS 7-2001, f. & cert. ef. 8-1-01; FCS 2-2004, f. & cert. ef. 8-5-04; FCS 1-2007, f. & cert. ef. 1-17-07; FCS 14-2009, f. 12-30-09, cert. ef. 1-4-10

## 441-860-0070

### Disclosure of Significant Developments

(1) A mortgage banker or mortgage broker shall be required to notify the director within 30 days of the occurrence of any of the following significant developments:

(a) Filing for bankruptcy or reorganization.

(b) Notification of the institution of license revocation procedures against the mortgage banker or mortgage broker by any state.

(c) Filing of a felony indictment against a mortgage banker or mortgage broker, officer, director, principal, control person or experienced person.

(d) A mortgage banker or mortgage broker, officer, director, principal, control person or experienced persons being convicted of a felony or misdemeanor involving fraud.

(e) All material litigation occurring against the mortgage banker or mortgage broker.

(f) The director may require other information as deemed necessary to determine whether a new application is required if a change of control or ownership of a mortgage banker or mortgage broker occurs. For purposes of this rule, a change in control or ownership includes:

(A) Acquisition of ten percent or more of the stock in a corporation by a person or a group of persons, or the ability of a person or group acting in concert to elect a majority of the directors or otherwise effect a change in policy of the corporation.

(B) Acquisition of the mortgage banker or mortgage broker business, if the applicant is an unincorporated sole proprietorship;

(C) Acquisition by a managing partner of a limited partnership or a partner in a general partnership of ten percent or more of the partnership interests in the general or limited partnership;

(D) Acquisition by a member or managing member in a limited liability company of a membership interest greater than or equal to ten percent of the total membership interests in the limited liability company; and

(E) In the case of entities other than corporations or those listed in paragraphs (A) through (D) of this subsection, change in control shall mean any change in principals of the organization, whether active or passive.

(g) In addition to the requirements of OAR 441-860-0030, a mortgage banker or a mortgage broker shall notify the director when a branch office ceases to operate.

(h) Any changes in the information required on the mortgage banker or mortgage broker's application form, including, but not limited to address changes, phone number changes, etc.

(i) Any changes in the status of a mortgage loan originator employed by the mortgage banker or mortgage broker.

(j) Any dismissal of a mortgage loan originator employed by the mortgage banker or mortgage broker due to a change in the mortgage loan originator's licensing status or an event that would constitute grounds for license revocation under 2009 Or Laws ch. 863, §§ 1 to 13 and OAR chapter 441, division 880.

(2) The director may request additional information regarding any of the occurrences outlined in this rule.

Stat. Auth.: ORS 59.850 & 59.900  
Stats. Implemented: ORS 59.860  
Hist.: FCS 3-1993, f. & cert. ef. 11-15-93; FCS 4-1999, f. & cert. ef. 12-23-99; FCS 10-2001, f. 12-24-01, cert. ef. 1-1-02; FCS 2-2004, f. & cert. ef. 8-5-04; FCS 14-2009, f. 12-30-09, cert. ef. 1-4-10

## 441-860-0080

### Failure to Continually Satisfy Experience Requirement

(1) If a mortgage banker or mortgage broker fails to satisfy the experience requirements under ORS 59.850(3) during any licensing period regardless of the reason for that failure, the mortgage banker or mortgage broker shall:

(a) Notify the director within three working days that the mortgage banker or mortgage broker no longer satisfies the experience requirement;

(b) Submit to the director within seven calendar days of the occurrence, an inventory and status of pending loan application files including an accounting of all Clients' Trust Accounts;

(c) Account for all investor funds;

(d) Submit to the director within one week of the occurrence a proposed plan to rectify the deficiency or a plan for the orderly transfer of business to a duly licensed mortgage banker or mortgage broker;

(e) Immediately cease accepting new applications from borrowers and, in the case of mortgage brokers who fund mortgages from investors other than institutions described in ORS 59.035(4), solicitation of funds and accepting such investor funds shall immediately cease.

(2) If the mortgage banker or mortgage broker fails to comply with the provisions of section (1) of this rule, the director shall take appropriate action, consistent with the authority granted pursuant to ORS 59.840 through 59.965 to ensure that the interests of borrowers and investors are protected.

(3) If the mortgage banker or mortgage broker is unable to satisfy the director that the experience requirement will be satisfied within 30 days, the director may institute action to suspend or revoke the mortgage banker's or mortgage broker's license.

(4) The director may require reports on the status of the mortgage banker or mortgage broker's business. A mortgage banker or mortgage broker shall provide a report containing the content specified by the director as often as the director may specify. The reports may be written or oral, or both as the director may specify.

(5) If a mortgage banker or mortgage broker renews a license but does not conduct business, the time period that the person does not conduct business does not apply to the experience requirement in ORS 59.850(2).

Stat. Auth.: ORS 59.850, ORS 59.865 & ORS 59.900  
Stats. Implemented: ORS 59.840  
Hist.: FCS 3-1993, f. & cert. ef. 11-15-93; FCS 11-1994, f. 11-4-94, cert. ef. 11-15-94; FCS 4-1999, f. & cert. ef. 12-23-99; FCS 10-2001, f. 12-24-01, cert. ef. 1-1-02; FCS 14-2009, f. 12-30-09, cert. ef. 1-4-10

## 441-860-0130

### Private Money Loans

A person is not engaged in the business of making loans secured by an interest in real estate as used in ORS 59.840(5)(b)(C) and (7)(b)(F) if the person is making a loan from their own funds and does not make more than 10 loans secured by an interest in residential real estate during any consecutive twelve month period if they do not advertise or otherwise hold themselves out as being in the business of making mortgage loans.

Stat. Auth.: ORS 59.900  
Stats. Implemented: ORS 59.840  
Hist.: FCS 4-1999, f. & cert. ef. 12-23-99; FCS 14-2009, f. 12-30-09, cert. ef. 1-4-10

## 441-865-0010

### General Provisions

All mortgage bankers and mortgage brokers shall maintain and preserve financial records concerning business operations, transactions with customers, and trust account transactions. The records shall be sufficient for an independent accountant to prepare a compiled, reviewed or audited financial statement on the business of the mortgage banker or mortgage broker.

Stat. Auth.: ORS 59.860  
Stats. Implemented: ORS 59.860  
Hist.: FCS 3-1993, f. & cert. ef. 11-15-93; FCS 14-2009, f. 12-30-09, cert. ef. 1-4-10

## 441-865-0020

### Financial Records

At a minimum the financial records shall include:

(1) A record, such as a cash receipts journal, of all monies received from borrowers showing at least:

(a) Name of payor;

(b) Date of receipt;

(c) Amount received;

(d) Purpose of receipt including identification of the loan to which it relates, if any;

(e) The disposition of all monies received including the date and place of deposit or, if not deposited, the date, name of the person who received the monies and the manner in which the monies were transmitted.

(2) A sequential listing of all checks written for each bank account relating to the mortgage banker or mortgage broker's business, such as a cash disbursement journal, showing at least:

(a) Name of the payee;

(b) Date of payment;

(c) Amount of the payment;

(d) Purpose of the payment including identification of the loan to which it relates, if any.

(3) Bank account activity source documents for every account maintained for the mortgage banker's or mortgage broker's business including at least:

(a) Receipted deposit tickets and if "less cash deposits" are made, an explanation of the use of the cash;

(b) Paid checks if available and if these items are truncated, a copy of a document authorizing the director to request and receive copies of processed items from the financial institution;

(c) Bank advices, including but not limited to debit and credit notices and overdraft notices;

(d) Monthly or periodic statements;

(e) Detail on wire transfers into or out of the account(s) including the name of the person who is the payor or payee, date, amount, purpose of receipt or payment, and identification of the loan to which it relates, if any.

(4) A record or file of all monies owed by the mortgage banker or mortgage broker, such as an accounts payable journal.

Stat. Auth.: ORS 59.860 & 59.900  
Stats. Implemented: ORS 59.860  
Hist.: FCS 3-1993, f. & cert. ef. 11-15-93; FCS 11-1994, f. 11-4-94 cert. ef. 11-15-94; FCS 14-2009, f. 12-30-09, cert. ef. 1-4-10

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## 441-865-0025

### Residential Mortgage Lending Reports

On or before March 31 of each calendar year, a mortgage banker or a mortgage broker licensed at any time during the preceding calendar year must file a report concerning the banker's or broker's business and operations conducted during the preceding calendar year related to residential mortgage transactions.

(1) A mortgage banker or mortgage broker must report the total number and dollar amount of all loans made or funded by the mortgage banker or mortgage broker in any state and those loans that are Oregon residential mortgage transactions.

(2) For loans made or funded for a property located in Oregon, a mortgage banker or mortgage broker must report the total number and dollar amount of:

- (a) First-lien mortgage loans.
- (b) Subordinate-lien mortgage loans including, but not limited to, home equity lines of credit.
- (c) Mortgage loans having a fixed periodic payment of principal and interest throughout the mortgage term.
- (d) Interest-only first-lien mortgage loans having a fixed interest rate.
- (e) Interest-only first-lien mortgage loans having an adjustable interest rate.
- (f) Negative amortization mortgage loans.
- (g) Home equity conversion mortgages, commonly known as reverse mortgages.
- (h) Adjustable rate first-lien mortgage loans.
- (i) Adjustable rate subordinate-lien mortgage loans.
- (j) Loans with a prepayment penalty in the contract at the time of closing.

(k) Mortgage loans closed for the purchase of a primary owner-occupied residential dwelling.

(l) Mortgage loans closed for the purchase of a secondary residence.

(m) Mortgage loans closed for the purchase of a non-owner occupied property that is a one-to-four family residential dwelling.

(n) Mortgage loans closed for the purpose of refinancing an existing mortgage loan secured by a primary owner-occupied residential dwelling.

(o) Mortgage loans closed for the purpose of refinancing an existing mortgage loan secured by a secondary residence.

(p) Mortgage loans closed for the purpose of refinance an existing mortgage loan secured by a non-owner occupied property that is a one-to-four family residential dwelling.

(q) Mortgage loans insured or guaranteed by a federal agency.

(3) For loans made or funded for a property located in Oregon, a mortgage banker or mortgage broker may, until March 31, 2010, report the total number and dollar amount of:

(a) Loans that were originated based on all of the following factors:

- (A) Income documentation;
- (B) Employment documentation; and
- (C) Asset documentation.

(b) Loans that were originated based on one or two of the following factors:

- (A) Income documentation;
- (B) Employment documentation; or
- (C) Asset documentation.

(c) Loans that were not originated based on any of the following factors:

- (A) Income documentation;
- (B) Employment documentation; or
- (C) Asset documentation.

(d) Loans with a combined loan-to-value ratio of 80% or lower made to an individual having a middle credit bureau risk score of 620 or above.

(e) Loans with a combined loan-to-value ratio of 80% or lower made to an individual having a middle credit bureau risk score below 620.

(f) Loans with a loan-to-value ratio of greater than 80% made to an individual having a middle credit bureau risk score of 620 or above.

(g) Loans with a loan-to-value ratio of greater than 80% made to an individual having a middle credit bureau risk score below 620.

(5)(a) In addition to the report required by this rule, on or before March 31 of each calendar year a mortgage banker or a mortgage broker shall file a call report published by the State Regulatory Registry, LLC for the National Mortgage Licensing System and Registry to report the mortgage banker's or mortgage broker's business and operations in Oregon related to residential mortgage transactions.

(b) Subsection (a) of this section applies to reports filed on or after March 31, 2011.

Stat. Auth.: ORS 59.860

Stat. Implemented: ORS 59.860

Hist.: FCS 12-2008, f. 12-8-08, cert. ef. 12-10-08; FCS 14-2009, f. 12-30-09, cert. ef. 1-4-10

## 441-865-0030

### Advertising

All mortgage bankers and mortgage brokers shall maintain copies of:

(1) All printed advertising published in newspapers, magazines, newsletters or other media designed for mass distribution;

(2) Scripts, or audio and video tapes, for advertising broadcast on radio or television; and

(3) Recorded telephone messages or voice mail messages which contain rate information.

Stat. Auth.: ORS 59.860, 59.900 & 59.945

Stats. Implemented: ORS 59.945

Hist.: FCS 3-1993, f. & cert. ef. 11-15-93; FCS 14-2009, f. 12-30-09, cert. ef. 1-4-10

## 441-865-0040

### Borrower and Investor Complaints

(1) Copies of all written complaints by borrowers and investors shall be maintained in a separate complaint file by the individual's name in alphabetical order and shall contain at a minimum a copy of the original complaint and response.

(2) Copies of correspondence related to the complaints and a written disposition of the complaint by an officer, director or control person of the company shall be maintained in the complaint file or in the borrower or investor file of the mortgage banker or mortgage broker.

(3) Complaints unrelated to borrower or investor transactions need not be retained.

Stat. Auth.: ORS 59.860 & 59.900

Stats. Implemented: ORS 59.860

Hist.: FCS 3-1993, f. & cert. ef. 11-15-93; FCS 2-2004, f. & cert. ef. 8-5-04; FCS 14-2009, f. 12-30-09, cert. ef. 1-4-10

## 441-865-0050

### Personnel Records

(1) Each employer shall maintain a personnel ledger which shall contain the name, date of birth, position or title and responsibilities, unique identifiers, starting date, and date and reason for termination of salaried employees.

(2) For purposes of this rule, personnel shall include salaried employees, independent contractors, and consultants who are involved in loan origination, loan servicing, loan negotiations, investor solicitation, or who transact business with borrowers or lenders.

Stat. Auth.: ORS 59.860 & 59.900

Stats. Implemented: ORS 59.860 & 59.969

Hist.: FCS 3-1993, f. & cert. ef. 11-15-93; FCS 10-2001, f. 12-24-01, cert. ef. 1-1-02; FCS 14-2009, f. 12-30-09, cert. ef. 1-4-10

## 441-865-0080

### Investor Files

(1) In addition to all other books and records required under the provisions of OAR 441-865-0010 to 441-865-0090, a mortgage banker or a mortgage broker must maintain the following documents and records when borrower loans are funded by investors who are persons other than those exempt under ORS 59.035(4) or (5):

(a) A copy of the written disclosure document described in OAR 441-870-0050(1);

(b) A written statement, signed and dated by the investor acknowledging receipt of the written disclosure document and an opportunity to review the supporting documentation;

(c) The supporting documentation evidencing the summarized information contained in the disclosure document.

(d) A copy of the written evidence of obligation and the instrument creating the investor's lien or assignment of the lien as required pursuant to OAR 441-870-0060;

(e) A copy of documents evidencing that the instrument creating the lien or assignment has been recorded pursuant to the provisions of OAR 441-870-0060;

(f) Copies of guarantees, surety agreements, "with-recourse" agreements or guarantees, and correspondence related to the sale of real estate paper to the investor.

(2) The documents required under the provisions of subsections (1)(a) through (f) of this rule may be maintained in separate files designated "Investor Files" or in the borrower file at the option of the mortgage banker or mortgage broker.

(3) For those documents which do not contain the original executed signature of the investor, the requirements of this rule shall be deemed to be satisfied if the mortgage banker or mortgage broker maintains computerized records from which hard copies or reports can be generated if the reports contain all the information required under the provisions of this rule.

Stat. Auth.: ORS 59.860 & 59.900

Stats. Implemented: ORS 59.860

Hist.: FCS 3-1993, f. & cert. ef. 11-15-93; FCS 11-1994, f. 11-4-94, cert. ef. 11-15-94; FCS 14-2009, f. 12-30-09, cert. ef. 1-4-10

## 441-865-0090

### Trust Account and Escrow Depository

In addition to the books and records required pursuant to the provision of OAR 441-865-0010 to 441-865-0080, a mortgage banker or a mortgage broker is required to maintain the books and records required under the provisions of OAR chapter 441, division 875.

Stat. Auth.: ORS 59.860 & 59.900

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Stats. Implemented: ORS 59.935  
Hist.: FCS 3-1993, f. & cert. ef. 11-15-93; FCS 14-2009, f. 12-30-09, cert. ef. 1-4-10

## 441-870-0030

### Borrower Transactions

A dishonest, fraudulent or illegal practice or conduct under ORS 59.865 includes, but is not limited to, the following conduct by a person in connection with a mortgage loan:

(1) Making any representation or guarantee to a customer that a loan can be secured by a date certain;

(2) Entering into a lock agreement for a specific interest rate or advertising the availability of a lock agreement for a specific interest rate unless:

(a) The agreement or advertisement also specifies the terms of the lock agreement including the length of the lock period and the costs to the borrower associated with the lock agreement; and

(b) The mortgage banker or mortgage broker can demonstrate that they have successfully closed loans under lock agreements, which provided for similar interest rates within similar time frames;

(3) Making a representation to a customer that interest rates, points, or other financing terms are available at the time the representation was made unless the interest rates, points, or terms are actually available within the time frame represented from:

(a) A lender with whom the mortgage banker or mortgage broker maintains a correspondent or loan brokerage agreement;

(b) A person exempt from licensing pursuant to ORS 59.840(7)(b)(A) or (B); or

(c) One or more persons, other than persons exempt under ORS 59.035(4), if the mortgage banker or mortgage broker has a written commitment from such persons to fund the mortgage loan at the interest rate, points or other financing term offered to the borrower.

(4) Failing to disclose in writing to a borrower before negotiating loan terms for a mortgage loan that the person, mortgage banker or mortgage broker, or mortgage loan originator has a verbal or written contract, joint venture agreement or any other type of understanding with a builder or a realtor who is a party to the transaction and that this relationship may result in the borrower getting less favorable loan terms.

(5) Failing to refund within 72 hours of rejecting a loan, the advance fees paid which have not been distributed pursuant to a signed loan agreement or, in the event the loan agreement does not contain provisions for acceptance and distribution of advance fees, pursuant to a fee agreement;

(6) Failing to account, after reasonable notice, to any person whose property secures a loan made by the mortgage banker or mortgage broker for any money which that person has paid to the mortgage banker or mortgage broker for the payment of third party obligations including, but not limited to, appraisal fees, title search fees, taxes, and insurance premiums;

(7) Failing to comply within 30 working days of a written request by a borrower made within 90 days of notice that the loan will not be obtained, for copies of any appraisal, title report, or credit report paid for by the borrower, unless the agreement between the mortgage banker or mortgage broker and the credit service prohibits such distribution;

(8) Providing a savings statement to the borrower, unless:

(a) The amount of savings the borrower will realize can be projected with certainty;

(b) The amount of savings actually realized is within \$1000.00 of the amount projected;

(c) The savings statement includes a disclaimer that the actual amount of savings may vary; and

(d) The savings statement shows changing payments over the life of the loan when the loan being offered is an adjustable rate product.

(9) Requiring or permitting a consumer to sign promissory notes and trust deeds prior to:

(a) The loan receiving final written loan approval;

(b) Full disclosure to the consumer of repayment terms; and

(c) The lender having funds available to fund the loan.

(10) Delaying release of loan funds to the borrower, the borrower's approved representative or escrow for more than one business day following recording of the lien.

Stat. Auth.: ORS 59.900

Stats. Implemented: ORS 59.865

Hist.: FCS 3-1993, f. & cert. ef. 11-15-93; FCS 11-1994, f. 11-4-94, cert. ef. 11-15-94; FCS 4-1999, f. & cert. ef. 12-23-99; FCS 10-2001, f. 12-24-01, cert. ef. 1-1-02; FCS 3-2008, f. 5-2-08, cert. ef. 5-7-08; FCS 14-2009, f. 12-30-09, cert. ef. 1-4-10

## 441-870-0040

### Lender Requirements

A dishonest, fraudulent or illegal practice or conduct under ORS 59.865 includes, but is not limited to, the following conduct a person in connection with a mortgage loan:

(1) Negotiating a residential loan agreement that provides for a penalty to be charged for repaying the loan prior to the date provided for repayment in the loan agreement without providing notice in writing of a size equal to at least ten-point bold or underlined type that substantially conforms to the following:

**NOTICE TO THE BORROWER: Do not sign this loan agreement before you read it. This loan agreement provides for the payment of a penalty if you wish to repay the loan prior to the date provided for repayment in the loan agreement.**

If a residential loan agreement does not contain a notice as required by this section, a lender shall not collect from the borrower a penalty for payment of the loan prior to the date provided for repayment.

(2) Negotiating a residential mortgage loan agreement that authorizes the lender to refuse to accept repayment of the loan prior to the date provided for repayment in the loan agreement without providing notice in writing of a size equal to at least ten-point bold or underlined type that substantially conforms to the following:

**NOTICE TO THE BORROWER: Do not sign this loan agreement before you read it. This loan agreement authorizes the lender to refuse to accept repayment of this loan prior to the date provided for repayment in this loan agreement.**

If a residential loan agreement does not contain a notice as required by this section, a lender shall not refuse to accept repayment of the loan by the borrower prior to the date provided for repayment.

Stat. Auth.: ORS 59.900

Stats. Implemented: ORS 59.865

Hist.: FCS 3-1993, f. & cert. ef. 11-15-93; FCS 11-1994, f. 11-4-94, cert. ef. 11-15-94; FCS 14-2009, f. 12-30-09, cert. ef. 1-4-10

## 441-870-0050

### Investor Transactions

A dishonest, fraudulent or illegal practice or conduct under ORS 59.865 includes, but is not limited to, the following conduct by a person in connection with a mortgage loan:

(1) Failing to provide to investors who are persons other than persons enumerated pursuant to ORS 59.035(4) and (5), prior to the time of sale of any interest in real estate paper, a written disclosure document which contains the following information:

(a) The priority of the lien created by the security and the total face amount of any senior liens;

(b) A statement whether any future advances may have a priority senior to that of the lien created by the security;

(c) A copy of the most recent complete property tax statement, covering the real property underlying the security;

(d) The value of the real property underlying the security. This value must be provided by:

(A) The tax assessed value if it is 100 percent of the true cash value and is on the same property underlying the security; or

(B) An appraisal by an independent licensed appraiser.

(e) The debtor's payment record, on the instrument being sold for the two years immediately preceding the sale. When the debtor's payment record is less than two years or not available:

(A) The payment record to date or a statement that payment records are not available; and

(B) A current credit report on the debtor prepared by a credit reporting agency or a current financial statement of the debtor.

(f) The terms of any senior lien or a copy of the instrument creating the lien and any assignments;

(g) If the mortgage seller, seller's agent, or any affiliate is the debtor, a statement disclosing that fact and the amount of cash paid to the debtor in consideration for the issuance of the real estate paper;

(h) A statement of any commissions, collection fees, and other costs chargeable to the purchaser of the real estate paper;

(i) A prominent statement of any balloon payments;

(j) In the case of a sale of junior real estate paper, a statement of the risk of loss on foreclosure of a senior lien; and

(k) A statement of whether or not the purchaser of the real estate paper will be insured against casualty loss.

(2) In the case of transactions involving securities sold under a registration which is currently effective, compliance with the provisions of this rule shall be deemed to be satisfied if the mortgage banker or mortgage broker provides to the investor a copy of the offering memorandum which was submitted to the director as part of the application to register securities pursuant to ORS Chapter 59.

(3) In the case of transactions which are exempt from registration under the provisions of ORS 59.035(7), compliance with the provisions of this rule shall be deemed to be satisfied if the mortgage banker or mortgage broker provides to the investor a copy of the risk disclosure section of an offering memorandum prepared for sales of similar, but non-exempt securities, if the memorandum was submitted to the director as a part of the registration application and that the registration is effective at the time the document is provided to the investor.

Stat. Auth.: ORS 59.035(7) & 59.900

Stats. Implemented: ORS 59.865

Hist.: FCS 3-1993, f. & cert. ef. 11-15-93; FCS 11-1994, f. 11-4-94, cert. ef. 11-15-94; FCS 2-2004, f. & cert. ef. 8-5-04; FCS 14-2009, f. 12-30-09, cert. ef. 1-4-10

## 441-870-0070

### Servicing Transactions

A dishonest, fraudulent or illegal practice or conduct under ORS 59.865 includes, but is not limited to, the following conduct by a person in connection with a mortgage loan:

(1) Failing to disclose that the lender may sell the loan to another party.

(2) Failing to provide to borrowers an annual statement of the account of the borrower showing the unpaid principal balance of the mortgage loan at the end of the immediately preceding 12-month period, the interest paid dur-

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ing such period, the amounts deposited into escrow and the amounts disbursed from escrow during the period.

Stat. Auth.: ORS 59.900  
Stats. Implemented: ORS 59.865  
Hist.: FCS 3-1993, f. & cert. ef. 11-15-93; FCS 14-2009, f. 12-30-09, cert. ef. 1-4-10

## 441-870-0080

### Advertising

(1) Advertising containing any of the following is false, misleading or deceptive:

(a) A statement or representation of a specific installment amount in repayment of a loan without as least as prominently disclosing the following information about the loan:

- (A) Principal amount;
- (B) Annual percentage rate;
- (C) Whether the interest rate is fixed or variable, and if variable, the loan terms;

(D) Number, amount and period of payments scheduled to the date of maturity; and

(E) Balance due at maturity (balloon payment) if not fully amortized;

(b) An interest rate without as least as prominently disclosing the annual percentage rate of the note;

(c) A statement or representation that the person can make or negotiate "low doc/no doc," "no income/no asset," "alt doc," "stated income," "stated asset," "no ratio," or similar loan products without at least as prominently disclosing that these products may have a higher interest rate, more points, or more fees than other products that require income documentation;

(d) An interest rate or annual percentage rate expressed in less than three decimal places, provided that ending zeros following the decimal point may be omitted;

(e) An offer to procure, arrange, or otherwise assist a borrower to obtain a mortgage loan on terms which the person cannot, does not intend, or does not want to provide, or which the person knows or should know cannot be reasonably provided;

(f) A statement or representation that all or most borrowers may or will qualify for a loan or that persons with bad credit histories or no credit histories may or will qualify for this loan unless the person can demonstrate that borrowers with bad credit or no credit have been routinely and successfully qualified for loans by that lender;

(g) Any statement or representation that would be in violation of Regulation X, 24 C.F.R. Part 3500 regarding kickbacks and unearned fees, including soliciting referrals with a promise to pay the advertising costs of any settlement provider;

(h) Any statement or representation that would be in violation of Regulation Z, 12 C.F.R. Part 226, regarding advertising;

(i) The phrase "wholesale rates" when the advertising is directed to or accessible by the public;

(j) Any statement or representation about a loan that carries the potential for negative amortization without clearly identifying that potential and without at least as prominently disclosing:

- (A) The market or fully indexed rate;
- (B) The term of the reduced payments;
- (C) The term of the entire loan; and
- (D) The annual percentage rate;

(k) Official looking emblems or logos, such as eagles, crests, or flags, which resemble a format similar to that used by any governmental agency;

(L) Envelopes which resemble an official government mailing, from entities such as the Internal Revenue Service, U.S. Treasury, a state taxing authority, or other governmental mailer;

(m) Slogans such as "Buy U.S. Savings Bonds" without at least as prominently disclosing that the mailing is an advertisement and not from a government agency;

(n) The name or logo of a financial institution or the holder of an existing loan when the person responsible for the advertisement or named in the advertisement has no association, affiliation or cooperative agreement with the financial institution or holder of the loan, without at least as prominently disclosing that person's name and the following statements:

- (A) "This is an advertisement";
- (B) "This is an offer for a new loan"; and
- (C) "This offer is not related to your existing mortgage lender or holder of your loan".

(o) Terms such as "verified as eligible", "preapproved", "prequalified" or similar words or phrases, without at least as prominently disclosing language that describes prerequisites to qualify for the loan, including, but not limited to, income verification, credit check, and property appraisal or evaluation;

(2) All advertisements a mortgage banker or mortgage broker disseminates by any means must contain the mortgage banker or mortgage broker's Oregon-issued license number, the mortgage banker or mortgage broker's name, or the mortgage banker or mortgage broker's assumed business name that conforms to a name on file with the director.

Stat. Auth.: ORS 59.900, 59.945  
Stats. Implemented: ORS 59.865, 59.930, 59.945  
Hist.: FCS 3-2008, f. 5-2-08, cert. ef. 5-7-08; FCS 14-2009, f. 12-30-09, cert. ef. 1-4-10

## 441-875-0020

### Branch Office Trust Accounts

(1) Branch offices shall maintain a separate trust account if:

(a) The main office of the mortgage banker or mortgage broker does not maintain a trust account or deposit funds into a neutral escrow depository on behalf of the branch offices' clients; or

(b) The main office of the mortgage banker or mortgage broker is not located within the State of Oregon.

(2) If the branch office maintains a trust account separate from the main office, the mortgage banker or mortgage broker shall be responsible for supervision of the branch office trust account to ensure compliance with the provisions of OAR 441-875-0030 and ORS 59.935 and 59.940.

(3) If the branch office places funds into a neutral escrow depository, the mortgage banker or mortgage broker shall be responsible for supervision of the branch office activities to ensure compliance with the provisions of OAR 441-875-0030 and ORS 59.935(1).

(4) Branch offices may maintain a trust account separate from any trust account maintained by the main office provided the branch office complies with all provisions under OAR 441-875-0030 and ORS 59.935(4).

(5) Examination of the branch office books and records relating to the trust accounts may be made at such time as the director may choose.

(6) Compliance with the provisions of OAR 441-875-0020 through 441-875-0040 does not relieve any person of any other duties and liabilities under ORS Chapter 59, applicable administrative rules, or any other provisions of law.

Stat. Auth.: ORS 59.900 & 59.935  
Stats. Implemented: ORS 59.935  
Hist.: FCS 3-1993, f. & cert. ef. 11-15-93; FCS 11-1994, f. 11-4-94, cert. ef. 11-15-94; FCS 1-2007, f. & cert. ef. 1-17-07; FCS 14-2009, f. 12-30-09, cert. ef. 1-4-10

## 441-875-0030

### Manner of Deposit

(1) A mortgage banker or mortgage broker shall deposit all trust funds received from a client into the trust account or neutral escrow depository and shall keep such funds in the trust account or neutral escrow depository until:

(a) In the case of a neutral escrow depository, the written escrow instructions prepared pursuant to the provisions of OAR 441-875-0040(3) and agreed to by all parties have been fulfilled; or

(b) In the case of a trust account, the instructions for disbursement of trust funds have been fulfilled as contained in:

- (A) The loan application form; or
- (B) A separate fee agreement, if any.

(2) A mortgage banker or mortgage broker shall not commingle any monies received from a client for deposit into a trust account with personal funds of the mortgage banker or mortgage broker. For purposes of OAR 441-875-0010 through 441-875-0040, the following shall not constitute commingling of trust funds with personal funds if the funds are removed from the trust account within 30 days:

(a) Earned, but untransferred interest income accruing to the mortgage banker or mortgage broker pursuant to a written agreement with the client;

(b) Earned, but untransferred fees due the mortgage banker or mortgage broker.

(3) Every deposit into a trust account shall be made with deposit slips or other evidence of deposit identifying each transaction by a written notation of the file identification assigned to the transaction on whose behalf the deposit is made. Compliance with this rule may be satisfied when a mortgage banker or mortgage broker has attached a copy of the client's check to the deposit slips.

(4) Every deposit into a neutral escrow depository shall be accompanied by a letter of transmittal which shall include a written notation of the file identification assigned to the transaction on whose behalf the deposit is made. Compliance with this rule may be satisfied when a mortgage banker or mortgage broker has attached a copy of the client's check to the letter of transmittal.

(5) All customer securities must be held in trust and kept in a secure depository. The securities must be held in such a manner that they will be free from claims, levy, or attachment by creditors of the mortgage banker or mortgage broker.

(6) All funds, whether in the form of money, checks, drafts, or warrants belonging to others and accepted by any mortgage banker or mortgage broker engaged in professional activity shall be deposited prior to the close of business of the third banking day following the date of the receipt of the funds into a trust account or neutral escrow depository established by the mortgage banker or mortgage broker. The mortgage banker or mortgage broker shall account for all funds received.

(7) Every mortgage banker or mortgage broker which requires a residential loan client to pay an amount for services prior to the time that the services are rendered may maintain a separate trust account in this state for prepayments and shall keep prepayment funds subject to refund in the trust account until the services are performed according to the provisions contained in OAR 441-875-0040(5) and (6), or the loan is rejected.

(8) In the event that the mortgage banker or mortgage broker accepts fees in advance of completing professional services, or accepts fees paid as a retainer to secure the availability of the mortgage banker or mortgage broker,

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or accepts a consulting fee for professional services, the fees shall be refundable and are trust funds unless the mortgage banker or mortgage broker provides written notice to the client prior to or at the time of receipt of the fees that such fees are not refundable. A record of this written notice to a client shall be maintained in the client file pursuant to the provisions of OAR 441-865-0020 through 441-865-0090.

Stat. Auth.: ORS 59.900 & 59.935

Stats. Implemented: ORS 59.935

Hist.: FCS 3-1993, f. & cert. ef. 11-15-93; FCS 11-1994, f. 11-4-94, cert. ef. 11-15-94; FCS 14-2009, f. 12-30-09, cert. ef. 1-4-10

## 441-875-0040

### Financial Practices; Manner of Disbursement

(1) In addition to those books and records required under ORS 59.840 through 59.980 and OAR 441-865-0010 through 441-865-0090, a mortgage banker or mortgage broker shall maintain books and records for each trust account in accordance with this rule:

(a) Mortgage bankers and mortgage brokers must reconcile at least monthly all trust accounts:

(A) The reconciled bank balance of the trust account must equal the sum of the balances in the individual owner's ledger accounts and also must equal the balance shown in the check register or the journal of receipts and disbursements for the trust account;

(B) The mortgage banker or mortgage broker must sign and date the reconciliation upon its completion.

(b) Each mortgage banker or mortgage broker shall set up and maintain a subsidiary ledger for each trust account showing the receipts and disbursements and maintaining a running total of every transaction pertaining to the trust account.

(2) The mortgage banker's or mortgage broker's offices, places of business, books, records, accounts, files and papers relating to the trust account shall be available for examination by the director under OAR 441-865-0010 through 441-865-0090.

(3) If funds are placed in a neutral escrow depository pursuant to the written agreement required by ORS 59.935(1), the agreement shall provide authorization for the director to examine the offices, places of business, books, records, accounts, files and papers relating to the client funds.

(4) Funds disbursed from a trust account shall be by checks which are prenumbered and bear the words "Client Trust Account" upon the face of the check. A mortgage banker or mortgage broker shall account for all checks, including voided checks, as part of the books and records maintained by the mortgage banker or mortgage broker.

(5) In the case of residential loan applications, escrow instructions and instructions for trust fund disbursement of fees shall provide that no trust funds may be disbursed to the mortgage banker or mortgage broker until the mortgage banker or mortgage broker has provided the following minimum services and disclosures:

(a) A good faith estimate required by Regulation X, 24 C.F.R. Part 3500;

(b) A completed loan application;

(c) If prepared, a fee agreement;

(d) HUD guide(s) for home buyers;

(e) The adjustable rate mortgage booklet as prepared by the Federal Reserve Board, if applicable;

(f) Truth in Lending Act disclosures as required by 12 C.F.R. Part 226.

(6) In the event that the mortgage banker or mortgage broker accepts fees in advance of completing professional services, or accepts fees paid as a retainer to secure the availability of the mortgage banker or mortgage broker, or accepts a consulting fee for professional services, and such fees are subject to refund under the provisions of these rules, such amounts may be withdrawn from the trust account for the benefit of the mortgage banker or mortgage broker only when actually expended for the benefit of the client or five days after notice of the proposed withdrawal has been mailed to the client.

(7) Every mortgage banker or mortgage broker must maintain a record listing all persons employed by that firm who have signatory authority to disburse funds held in the trust account and the date such authority begins and ends.

Stat. Auth.: ORS 59.900 & 59.935

Stats. Implemented: ORS 59.935

Hist.: FCS 3-1993, f. & cert. ef. 11-15-93; FCS 11-1994, f. 11-4-94, cert. ef. 11-15-94; FCS 4-1999, f. & cert. ef. 12-23-99; Administrative correction 4-18-00; FCS 7-2001, f. & cert. ef. 8-1-01; FCS 2-2004, f. & cert. ef. 8-5-04; FCS 14-2009, f. 12-30-09, cert. ef. 1-4-10

## 441-880-0010

### Certified Authority

(1) Until July 31, 2010, an organization may apply to the director to become a certified authority by filing an application in a form acceptable to the director. The application must include:

(a) Name, address, contact person, phone number and e-mail address;

(b) Names of the principals of the organization; and

(c) The bylaws or rules that will be utilized by the organization in selecting providers.

(2) The director's approval for certification will be dependent upon:

(a) The experience, knowledge, and professional ethics of the membership of the organization; and

(b) The bylaws or rules for approval and withdrawal of provider applications and test and course content.

(3) Certification will remain effective until surrendered by the certified authority, revoked or suspended by the director, or until July 31, 2010, whichever occurs sooner.

(4) Revocation or suspension of a certified authority will occur if the certified authority fails to follow its own bylaws or rules or fails to consider in good faith the test and course content in provider applications.

(5) The certified authority will review and approve or disapprove providers and the following matters:

(a) The requirements and contents of the entry-level training course;

(b) The examination on state and federal laws and rules relating to mortgage lending in this state;

(c) The contents of all continuing education.

(6) The certified authority will be responsible for approving education offered by another state's mortgage lender program, provided the director has determined that the laws of that state provide protection to the public that exceeds or is substantially similar to the protection provided by Oregon's mortgage lender law and rules.

Stat. Auth.: ORS 59.977

Stats. Implemented: ORS 59.977

Hist.: FCS 10-2001, f. 12-24-01, cert. ef. 1-1-02; FCS 2-2004, f. & cert. ef. 8-5-04; FCS 14-2009, f. 12-30-09, cert. ef. 1-4-10

## 441-880-0021

### Mortgage Loan Originator Examination Requirements

An applicant for a mortgage loan originator license shall take and pass an examination on state and federal statutes and rules relating to mortgage lending in this state before taking an application for a residential mortgage loan or negotiating the terms of a residential mortgage loan, consistent with the requirements of this rule.

(1) Between January 1, 2010 and July 16, 2010, an applicant for a mortgage loan originator license shall take and pass either:

(a) An examination approved by the Mortgage Lending Education Board and administered by a provider approved by the Mortgage Lending Education Board under ORS 59.977 and OAR 441-880-0010; or

(b) The national and Oregon state components of the examination approved by the Nationwide Mortgage Licensing System and Registry.

(2) On or after July 16, 2010, an applicant for a mortgage loan originator license shall take and pass the national and Oregon state components of the examination approved by the Nationwide Mortgage Licensing System and Registry.

(3) A passing score on either examination described in section (1) of this rule is 75 percent or greater. A passing score on a certified authority approved examination is valid for two years or until July 16, 2010, whichever occurs sooner. A person must apply for a license within two years of successfully passing an examination under this rule.

Stat. Auth.: ORS 59.975, 2009 OL Ch 863, § 13a

Stats. Implemented: ORS 59.969, 59.975, 2009 OL Ch 863, § 5

Hist.: FCS 14-2009, f. 12-30-09, cert. ef. 1-4-10

## 441-880-0022

### Mortgage Loan Originator Continuing Education Requirements

A mortgage loan originator shall take continuing education courses in order to take an application for a residential mortgage loan or negotiate the terms of a residential mortgage loan, consistent with the requirements of this rule.

(1)(a) Between January 1, 2010 and December 31, 2010, a mortgage loan originator shall take either a continuing education course approved by the Mortgage Lending Education Board under ORS 59.977 and OAR 441-880-0010 or by the Nationwide Mortgage Licensing System and Registry. Each mortgage loan originator must complete 20 hours of continuing education within 24 months of the mortgage loan originator's notification date and every subsequent 24-month period. There shall be no carryover of hours of continuing education between periods. A mortgage loan originator is not required to complete continuing education if there is less than 24 months between the end of the last education period and December 31, 2010.

(b) A mortgage loan originator who fails to meet the continuing education requirement between January 1, 2010 and December 31, 2010 shall not take an application for a residential mortgage loan or negotiate the terms of a residential mortgage loan until the mortgage loan originator makes up any continuing education required by this section.

(c) The director may refuse to renew, deny or suspend the mortgage loan originator's license until the mortgage loan originator makes up any continuing education required by this section.

(2)(a) On or after January 1, 2011, a mortgage loan originator shall take a continuing education course approved by the Nationwide Mortgage Licensing System and Registry. A mortgage loan originator shall complete at least ten hours of continuing education per year.

(b) A mortgage loan originator who fails to meet the continuing education requirement after July 31, 2011 shall not take an application for a residential mortgage loan or negotiate the terms of a residential mortgage loan until the mortgage loan originator makes up any continuing education required by this section.

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(c) The director may refuse to renew, deny or suspend the mortgage loan originator's license until the mortgage loan originator makes up any continuing education required this section.

(3) For purposes of this rule:

(a) "Notification date" is the date the director receives the first initial, renewal, or amended mortgage banker/broker mortgage banker or mortgage broker application which lists the mortgage loan originator's name. For an existing mortgage banker or mortgage broker, the notification to the director of a person functioning as a loan originator is considered an amended application and establishes the notification date for that loan originator.

(b) For a mortgage loan originator not subject to continuing education requirements while employed by an exempt entity, but who was previously the subject of notification to the director as a mortgage loan originator, the date of the director's receipt of an initial, renewal or amended application which again lists that loan originator's name is a new notification date for that loan originator.

Stat. Auth.: ORS 59.975, 2009 OL Ch 863, § 13a  
Stats. Implemented: ORS 59.969, 59.975, 2009 OL Ch 863, § 6  
Hist.: FCS 14-2009, f. 12-30-09, cert. ef. 1-4-10

## 441-880-0030

### Employer's Requirements

(1) All persons employing mortgage loan originators shall provide the director with a list of all mortgage loan originators and the information in section (3) of this rule.

(2) Between January 1, 2010 and July 31, 2010, within 30 days of a person starting to function as a mortgage loan originator or ending functioning as a mortgage loan originator, the employer must notify the director by amending their licensee application in a form approved by the director.

(3) If the notice is for a person starting to function as a mortgage loan originator, the amendment shall include the following information about the mortgage loan originator:

- (a) Name;
- (b) The start date as a loan originator;
- (c) Current business and home address, telephone, and e-mail address;
- (d) Social Security number;
- (e) Date of birth; and
- (f) Certification of compliance with ORS 59.967(2), 59.969(4)(a) & (b) and 59.971.

(4) If the notice is for a person ending functioning as a mortgage loan originator, the amendment should include the following information:

- (a) Name;
- (b) The ending date as a mortgage loan originator;
- (c) Last known contact information; and
- (d) The reason for termination if it was for failure to comply with state or federal laws, regulations or rules.

(5) Between January 1, 2010 and July 31, 2010, at the time for each mortgage banker/broker license application or renewal, the employer must notify the director of the names and current contact information of the loan originators employed, including certification of compliance with ORS 59.967(2), 59.969(4)(a) & (b) and 59.971.

(6) No employer may hire, or continue to employ, a person to serve as a mortgage loan originator who has not met the educational requirements of ORS 59.840 through 59.980, 59.969 & 59.975 and OAR 441-880-0020.

(7) As courses are satisfactorily completed by the mortgage loan originators, the employer shall retain a copy of the completion certificate in the loan originator's personnel file for review by the director at the time of the next occurring examination or for five years, whichever first occurs.

(8) On or after July 31, 2010, all mortgage brokers or mortgage bankers employing mortgage loan originators shall provide notice to the Nationwide Mortgage Licensing System and Registry within 30 days of a person starting to function as a mortgage loan originator or ending functioning as a mortgage loan originator.

(9) Sponsorship or termination of sponsorship of a loan originator through the Nationwide Mortgage Licensing System and Registry is deemed compliance with this rule.

Stat. Auth.: ORS 59.900  
Stats. Implemented: ORS 59.969  
Hist.: FCS 10-2001, f. 12-24-01, cert. ef. 1-1-02; FCS 2-2004, f. & cert. ef. 8-5-04; FCS 1-2007, f. & cert. ef. 1-17-07; FCS 14-2009, f. 12-30-09, cert. ef. 1-4-10

## 441-880-0040

### Mortgage Loan Originator Requirements

(1) It is unlawful for any person to act as a mortgage loan originator unless the educational requirements in ORS 59.840 to 59.980, 2009 Or Laws ch. 863, §§ 1 to 13, and OAR 441-880-0020 are met.

(2) The mortgage loan originator must retain the original completion certificate provided following satisfactory course completion for five years and provide a copy to the employer.

(3) Only mortgage loan originators employed by exempt employers may file notification of completed education directly with the director. A copy of the completion certificate may be provided or notification may be provided electronically of the course name and number, the number of hours

of each course, the completion date, and the score or pass/fail result, if applicable.

(4) A mortgage loan originator may notify the director of termination of the mortgage loan originator's employment including the end date, reason for termination, and current contact information for the mortgage loan originator.

(5) Sections (1) to (4) of this rule apply to mortgage loan originators before July 31, 2010.

(5) A mortgage loan originator shall be required to notify the director within 30 days of the occurrence of any of the following significant developments:

(a) Filing for bankruptcy.

(b) Notification of the institution of license revocation procedures against the mortgage loan originator by any state.

(c) Filing of a felony indictment against the mortgage loan originator.

(d) Convictions for a felony or misdemeanor involving fraud.

(e) Instances of material litigation occurring against the mortgage loan originator.

(f) Changes in the information required on the mortgage loan originator's application form, including, but not limited to address changes, phone number changes, etc. and

(g) Changes in the employment status of a mortgage loan originator.

(6) Section (5) of this rule applies to mortgage loan originators on or after August 1, 2010.

Stat. Auth.: ORS 59.975

Stats. Implemented: ORS 59.975

Hist.: FCS 10-2001, f. 12-24-01, cert. ef. 1-1-02; FCS 2-2004, f. & cert. ef. 8-5-04; FCS 14-2009, f. 12-30-09, cert. ef. 1-4-10

## 441-880-0200

### Application Process

An applicant for a license as a mortgage loan originator shall submit all information required by the National Mortgage Licensing System and Registry to the Nationwide Mortgage Licensing System and Registry. This rule applies to mortgage loan originators licensed on or after July 31, 2010.

Stat. Auth.: 2009 OL Ch 863, § 13a

Stats. Implemented: 2009 OL Ch 863, § 4

Hist.: FCS 14-2009, f. 12-30-09, cert. ef. 1-4-10

## 441-880-0205

### Interim Licenses

If the director issues an interim mortgage loan originator license, it shall only be valid during the period of July 31, 2010, to December 31, 2010. This rule applies to mortgage loan originators on or after July 31, 2010.

Stat. Auth.: 2009 OL Ch 863, § 13a

Stats. Implemented: 2009 OL Ch 863, § 3a

Hist.: FCS 14-2009, f. 12-30-09, cert. ef. 1-4-10

## 441-880-0210

### Financial Responsibility Criteria

(1) For purposes of this rule, an applicant is not financial responsible if the applicant has shown a disregard of his or her own financial circumstances, taking into consideration the totality of the applicant's financial circumstances.

(2) Factors that the director may consider in determining whether an applicant has not demonstrated financial responsibility include, but are not limited to, the following:

(a) Current outstanding judgments or material litigation, excluding judgments solely as a result of medical expenses;

(b) Current outstanding tax liens or other government liens and filings;

(c) A foreclosure within the past three years and the type of property subject to foreclosure, whether residential or commercial;

(d) Pending or completed bankruptcy proceedings, and the nature of the proceedings, occurring within the past five years; or

(e) A pattern of seriously delinquent accounts within the past three years.

(2) In assessing the financial responsibility of the applicant, the director may consider extenuating or mitigating factors, including but not limited to the following:

(a) Involuntary loss of job or income;

(b) Involuntary medical expenses;

(c) Divorce;

(d) Attempting workout arrangements with creditors; or

(e) Any other factor the director believes reflects circumstances beyond the control of the applicant.

(3) This rule applies to mortgage loan originators licensed on or after July 31, 2010.

Stat. Auth.: 2009 OL Ch 863, § 13a

Stats. Implemented: 2009 OL Ch 863, § 4

Hist.: FCS 14-2009, f. 12-30-09, cert. ef. 1-4-10

## 441-880-0215

### Oregon Examination of Mortgage Loan Originators

(1) Each applicant for a mortgage loan originator license must pass an entry-level examination approved by the National Mortgage Licensing System and an examination on Oregon statutes and rules approved by the

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National Mortgage Licensing System prior to engaging in activities as an Oregon mortgage loan originator.

(2) A passing score on either examination described in section (1) of this rule is 75 percent or greater.

(3) A passing score on either examination described in section (1) of this rule is valid for 2 years from the date of passing the examination.

(4) This rule applies to mortgage loan originators on or after July 31, 2010.

Stat. Auth.: ORS 2009 OL Ch 863, § 13a  
Stats. Implemented: ORS 2009 OL Ch 863, § 5  
Hist.: FCS 10-2001, f. 12-24-01, cert. ef. 1-1-02; FCS 2-2004, f. & cert. ef. 8-5-04; FCS 1-2007, f. & cert. ef. 1-17-07; Renumbered from 441-880-0020 by FCS 14-2009, f. 12-30-09, cert. ef. 1-4-10

## 441-880-0300

### License Renewal; Reinstatement Process

(1) A mortgage loan originator license shall expire on December 31 of each calendar year. At least 30 days prior to the expiration of a mortgage loan originator license, a mortgage loan originator shall submit all information required by the National Mortgage Licensing System and Registry to the Nationwide Mortgage Licensing System and Registry. The renewal application shall include evidence that:

(a) The applicant continues to meet the minimum requirements for a mortgage loan originator license in 2009 Or Laws ch. 863, § 4;

(b) The applicant paid any required fee, as applicable, under OAR 441-880-0400; and

(c) The applicant completed ten hours of continuing education approved by the Nationwide Mortgage Licensing System and Registry.

(2) A person applying to reinstate a mortgage loan originator license that has lapsed for a period of five or more years, whether or not the applicant was employed or continued to engage in business as a mortgage loan originator during the period of the lapse, shall:

(a) Complete the continuing education requirements under this section (1) of this rule; and

(b) Pass a qualified written test under 2009 Or Laws ch. 863, § 5 and OAR 441-880-0215.

(3) This rule applies to mortgage loan originators on or after July 31, 2010.

Stat. Auth.: 2009 OL Ch 863, § 13a  
Stats. Implemented: 2009 OL Ch 863, §§ 5, 6  
Hist.: FCS 14-2009, f. 12-30-09, cert. ef. 1-4-10

## 441-880-0310

### Deficiencies in Continuing Education

(1) A mortgage loan originator may submit a written request to make up deficiencies in continuing education due to hardship or illness. A written request shall:

(a) Describe the hardship or illness; and

(b) Describe why the mortgage loan originator was unable to meet requirements for continuing education.

(2) In all requests under this rule, the mortgage loan originator has the burden of proving the hardship or illness responsible for the deficiency in continuing education.

(3) The director shall consider and may grant a request, but the director shall not grant a request for the following:

(a) Failure or inability to pay applicable fees to obtain or maintain a mortgage loan originator license;

(b) A suspension of business activities as a mortgage loan originator; or

(c) Incapacity due to imprisonment

(4) Sections (1) to (3) of this rule apply to mortgage loan originators on or after July 31, 2010.

(5) Nothing in this rule affects the director's authority to require by order a mortgage loan originator to make up deficiencies in continuing education under 2009 Or Laws ch. 863, § 6 or to decline to renew the person's mortgage loan originator license.

Stat. Auth.: 2009 OL Ch 863, § 13a  
Stats. Implemented: 2009 OL Ch 863, § 6  
Hist.: FCS 14-2009, f. 12-30-09, cert. ef. 1-4-10

## 441-885-0010

### Cancellation of Mortgage Banker Or Mortgage Broker License for Failure to Maintain Corporate Surety Bond or Irrevocable Letter of Credit

(1) The director may cancel the license of a mortgage banker or mortgage broker for failing to maintain a corporate surety bond or irrevocable letter of credit as required by ORS 59.850 and OAR 441-860-0090 or 2009 Or Laws ch. 863, § 9 and OAR 441-860-0085. The procedure for canceling a mortgage banker or mortgage broker license under this rule is as follows:

(a) Upon notification from the surety of notice of intent to cancel the corporate surety bond, or upon notification from the financial institution of notice of intent to cancel the irrevocable letter of credit, the director shall send written notice to the mortgage banker or mortgage broker. This notice shall be sent by certified mail within three business days of receipt of notification from the surety or financial institution. Failure to send the notice within three

business days will not preclude cancellation under subsection (1)(b) of this rule.

(b) If the director does not receive an effective corporate surety bond or irrevocable letter of credit by 5 p.m. Pacific Time seven business days after the corporate surety bond or letter of credit cancellation date, the director shall cancel the license of the mortgage banker or mortgage broker. The cancellation of the mortgage banker or mortgage broker license shall be effective as of the corporate surety bond or irrevocable letter of credit cancellation date. For purposes of this rule, an effective corporate surety bond or irrevocable letter of credit is one that commences no later than the cancellation date of the previous corporate surety bond or irrevocable letter of credit.

(2) A mortgage banker or mortgage broker whose license has been cancelled may obtain a mortgage banker or mortgage broker license in Oregon by submitting a new application.

(3) Upon cancellation of a mortgage banker or mortgage broker license all rights under the license are terminated, except that the director shall retain jurisdiction to investigate the professional activities pursuant to ORS 59.880.

(4)(a) The director may change the mortgage loan originator's license status to inactive if the director finds that the mortgage loan originator is not covered by a corporate surety bond or the corporate surety bond covering the mortgage loan originator is maintained in an insufficient amount under OAR 441-860-0085.

(b) The director may change the mortgage loan originator's license status to approved if the mortgage loan originator provides evidence acceptable to the director that the mortgage loan originator is covered by a corporate surety bond or the corporate surety bond covering the mortgage loan originator is maintained in a sufficient amount under OAR 441-860-0085.

Stat. Auth.: ORS 59.850, 2009 OL Ch 863, § 13a  
Stats. Implemented: ORS 59.875, 2009 OL Ch 863, § 9  
Hist.: FCS 3-1993, f. & cert. ef. 11-15-93; FCS 4-1999, f. & cert. ef. 12-23-99; FCS 14-2009, f. 12-30-09, cert. ef. 1-4-10

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**Rule Caption:** Suspension of temporary rules regarding debt management to eliminate redundancy and conflict with permanent rules.

**Adm. Order No.:** FCS 1-2010(Temp)

**Filed with Sec. of State:** 1-6-2010

**Certified to be Effective:** 1-6-10 thru 2-9-10

**Notice Publication Date:**

**Rules Suspended:** 441-910-9000(T), 441-910-9001(T)

**Subject:** These rules are no longer needed because permanent rules 441-910-0000 through 441-910-0200 filed and effective January 1, 2010 supersede these temporary rules. Although the temporary rules will expire on February 9, 2010, we are suspending them prior to their expiration date to eliminate redundancy between the two rules and prevent confusion.

**Rules Coordinator:** Shelley Greiner—(503) 947-7484

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

**Rule Caption:** Annual Update of Rule Relating to Health Insurance Coverage of Prosthetic and Orthotic Devices.

**Adm. Order No.:** ID 12-2009

**Filed with Sec. of State:** 12-18-2009

**Certified to be Effective:** 12-18-09

**Notice Publication Date:** 11-1-2009

**Rules Amended:** 836-052-1000

**Subject:** This rulemaking proposes to update the Insurance Division rule listing the prosthetic and orthotic devices that must be covered by group and individual health insurance policies. The rulemaking implements ORS 743A.144, which requires all such policies that provide coverage for hospital, medical or surgical expenses to include coverage for prosthetic and orthotic devices.

**Rules Coordinator:** Sue Munson—(503) 947-7272

## 836-052-1000

### Prosthetic and Orthotic Devices

(1) This rule is adopted under the authority of ORS 731.244 and 743A.144, for the purpose of implementing ORS 743A.144.

(2) The list of prosthetic and orthotic devices and supplies in the Medicare fee schedule for Durable Medical Equipment, Prosthetics, Orthotics and Supplies is adopted for the purpose of listing the prosthetic and orthotic devices and supplies for which coverage is required by ORS 743A.144, insofar as the list is consistent with ORS 743A.144. The list is limited to those rigid or semi rigid devices used for supporting a weak or

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deformed leg, foot, arm, hand, back or neck, or restricting or eliminating motion in a diseased or injured leg, foot, arm, hand, back or neck or an artificial limb device or appliance designed to replace in whole or in part an arm or a leg that the Centers for Medicare and Medicaid Services (CMS) has designated in the L Codes of Healthcare Common Procedure Coding System (HCPC) Level II, which is accessible by selecting the link for the most current Alpha-Numeric HCPCS File at <https://www.cms.hhs.gov/HCPCSReleaseCodeSets/ANHCPSCS/list.asp>

(3) Under ORS 743A.144(4), benefits payable under a policy may not be subject to internal or separate limits or caps other than the policy lifetime maximum benefits as they apply to the coverage for prosthetic and orthotic devices required by ORS 743A.144.

(4) A managed care plan to which ORS 743A.144(6) applies is a health insurance policy that requires an enrollee to use a closed network of providers managed, owned, under contract with or employed by the insurer in order to receive benefits under the plan.

Stat. Auth.: ORS 731.244 & 743A.144

Stats. Implemented: ORS 743A.144

Hist.: ID 12-2007, f. 12-18-07, cert. ef. 1-1-08; ID 12-2009, f. & cert. ef. 12-18-09

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**Rule Caption:** Adopting Rules Extending Program for Continuation of Health Benefit Plans and Eligibility for Federal Subsidy.

**Adm. Order No.:** ID 13-2009(Temp)

**Filed with Sec. of State:** 12-23-2009

**Certified to be Effective:** 12-23-09 thru 6-18-10

**Notice Publication Date:**

**Rules Amended:** 836-053-0855, 836-053-0860, 836-053-0865

**Subject:** Oregonians who lose their jobs have two options to continue coverage under their group health plan. If their former employer has twenty or more workers, they are eligible under the Consolidated Omnibus Budget Reconciliation Act (COBRA). If their former employer has fewer than twenty workers, they are eligible under Oregon's state continuation law. In February 2009, the federal economic stimulus package extended a 65 percent subsidy for up to nine months of coverage. Recognizing the need for changes to state law to allow Oregonians to obtain the full advantage of the federal subsidy, the Oregon Legislative Assembly enacted House Bill 2433, which extends the period of eligibility for state continuation coverage from six to nine months and allows the Director of the Department of Consumer and Business Services to adopt rules as necessary to allow Oregonians to take full advantage of the benefits provided by the federal law including additional extensions of the period of eligibility to match future extensions or changes in the federal subsidy or COBRA program. On December 21, 2009, President Obama signed HR 3326, the Fiscal Year 2010 Defense Appropriations Act, which extends the COBRA benefits. These rules amend earlier-adopted provisions to implement House Bill 2433 to match extensions of the federal benefits included in HR 3326. The federal act extends the eligibility period for the ARRA premium reduction for an additional two months (through February 28, 2010) and the maximum period for receiving the subsidy for an additional six months (from nine to 15 months). These temporary rules make the same changes to the state continuation program.

**Rules Coordinator:** Sue Munson—(503) 947-7272

## 836-053-0855

### Definitions

As used in OAR 836-053-0850 to 836-053-0885:

(1) "American Recovery and Reinvestment Act of 2009" means the Public Law 111-5 as amended by the Fiscal Year 2010 Defense Appropriations Act (HR 3326).

(2) "Certificate holder" means any covered employee or qualified beneficiary who:

- (a) Is eligible for continuation coverage;
- (b) Elects continuation coverage;
- (c) Is subject to a qualifying event; and
- (d) Is considered an assistance eligible individual under the American Recovery and Reinvestment Act of 2009 (P.L. 111-5).

(3) "Covered employee" means a certificate holder who has been insured continuously under a policy or similar predecessor policy during the three-month period ending on the date of the termination of employment or membership.

(4)(a) "Qualified beneficiary" means a covered employee under a group health plan or any other individual who, on the day before the qualifying event for that employee, is a beneficiary under that plan as the spouse of the

covered employee or as the dependent child of the employee, including a child born or placed for adoption after the qualifying event or during the period the covered employee is eligible for continuation coverage.

(b) An individual is not a qualified beneficiary if:

(A) The individual is eligible for Federal Medicare coverage.

(B) The individual is eligible for any other group health plan. This limitation does not apply to coverage consisting only of:

(i) Dental, vision, counseling, or referral services;

(ii) Coverage under a health flexible spending arrangement as defined in section 106(c)(2) of the Internal Revenue Code of 1986; or

(iii) Treatment that is furnished in an on-site medical facility maintained by an employer.

(C) An individual is not a qualified beneficiary only for purposes of receiving a premium subsidy if the individual is a domestic partner.

(5) "Qualifying event" means involuntary termination of employment and loss of group health insurance coverage during the period beginning September 1, 2008 and ending December 31, 2009.

(6)(a) "Transition period" means, with respect to any assistance eligible individual, any period of coverage if:

(A) The period begins before December 21, 2009; and

(B) The subsidy allowed under the American Recovery and Reinvestment Act of 2009 applies to such period due to the extension of the state continuation period to 15 months.

(b) Any period of time during the transition period for which the assistance eligible individual pays the applicable premium under OAR 836-053-0865(9) shall be treated as a period of coverage for which timely payment of premium was paid, irrespective of any failure to timely pay the applicable premium for such period.

Stat. Auth.: ORS 731.244, 743.610 & 2009 OL Ch. 73 (HB 2433)

Stats. Implemented: ORS 743.610 & 2009 OL Ch. 73 (HB 2433)

Hist.: ID 2-2009(Temp), f. & cert. ef. 4-28-09 thru 10-24-09; ID 8-2009, f. & cert. ef. 10-23-09; ID 13-2009(Temp), f. & cert. ef. 12-23-09 thru 6-18-10

## 836-053-0860

### Notification

(1) An insurer subject to the requirements of ORS 743.610 and chapter 73, Oregon Laws 2009 (Enrolled House Bill 2433) shall provide a notice explaining continuation of benefits directly to individuals losing group coverage, for any reason other than group replacement of coverage, within 10 days following the date of any administrative action taken by an insurer to initiate or document the loss of coverage.

(2) The insurer providing the notice required under section (1) of this rule shall include in the notice at least the following information:

(a) Contact information for the employee to reach the insurer;

(b) Forms and instructions about how to complete and return the forms and to whom (i.e., going through employer or direct to insurer);

(c) A clear statement explaining availability of premium subsidy;

(d) Premium information or directions for determining the premium amount for each qualified beneficiary and instructions for submitting the premium;

(e) A clear statement about who is eligible to continue coverage;

(f) Information about how to enroll in different coverage if allowed by the employer;

(g) Instructions about the employee's responsibility to notify the insurer if the employee becomes ineligible for the subsidy; and

(h) Instructions about how to appeal denials for treatment as a certificate holder.

(3)(a) In the case of an individual who was an assistance eligible individual at any time on or after October 31, 2009, or experiences a qualifying event (consisting of termination of employment) relating to state continuation coverage on or after October 31, 2009, the insurer shall provide, no later than February 21, 2010, an additional notification consisting of the following:

(A) A qualifying event means involuntary termination of employment during the period of September 1, 2008 and ending February 28, 2010;

(B) Assistance eligible individuals are eligible to continue coverage for a period of fifteen months beginning with the coverage month first following the qualifying event;

(C) A transition period exists for assistance eligible individuals who became eligible for a premium subsidy under the American Recovery and Reinvestment Act of 2009 before December 21, 2009 and whose state continuation coverage has now been extended to fifteen months due to availability of the subsidy for that period of time;

(D) An assistance eligible individual who has paid the full premium during the transition period is entitled to a refund or credit as specified in OAR 836-053-0865(10);

(E) Assistance eligible individuals who did not timely pay the premium for any period of coverage during their transition period may now pay premiums retroactively in accordance with OAR 836-053-0865(9).

(b) In the case of a qualifying event occurring after December 21, 2009, the insurer shall provide notification consistent with this rule.

(4) In the case of an assistance eligible individual who did not timely pay the premium for any period of coverage during the individual's transition period or paid the full premium for the transition period without regard to the subsidy, the insurer shall provide to the individual, within the first 60 days of



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the start of the individual's transition period, an additional notification. The additional notification shall include the information required in section (3) of this rule and information on the ability to make retroactive premium payments in accordance with OAR 836-053-0865(9) with respect to the transition period of the individual in order to maintain state continuation coverage.

Stat. Auth.:ORS 731.244, 743.610 & 2009 OL Ch. 73 (HB 2433)  
Stats. Implemented: ORS 743.610 & 2009 OL Ch. 73 (HB 2433)  
Hist.: ID 2-2009(Temp), f. & cert. ef. 4-28-09 thru 10-24-09; ID 8-2009, f. & cert. ef. 10-23-09; ID 13-2009(Temp), f. & cert. ef. 12-23-09 thru 6-18-10

## 836-053-0865

### Provisions Relating to Premium Subsidy for State Continuation Coverage

(1) In order to maximize the benefit to Oregonians under the federal American Recovery and Reinvestment Act of 2009 (P.L. 111-5), certain qualified beneficiaries are eligible for:

(a) Premium subsidy for continuation of coverage;

(b) An opportunity to elect continuation of coverage that is in addition to the period allowed under ORS 743.610(5);

(c) Continuation of coverage for a period of time that exceeds the period allowed under ORS 743.610(7)(a); and

(d) An option to enroll in different coverage if the employer permits certificate holders to elect enrollment in different coverage.

(2) After receiving the attestation from an employer stating that the employee meets the requirements of a certificate holder and the date of the qualifying event, an insurer is required to accept timely payment of the certificate holder's 35 percent share of the total premium as full payment of the premium and process claims as though 100 percent of the total premium due has been paid.

(3)(a) The following certificate holders qualify for a second opportunity to elect continuation of coverage if the group health plan remains in effect:

(A) Certificate holders who did not elect to continue coverage during the period allowed under ORS 743.610(5) prior to April 28, 2009; and

(B) Certificate holders who elected continuation coverage during the period allowed under ORS 743.610(5) but whose continuation coverage ended for any reason prior to April 28, 2009;

(b) Within 31 calendar days after the insurer provides the notice required under OAR 836-053-0860(1), certificate holders who received the notice under paragraph (a) of this subsection must return the following items according to instructions provided by the insurer:

(A) Completed forms for electing state continuation coverage and requesting treatment as a certificate holder;

(B) The individual's tax identification number;

(C) Form for Switching State Continuation Coverage Benefit Options, if offered; and

(D) The initial premium if required.

(c) Certificate holders who became eligible on or after September 1, 2008 and prior to April 28, 2009 are eligible to continue coverage while the group health plan remains in effect, and upon timely payment of their portion of the premium, for 15 months of continuation coverage beginning with the coverage month first following the qualifying event.

(d) The effective date for continuation coverage issued in response to a second election of coverage will be the later of the first day of the coverage month on or after February 17, 2009 or the first day of the coverage month first following the qualifying event.

(4)(a) Within 31 calendar days after the insurer provides the notice required under OAR 836-053-0860(1), certificate holders who become eligible on or after April 28, 2009 must return the following items according to any instructions provided by the insurer:

(A) Forms for electing state continuation coverage and requesting treatment as a certificate holder;

(B) The individual's tax identification number;

(C) The form for switching state continuation coverage benefit options, if offered; and

(D) The initial premium, if required.

(b) A certificate holder who becomes eligible on or after April 28, 2009 is eligible to continue coverage for a period of 15 months beginning with the coverage month first following the qualifying event. However, the premium subsidy available to the individual shall not exceed any period of limitation specified in the American Recovery and Reinvestment Act of 2009 (P.L. 111-5)

(5) A certificate holder may elect to enroll in different coverage as described in subsection (1)(d) of this rule if:

(a) The employer permits certificate holders to enroll in different coverage;

(b) The premium for the different coverage does not exceed the premium for coverage in which the certificate holder was enrolled at the time of the qualifying event;

(c) The different coverage in which the individual elects to enroll is coverage that is also offered to the active employees of the employer at the time the individual makes the election; and

(d) The different coverage is not:

(A) Coverage that provides only dental, vision, counseling or referral services, or a combination of such services;

(B) A flexible spending arrangement as defined in section 106(c)(2) of the Internal Revenue Code of 1986; or

(C) Coverage that provides coverage for services or treatments furnished in an on-site medical facility maintained by the employer and that consists primarily of first-aid services, prevention and wellness care or similar care, or a combination of such care.

(6) The period of time beginning on the date of the qualifying event and ending with the effective date of continuation coverage shall be disregarded for purposes of determining periods of creditable coverage under ORS 743.754, 743.737, and 743.766.

(7) A premium subsidy is not available to a certificate holder who becomes eligible for coverage under any other group health plan or Medicare. An individual paying a reduced premium for continuation coverage as described in this section must promptly notify the insurer if they become eligible for other group health plan coverage or Medicare.

(8) Certificate holders who elected continuation on or after September 1, 2008 and prior to April 28, 2009, are eligible to continue coverage while the group health plan remains in effect, and upon timely payment of their portion of the premium, for a period of 15 months beginning with the coverage month first following the qualifying event

(9) In the case of any premium for a period of coverage during an assistance eligible individual's transition period, the individual shall be treated for purposes of any state continuation provision as having timely paid the amount of such premium if:

(a) The individual was covered under the state continuation coverage to which the premium relates for the period of coverage immediately preceding the transition period; and

(b) The individual pays the individual's 35 percent share of the total premium:

(A) Not later than February 21, 2010; or

(B) If the transition period extends beyond February 21, 2010, not later than 30 days after the date notification required under OAR 836-053-0860(4) is provided to the individual.

(10) In the case of an assistance eligible individual who pays, with respect to any period of state continuation coverage during the individual's transition period, the full premium amount for such coverage, the insurer shall:

(a) Make a reimbursement payment to the individual for the amount of premium paid in excess of the 35 percent share of the total premium; or

(b) Provide credit to the individual for the amount in a manner that reduces one or more subsequent premium payments that the individual is required to pay for the coverage involved.

Stat. Auth.: ORS 731.244, 743.610 & 2009 OL Ch. 73 (HB 2433)

Stats. Implemented: ORS 743.610 & 2009 OL Ch. 73 (HB 2433)

Hist.: ID 2-2009(Temp), f. & cert. ef. 4-28-09 thru 10-24-09; ID 8-2009, f. & cert. ef. 10-23-09; ID 13-2009(Temp), f. & cert. ef. 12-23-09 thru 6-18-10

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**Rule Caption:** Requirements for Total Loss Settlements in Automobile Insurance.

**Adm. Order No.:** ID 14-2009

**Filed with Sec. of State:** 12-23-2009

**Certified to be Effective:** 1-1-10

**Notice Publication Date:** 11-1-2009

**Rules Amended:** 836-080-0240

**Subject:** This rulemaking amends the current rule that establishes standards for adjustment and settlement of automobile total loss claims under collision or comprehensive coverage on the basis of replacement or actual cash value. The rule specifies the written statement that insurers must provide to consumers whose automobiles are totaled and incorporates other provisions of House Bill 2190.

**Rules Coordinator:** Sue Munson—(503) 947-7272

## 836-080-0240

### Standards for Prompt and Fair Total Loss Settlements — Automobile Insurance

(1) When an automobile insurance policy provides for the adjustment and settlement of collision or comprehensive coverage total losses on the basis of actual cash value or replacement with another comparable automobile or one of like kind and quality, the insurer shall adjust and settle the claim as provided in this rule.

(2) The insurer may elect to offer a replacement automobile that is at least comparable to the insured automobile. A replacement automobile is at least comparable if it is the same make, is of the same or a newer year, is of a similar body style, has similar options and mileage as the insured automobile, is in as good or better overall condition and is available for inspection within a reasonable distance of the insured's residence. The insurer shall pay all applicable taxes, license fees and other fees incident to the transfer of evidence of ownership of the automobile at no cost other than any deductible provided in the policy. The offer and any rejection thereof must be documented in the claim file.

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(3) The insurer may elect to make a cash settlement, less any deductible provided in the policy, but including all applicable taxes, license fees and other fees incident to transfer of ownership of another comparable automobile. When an insurer makes a cash settlement, the insurer shall furnish the insured copies of the information used by the insurer for the purpose of determining the amount of the cash settlement. The insurer shall comply with the provisions of the Uniform Electronic Transactions Act (ORS 84.001 to 84.061) and ORS 84.070 if the insurer provides this information electronically. If the information includes documentation of a specific and comparable automobile that the insurer intends to rely upon to preclude reopening the claim file under section (6) of this rule, the insurer shall prominently disclose that intention. The value of the automobile for purposes of a cash settlement may be based upon one of the following standards:

(a) A valuation obtained from a computerized database source that produces statistically valid and fair market values for automobiles, on the basis of the following criteria:

(A) The source shall produce values for at least 85 percent of all makes and models of private passenger automobiles for the last 15 model years;

(B) The source shall rely upon values of vehicles that are currently available or were available within the last 90 days from the date of loss for all vehicles and shall apply appropriate standards of comparability;

(C) For all vehicles of five model years or less of age, the values must be derived primarily from verifiable data or inventory from licensed dealers;

(D) The source shall monitor the average retail price of private passenger automobiles when there is insufficient data or inventory from licensed dealers to ensure statistically valid market area values;

(E) The source shall give primary consideration to the values of vehicles in the local market area and may consider data on vehicles outside the area; and

(F) The source shall produce fair market values based on current data available from the area surrounding the location where the insured vehicle was principally garaged or a necessary expansion of parameters, such as time and area, to assure statistical validity.

(b) The actual cost to purchase the automobile identified by the insurer as a replacement automobile that is at least comparable to the insured automobile as determined pursuant to section (2) of this rule, including all applicable taxes, license fees and other fees incident to purchase of the automobile other than any deductible provided in the policy; or

(c) An alternative that deviates from the methods described in subsections (a) and (b) of this section and is allowable under the policy, as long as documentation in the claim file supports the deviation and gives particulars of the pre-loss condition of the automobile. Any deductions from the cost, including deduction for salvage if the salvage is retained by the claimant, must be measurable, discernible, itemized and specified as to dollar amount and must be appropriate in amount. The basis for a settlement under this subsection must be fully explained in writing, supplied to the claimant and maintained in the claim file.

(4) When an insurer elects to make a cash settlement, the insurer shall provide the insured or third-party claimant with the written statement set forth in Exhibit 1 of this rule. The insurer shall comply with the provisions of the Uniform Electronic Transactions Act (ORS 84.001 to 84.061) and 84.070 if the insurer provides this written statement electronically.

(5) If an insurer and the insured or third-party claimant are unable to agree on the value of the automobile, an insurer shall pay the insured or third-party claimant the amount of the automobile's value that is not in dispute as provided in section 3, chapter 65, Oregon Laws 2009. An insurer is not obligated to pay the undisputed amount until the insured or third-party owner of the automobile:

(a) Agrees to execute documents sufficient to transfer ownership of the automobile to the insurer; and

(b) Authorizes the insurer, at the insurer's expense, to move the automobile to a disclosed location selected by the insurer, where the automobile will remain available for inspection and evaluation for not fewer than 14 calendar days. After the expiration of the 14-day period, the insurer may proceed with the salvage sale of the automobile.

(6) If the insured notifies the insurer within 35 days of the receipt of the claim draft that the insured cannot purchase an automobile for the market value as determined in section (3) of this rule, the insurer shall reopen its claim file and the following procedures shall apply:

(a) The insurer may locate an automobile that is at least comparable to the insured automobile as determined pursuant to section (2) of this rule, and that is currently available for the market value determined by the insurer at the time of settlement;

(b) The insurer may either pay the insured the difference between the market value before applicable deductions and the cost of the comparable automobile of like kind and quality that the insured has located, or negotiate and effect the purchase of the automobile for the insured;

(c) The insurer may elect to offer a replacement automobile in accordance with the provisions set forth in section (2) of this rule; or

(d) The insurer may conclude the loss settlement in the manner provided in the appraisal section of the insurance policy in force at the time of the loss. The insurer shall reimburse the insured for the reasonable appraisal costs as provided in ORS 742.466.

(7) The right of the insured to have a claim reopened under section (6) of this rule applies only to first party claims of the insured under the policy. The insurer is not required to take action under section (6) of this rule if its documentation to the insured at the time of settlement includes written notification of the availability and location of a specified automobile that is at least comparable to the insured automobile as determined pursuant to section (2) of this rule, that could have been purchased for the market value determined by the insurer before applicable deductions. The documentation shall include the vehicle identification number or another specific vehicle identifier.

(8) When the issue of liability is reasonably clear, an insurer shall not recommend that a third party claimant make claim under the claimant's own insurance policy solely for the recommending insurer to avoid paying a claim.

(9) An insurer shall not require unreasonable travel of a claimant to inspect a replacement automobile, to obtain a repair estimate or to have the automobile repaired at a repair shop.

(10) An insurer shall, upon a first party claimant's request, include the claimant's deductible in the insurer's demands under its subrogation rights. Subrogation recoveries shall be shared at least on a proportionate basis with the first party claimant, unless the deductible amount has been otherwise recovered by the claimant. No deduction for expenses may be made from the deductible recovery unless an outside attorney is retained to collect such recovery, in which case deduction may be made only for a pro rata share of the cost of retaining the attorney.

(11) If an insurer or body shop prepares an estimate of the cost of automobile repairs, the estimate shall be in the amount for which the damage may reasonably be expected to be satisfactorily repaired. If crash parts manufactured by anyone other than the original manufacturer are to be supplied or installed, the estimate shall identify each such part in a clearly understandable manner. The insurer or body shop shall give a copy of the written estimate to the claimant.

(12) As provided in ORS 746.280, an insurer shall not require that a particular person make the repairs to the first party claimant's automobile as a condition for recovery under the claimant's policy. An insurer shall not make such a requirement for the repair of a third party claimant's automobile as a condition for claim payment.

(13) When the amount claimed as automobile damage is reduced because of betterment or depreciation, all information used as the basis for the reduction shall be contained in the insurer's claim file. Such deductions shall be itemized and specified as to dollar amount and shall be appropriate for the amount of betterment or depreciation.

(14) Sections (3), (4), (5), (8), and (12) of this rule also apply to third party claimants.

Stat. Auth.: ORS 731.244

Stats. Implemented: ORS 742.466, 746.230, 746.240, 746.280 & 2009 OL Ch. 65, sec. 2 & 3

Hist.: IC 2-1980, f. 5-8-80, ef. 6-1-80; IC 8-1986, f. & ef. 12-30-86; ID 20-1998, f. 12-2-98, cert. ef. 2-1-99; ID 2-2001(Temp), f. & cert. ef. 3-15-01 thru 9-7-01; Administrative correction 11-20-01; ID 12-2002, f. & cert. ef. 5-10-02; ID 14-2009, f. 12-23-09, cert. ef. 1-1-10

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**Rule Caption:** Implementation of Senate Bill 973 Relating to Life Settlement Requirements.

**Adm. Order No.:** ID 1-2010

**Filed with Sec. of State:** 1-5-2010

**Certified to be Effective:** 1-5-10

**Notice Publication Date:** 11-1-2009

**Rules Adopted:** 836-014-0205, 836-014-0226, 836-014-0263, 836-014-0285, 836-014-0325

**Rules Amended:** 836-014-0200, 836-014-0210, 836-014-0220, 836-014-0240, 836-014-0250, 836-014-0260, 836-014-0265, 836-014-0270, 836-014-0280, 836-014-0290, 836-014-0300, 836-014-0310, 836-014-0320

**Subject:** This rulemaking proposes to adopt rules to fully implement chapter 711, Oregon Laws 2009 (Enrolled Senate Bill 973) enacted by the 2009 Legislative Assembly. The legislation established statutory requirements related to the use and marketing of life settlement agreements in Oregon and expanded regulation of these agreements beyond the use of life settlement agreements by terminally ill policyholders.

These rules include clarification of the process for applying for a broker, provider and investment agent license and setting the fee for each application and for renewal of the licenses; clarification of reporting requirements; disclosure requirements; and notice requirements for life insurers.

**Rules Coordinator:** Sue Munson—(503) 947-7272

# ADMINISTRATIVE RULES

## 836-014-0200

### Statutory Authority and Implementation

(1) OAR 836-014-0200 to 836-014-0330 are adopted under the authority of ORS 731.244, 731.804, 744.331, 744.358 and 746.240 and section 20, chapter 711, Oregon Laws 2009 (Enrolled Senate Bill 973) for the purpose of implementing 744.326, 744.328, 744.331, 744.341 and 744.358 and sections 2, 5, 11 to 19 and 22, chapter 711, Oregon Laws 2009 (Enrolled Senate Bill 973).

(2) OAR 836-014-0205, 836-014-0226, 836-014-0263, 836-014-0285 and 836-014-0325, and the amendments to OAR 836-014-0200 to 836-014-0325 are operative on and after the date that they are filed with the Secretary of State.

Stat. Auth.: ORS 731.244, 744.331, 744.358  
Stats. Implemented: ORS 744.326, 744.328, 744.331, 744.341, 744.358, Sec. 2, 5, 11–19 & 22, Ch. 711, OL 2009  
Hist.: ID 3-1996, f. & cert. ef. 2-26-96; ID 15-2006, f. & cert. ef. 7-27-06; ID 1-2010, f. & cert. ef. 1-5-10

## 836-014-0205

### Definitions

(1) In addition to the definitions set forth in section 2, chapter 711, Oregon Laws 2009 (Enrolled Senate Bill 973), as used in OAR 836-014-0200 to 836-014-0330:

(2) “Terminally ill” means having an illness or sickness that can reasonably be expected to result in death in 24 months or less, including but not limited to one or more of the following:

(a) A medical condition that will result in a drastically limited life span not exceeding 24 months.

(b) A medical condition that has required or requires extraordinary medical intervention, such as a major organ transplant or continuous artificial life support, without which the insured person would die.

(c) Any condition that usually requires continuous confinement in a nursing home, convalescent center or other care facility, if the insured person is expected to remain there for the rest of the insured person’s life.

(d) A medical condition that in the absence of extensive or extraordinary medical treatment will result in a drastically limited life span. Such medical conditions include but are not limited to the following:

(A) Coronary artery disease resulting in an acute infarction or requiring surgery;

(B) Permanent neurological deficit resulting from cerebral vascular accident;

(C) End-stage renal failure; or

(D) Acquired Immune Deficiency Syndrome.

Stat. Auth.: ORS 731.244, 744.331, 744.358  
Stats. Implemented: ORS 744.326, 744.328, 744.331, 744.341, 744.358  
Hist.: ID 1-2010, f. & cert. ef. 1-5-10

## 836-014-0210

### License Fees

(1) The fee for filing an application for a license to transact business as a life settlement provider is \$400.

(2) The fee for annual renewal of a license to transact business as a life settlement provider is \$200.

(3) The fee for filing an application for a license to transact business as a life settlement broker is \$45.

(4) The fee for biennial renewal of a license to transact business as a life settlement broker is \$45.

(5) The fee for filing an application for a license to transact business as a life settlement investment agent is \$45.

(6) The fee for biennial renewal of a license to transact business as a life settlement investment agent is \$45.

Stat. Auth.: ORS 731.244, 731.804, 744.331, 744.358  
Stats. Implemented: ORS 744.326, 744.328, Sec. 5, Ch. 711, OL 2009  
Hist.: ID 3-1996, f. & cert. ef. 2-26-96; ID 15-2006, f. & cert. ef. 7-27-06; ID 1-2010, f. & cert. ef. 1-5-10

## 836-014-0220

### Life Settlement Provider License Requirements

(1) Any person, other than the owner of a life insurance policy, that enters into or effectuates a life settlement contract with an owner who is a resident of Oregon must obtain a life settlement provider license from the Department of Consumer and Business Services.

(2) In order for an applicant to qualify for authority to transact business as a life settlement provider the person must do all of the following:

(a) Demonstrate evidence of financial responsibility as follows:

(A) The applicant’s assets must exceed its liabilities by an amount of not less than \$150,000;

(B) The applicant must file with the Department of Consumer and Business Services a surety bond in the sum of \$100,000 that meets the requirements of ORS 731.640; or

(C) The applicant must deposit with the Department of Consumer and Business Services the sum of \$100,000 in cash, certificates of deposit or securities, or any combination of cash, certificates of deposit or securities.

(b) Submit a detailed plan of operation with the application that includes a description of the method for retaining records as required under ORS 744.346.

(c) Provide an anti-fraud plan that includes initiatives reasonably calculated to detect, prosecute and prevent fraudulent life settlement acts. The anti-fraud plan must include but need not be limited to:

(A) A provision for use of fraud investigators;

(B) A description of the procedures for detecting and investigating possible fraudulent life settlement acts and procedures to resolve material inconsistencies between medical records and insurance applications;

(C) Procedures for reporting possible fraudulent life settlement activities to the director;

(D) A plan for anti-fraud education and training of the provider’s staff and employees; and

(E) A description or organizational chart of the personnel responsible for implementing and maintaining the integrity of the anti-fraud plan.

(d) Demonstrate that procedures are in place to prevent any person convicted of a felony involving dishonesty or breach of trust to participate in the life settlement operations of the applicant.

(3) As a condition of maintaining a license to act as a life settlement provider, a life settlement provider must do all of the following:

(a) (A) At all times maintain assets that exceed its liabilities by an amount of not less than \$150,000; or

(B) At all times maintain with the Department of Consumer and Business Services a surety bond or the deposit of cash, certificates of deposit or securities. The surety bond, cash or securities must meet the requirements of ORS 731.640 and must be in the sum of \$100,000.

(b) Pay the annual provider renewal fee as specified in OAR 836-014-0210; and

(c) Submit to the Department of Consumer and Business Services a completed license renewal application on the form prescribed by the Department, not later than the 30th day after the anniversary date of the life settlement provider’s license.

(4) A bond filed or deposit made in this state under this rule shall be held for the faithful performance by the life settlement provider of all transactions of the provider subject to ORS 744.319 to 744.358.

(5) A life settlement provider license does not eliminate the need to obtain a securities license from the Department if a life settlement provider conducts life settlement transactions in a manner that would be considered an offer, sale, transfer or delivery of a security under the Oregon Securities Law.

Stat. Auth.: ORS 731.244, 744.358  
Stats. Implemented: ORS 744.328  
Hist.: ID 3-1996, f. & cert. ef. 2-26-96; ID 6-1996(Temp), f. & cert. ef. 5-8-96; ID 14-1996, f. & cert. ef. 11-1-96; ID 15-2006, f. & cert. ef. 7-27-06; ID 1-2010, f. & cert. ef. 1-5-10

## 836-014-0226

### Life Settlement Investment Agent Licensing Requirements

(1) In order for an applicant to qualify to transact business as a life settlement investment agent, the person must pay the appropriate application fee under OAR 836-014-0210 and either:

(a) Demonstrate that the person has completed to the director’s satisfaction an examination of the Financial Industry Regulatory Authority (FINRA) that is Series 6 or Series 7; or

(b) Operates under the appropriate license from the equivalent chief insurance official of the state of residence of the life settlement purchaser whom the agent is negotiating with on behalf of a life settlement provider. If there is more than one purchaser of a single policy and the purchasers are residents of different states, the life settlement investment agent must be licensed by the state in which the purchaser having the largest percentage ownership resides, or if the purchasers hold equal ownership, the state of residence of one purchaser agreed upon in writing by all purchasers.

(2) A life settlement investment agent license does not eliminate the need to obtain a securities license from the Department if a life settlement investment agent conducts life settlement transactions in a manner that would be considered an offer, sale, transfer or delivery of a security under the Oregon Securities Law.

Stat. Auth.: ORS 731.244, 744.331, 744.358  
Stats. Implemented: Sec. 5, Ch. 711, OL 2009  
Hist.: ID 1-2010, f. & cert. ef. 1-5-10

## 836-014-0240

### Filing Requirements, Life Settlement Contracts and Disclosure Statement Forms; Promotional, Advertising and Marketing Materials

(1) An applicant for a license as a life settlement provider or life settlement broker must file with the Director a copy of each life settlement contract form and disclosure statement form that the applicant intends to use in business under the license.

(2) A life settlement provider or life settlement broker must file with the Director, prior to use in this state, any amendment to a previously-filed life settlement contract form or disclosure statement form and any new life settlement contract form or disclosure statement form.

(3) Contract forms and amendments thereto and disclosure statement forms and amendments thereto are subject to approval prior to use in this state, as provided in ORS 744.341.

# ADMINISTRATIVE RULES

(4) Each form of life settlement contract filed with the Director must contain all of the following:

- (a) A life settlement contract, completed in John Doe fashion;
- (b) A copy of a policyholder's or certificate holder's application, completed in John Doe fashion; and
- (c) A copy of the disclosure statement form that will be provided to a policyholder or certificate holder as required by section 11, chapter 711, Oregon Laws 2009 (Enrolled Senate Bill 973) and 836-014-0280.

(5) A life settlement contract form or a disclosure statement form is subject to disapproval by the Director:

- (a) If the Director finds it does not comply with the law;
- (b) If the Director finds it contains any provision or has any description of its contents, title, heading or other indication of its provisions, that is unintelligible, uncertain, ambiguous or abstruse, or likely to mislead a person to whom the contract is offered or with whom the contract is made;
- (c) If, in the Director's judgment, its use would be prejudicial to the interest of the persons with whom the life settlement provider contracts; or
- (d) If the Director finds it contains provisions that are unjust, unfair or inequitable.

(6) A life settlement provider must file with the Director, prior to use in this state, any promotional, advertising and marketing materials related to a life settlement contract used in this state.

Stat. Auth.: ORS 744.358  
Stats. Implemented: ORS 744.326, 744.341, Sec. 11 & 15, Ch. 711, OL 2009  
Hist.: ID 3-1996, f. & cert. ef. 2-26-96; ID 15-2006, f. & cert. ef. 7-27-06; ID 1-2010, f. & cert. ef. 1-5-10

## 836-014-0250

### Contents of Life Settlement Contracts

(1) In addition to the requirements of ORS 744.341, each life settlement contract must be in writing, in a type size of not less than 12 points, and written in clear, understandable and straightforward wording.

(2) A life settlement contract may not contain any limitation or restriction on the use of the proceeds by the policyholder or certificate holder.

(3) Each life settlement contract shall specify any effect that entering into the contract will have upon the continuation or continued availability of supplemental benefits or riders that are or may be attached to the life insurance policy that is the subject of the life settlement contract, including assignment of the responsibility for the continued payment of premiums. The contract must require the provider to pay the premium on supplemental benefits and riders added to the policy before the life settlement contract was entered, when so elected according to OAR 836-014-0260, and must require the provider to notify the former policyholder or certificate holder of any option that may arise to select any supplemental benefits or riders. The benefits and riders considered shall include, but need not be limited to, the following:

- (a) Guaranteed insurability options;
- (b) Accidental death benefits, or accidental death and dismemberment benefits;
- (c) Disability income or loss of income protection; and
- (d) Family, spousal or children's riders or benefits.

(4) The life settlement contract must provide for rescission by the policyholder or certificate holder entering the life settlement contract as set forth in ORS 744.341. The rescission provision must appear on the first page of the contract. The rescission period specified in 744.341 may not be less than 60 days after the date on which the contract is executed by all parties or less than 30 days after the date on which the policyholder or certificate holder receives the life settlement proceeds, whichever is the lesser period. The rescission provision must also provide that if the insured dies during the period of time for rescission:

- (a) The contract is rescinded effective on the date of application; and
- (b) The provider will return the amount by which the insurance proceeds according to the terms of the policy exceed the compensation paid by the provider pursuant to the life settlement contract and any premiums paid by the provider on the policy so that all parties, including any beneficiaries, are returned to their original positions under the insurance policy.

(5) A life settlement contract must provide a method for giving notice of rescission, including but not limited to the address or addresses to which the rescission notice must be sent, and a telephone number that the insured may call for information.

(6) All life settlement contracts, purchase agreement forms and applications for life settlements must contain the following statement or a substantially similar statement approved by the Director: "Any person who knowingly presents false information in this application is guilty of a crime and may be subject to fines and confinement in prison."

Stat. Auth.: ORS 744.358  
Stats. Implemented: ORS 744.341  
Hist.: ID 3-1996, f. & cert. ef. 2-26-96; ID 14-1997, f. & cert. ef. 10-17-97; ID 15-2006, f. & cert. ef. 7-27-06; ID 1-2010, f. & cert. ef. 1-5-10

## 836-014-0260

### Rights and Duties of Parties to Life Settlement Contract

(1) A policyholder or certificate holder who has entered a life settlement contract has the right to retain additional benefits or optional riders that were part of the life insurance policy, including but not limited to disability income, accidental death and dismemberment and spouse, children and fam-

ily riders, but not including term riders. Any premiums payable on the insurance policy or certificate that is the subject of the life settlement contract, including premiums payable for additional benefits retained at the option of the policyholder or certificate holder, shall be paid by the life settlement provider when due, for the remaining duration of the life that is the subject of the life settlement contract.

(2) Except as provided in this section (2), any additional benefit or optional rider that the policyholder or certificate holder elects not to continue must be terminated when the life settlement takes place. A waiver of premium provision may be continued by the life settlement provider.

(3) The life settlement provider does not have the right to any cash surrender value unless all additional benefits retained by the policyholder or certificate holder, whether by rider or endorsement, are in a paid-up status and will be unaffected by any change in cash surrender value.

(4) The life settlement provider shall make the payment of proceeds of a life settlement to an escrow agent as required in Section 13, chapter 711, Oregon Laws 2009 (Enrolled Senate Bill 973) by means of wire transfer or by cashier's check.

(5) Any policyholder or certificate holder who enters into a life settlement contract has the right to rescind the contract not later than the 60th day after the date on which the contract is executed by all parties or not later than the 30th day after the date the policyholder or certificate holder receives the life settlement proceeds, whichever is the lesser period. Not later than the date on which the life settlement proceeds are paid to the policyholder or certificate holder, the life settlement provider must give the policyholder or certificate holder a written statement of the date on which the rescission period expires. The statement must include a notice to the policyholder or certificate holder that a rescission is not complete until the full payment, including any premiums paid by the life settlement provider, is returned to the life settlement provider and that the full payment must be returned not later than the 30th day after the date specified for expiration of the rescission period.

(6) If the statement required in section (5) of this rule is given by mail, it shall be considered to be given when deposited in the United States mail, first class postage prepaid.

(7) If notice of rescission is given by mail, it shall be considered to be given when deposited in the United States mail, first class postage prepaid.

(8) A life settlement broker represents exclusively the owner, and not the insurer or the life settlement provider, and owes a fiduciary duty to the owner, including a duty to act according to the owner's instructions and in the best interest of the owner.

(9) The life settlement investment agent does not have the right to have any contact with the owner or insured under a policy or to any knowledge of the identity of the owner or insured.

Stat. Auth.: ORS 744.358  
Stats. Implemented: ORS 744.341, Sec. 11, Ch. 711, OL 2009  
Hist.: ID 3-1996, f. & cert. ef. 2-26-96; ID 14-1997, f. & cert. ef. 10-17-97; ID 15-2006, f. & cert. ef. 7-27-06; ID 1-2010, f. & cert. ef. 1-5-10

## 836-014-0263

### Request to Insurer for Verification of Coverage

(1) The life settlement provider or broker shall submit in writing a request for verification of coverage from the insurer on the status of the life insurance policy or certificate of a policyholder. The request shall be in the form illustrated on the Insurance Division website, or a similar form approved by the Director and shall be accompanied by an instruction executed by the policyholder or certificate holder authorizing the insurer to release the specified information referred to in this section to the life settlement provider or to the life settlement broker.

(2) A life settlement provider or broker who submits a request under section (1) of this rule must state in the request that the provider or broker is licensed as a life settlement provider in this state and must disclose its license number.

Stat. Auth.: ORS 731.244, 744.331, 744.358  
Stats. Implemented: ORS 744.326, 744.328, 744.331, 744.341, 744.358, Sec. 13, Ch. 711, OL 2009  
Hist.: ID 1-2010, f. & cert. ef. 1-5-10

## 836-014-0265

### Response by Insurer

(1) An insurer shall provide information requested by a life settlement provider or life settlement broker on the status of the life insurance policy or certificate of a policyholder or certificate holder within 30 calendar days after the insurer receives the request for verification of coverage.

(2) Nothing in this rule prohibits a certificate holder from assigning rights or benefits under the certificate to a licensed life settlement provider if assignment is allowed in the group policy, or from converting the coverage to an individual life insurance policy as provided by law and any applicable terms of the group policy.

Stat. Auth.: ORS 731.244, 744.358  
Stats. Implemented: ORS 744.358  
Hist.: ID 14-1997, f. & cert. ef. 10-17-97; ID 15-2006, f. & cert. ef. 7-27-06; ID 1-2010, f. & cert. ef. 1-5-10

# ADMINISTRATIVE RULES

## 836-014-0270

### Standards for Evaluation of Reasonable Payments; Definition of "Terminal Illness or Condition"

(1) If the insured is terminally ill or chronically ill, payments under life settlement contracts must be fair and equitable and may not in any event be less than the following: Insured's Life Expectancy — Minimum Percentage of Face Value Less Outstanding Loans Received by Policyholder or Certificate Holder

- (a) Less than six months — 85 percent;
- (b) At least six but less than 12 months — 80 percent;
- (c) At least 12 but less than 18 months — 75 percent;
- (d) At least 18 but less than 24 months — 70 percent;

(2) If the insured is chronically ill, payments under life settlement contracts must be fair and equitable and may not in any event be less than the following: Insured's Life Expectancy — Minimum Percentage of Face Value Less Outstanding Loans Received by Policyholder or Certificate Holder

- (a) At least 24 but less than 36 months — 60 percent;
- (b) 36 months or more — The insured must receive at least the greater

of:

- (A) 50 percent;
- (B) The cash surrender value; or
- (C) The accelerated death benefit in the policy.

(3) If the insured is not terminally ill or chronically ill, the owner must receive a reasonable return for entering into a life settlement agreement. The life settlement contract shall not provide a payment to the insured that is unreasonable or unjust. In determining whether a payment is unreasonable or unjust, the Director may consider the following factors:

- (a) The face amount being purchased;
- (b) Any policy loan in effect on the policy being purchased;
- (c) The life expectancy of the insured at the time of purchase;
- (d) The age of the insured at the time of purchase;
- (e) The future premiums that must be paid to minimally keep the policy in force;

(f) The cash surrender value or accelerated death benefit available from the policy;

(g) The method for allocating internal costs relating directly to the acquisition of this policy;

(h) The payment of any commission, fee or other expense to a life settlement broker or any other external party;

(i) If known, any future interest payments due for funds borrowed to purchase this policy;

(j) The applicable rating at the time of purchase of the insurance company that issued the policy by a rating service generally recognized by the insurance industry, regulators and consumer groups;

(k) Whether the policy is within the contestable period; and

(l) Other factors that the Director considers relevant.

(3) A payment may be reduced by the minimum premium required under sections (1) or (2) of this rule to keep the contract in force for the duration of the remaining life expectancy of the life that is the subject of the life settlement contract. The minimum premium includes any premiums payable for additional benefits retained at the option of the policyholder or certificate holder. Other than this allowable reduction in payment, there shall be no other retention for expenses or broker's fees that would reduce payments below the minimum levels established in sections (1) or (2) of this rule.

(4) The estimated life expectancy of an insured person must be determined according to sound actuarial principles or other sound methodology acceptable to the director.

Stat. Auth.: ORS 744.358

Stats. Implemented: ORS 744.338, 744.358

Hist.: ID 3-1996, f. & cert. ef. 2-26-96; ID 14-1997, f. & cert. ef. 10-17-97; ID 15-2006, f. & cert. ef. 7-27-06; ID 1-2010, f. & cert. ef. 1-5-10

## 836-014-0280

### Disclosure Required

(1) With an application for a life settlement, a life settlement provider or life settlement broker shall disclose the information specified in section 11, chapter 711, 2009 Oregon Laws (Enrolled Senate Bill 973) in a disclosure statement in a form approved by the director. The statement must be in not less than 12 point type. An example of the form of the disclosure statement will be displayed on the Insurance Division website and the director may update names, telephone numbers and similar information from time to time as necessary. A life settlement broker shall disclose to the insured in writing any relationship required to be disclosed to an owner under section 15, chapter 711, Oregon Laws 2009 prior to effectuating a life settlement contract. The form of the disclosure statement shall be approved by the director.

(2) For each life settlement contract entered into by a life settlement provider, the provider must keep a copy of the disclosure statement in the provider's file on the contract, along with an affidavit signed by the provider showing the date the statement was delivered to and signed by the policyholder or insured and the life settlement provider or life settlement broker and attesting to the provider's belief that the policyholder or insured had an opportunity to read and understand the statement. The provider must also send a copy of the statement and the signed affidavit to the life settlement broker.

(3) The disclosures required under section (1) of this rule must be provided in a separate document that is signed by the owner or insured and the life settlement provider or life settlement broker, and must provide the following information:

(a) All information required by section 11(1), chapter 711, Oregon Laws 2009 (Enrolled Senate Bill 973);

(b) The brochure required by section 11(2), chapter 711, Oregon Laws 2009 (Enrolled Senate Bill 973); and

(c) An explanation of the ability of the life settlement provider and the life settlement broker to contact the insured for the purpose of determining the health status of the insured after the life settlement occurs, and the frequency at which those contacts may occur.

(4) No later than the date the life settlement contract is signed by all parties, a life settlement provider shall provide the owner and insured with at least the disclosures required under section 11(3), chapter 711, Oregon Laws 2009 (Enrolled Senate Bill 973). The disclosures shall be conspicuously displayed in the life settlement contract or in a separate document signed by the owner or insured.

(5) If the life settlement provider transfers ownership or changes the beneficiary of the insurance policy, the provider shall communicate in writing the change in ownership or beneficiary to the insured within 20 days after the change. Any subsequent life settlement purchaser that transfers ownership or changes the beneficiary shall notify the person identified by the life settlement provider under section 11(7)(h), chapter 711, Oregon Laws 2009 (Enrolled Senate Bill 973) in order that the life settlement provider may again notify the insured of the subsequent change in ownership or beneficiary.

(6) Prior to the date the life settlement purchase agreement is signed by all parties, a life settlement provider or its life settlement investment agent shall provide the life settlement purchaser with at least the following disclosures. The disclosures must be conspicuously displayed in any life purchase contract or in a separate document signed by the life settlement purchaser and life settlement provider or life settlement investment agent, and must include the following:

(a) The disclosures required by section 11(5), chapter 711, Oregon Laws 2009 (Enrolled Senate Bill 973); and

(b) A brochure describing the process of investment in life settlements in a form approved by the director. The director shall review the form to determine whether the form is sufficiently similar to the brochure as illustrated on the Insurance Division website.

(7) No later than at the time of the assignment, transfer or sale of all or a portion of an insurance policy, a life settlement provider or its life settlement investment agent shall provide the life settlement purchaser with at least the disclosures required by section 11(7), chapter 711, Oregon Laws 2009 (Enrolled Senate Bill 973).

(8) A life settlement broker shall retain for five years a copy of a disclosure statement given to a person under section (3) of this rule that is signed by the person, in the broker's files.

(9) A life settlement broker to whom a copy of a disclosure statement and signed affidavit is sent by the life settlement provider must retain for five years the copies in the broker's files on the contract.

(10) A life settlement provider shall not enter a life settlement contract affecting a life insurance policy issued by an insurer with which the life settlement provider is affiliated or of which the life settlement provider is a subsidiary, unless the relationship between the insurer and the life settlement provider is fully disclosed, in writing, to the policyholder or certificate holder.

Stat. Auth.: ORS 744.358

Stats. Implemented: Sec 10, 11 & 15, Ch. 711, OL 2009

Hist.: ID 3-1996, f. & cert. ef. 2-26-96; ID 14-1997, f. & cert. ef. 10-17-97; ID 15-2006, f. & cert. ef. 7-27-06; ID 1-2010, f. & cert. ef. 1-5-10

## 836-014-0285

### Disclosures to Insurer

Before initiating a plan, transaction or series of transactions, a life settlement broker or life settlement provider shall fully disclose to an insurer the plan, transaction or series of transactions to which the life settlement broker or life settlement provider is a party, to originate, renew, continue or finance a life insurance policy with the insurer for the purpose of engaging in the business of life settlements at anytime prior to, or during the first five years after, issuance of the policy.

Stat. Auth.: ORS 731.244, 744.331, 744.358

Stats. Implemented: ORS 744.326, 744.328, 744.331, 744.341, 744.358, section 12, chapter 711, Oregon Laws 2009

Hist.: ID 1-2010, f. & cert. ef. 1-5-10

## 836-014-0290

### Contacts by Life Settlement Provider or Broker

(1) After a life settlement provider has entered into a life settlement contract, neither the life settlement provider nor the life settlement broker may make contact with the insured:

(a) More frequently than once every three months if the insured has a life expectancy of more than one year; and

(b) More frequently than twice each month if the insured has a life expectancy of one year or less.

# ADMINISTRATIVE RULES

(2) The life settlement provider shall explain the procedure for contacts authorized in section (1) of this rule to the insured when the life settlement contract is entered into.

(3) The limitation in this rule on contacts by a life settlement provider or life settlement broker does not apply to contacts initiated by the policyholder, certificate holder or insured, to contacts required to inform the insured of any transfer of ownership under OAR 836-014-0280(5) or for keeping the life insurance policy in force.

(4) The disclosure statement required under OAR 836-014-0280 must include a clear description of the permitted contacts with an insured allowed under section (1) of this rule including an explanation of the purpose of such subsequent contacts.

Stat. Auth.: ORS 744.358  
Stats. Implemented: ORS 744.358, Sec. 11, Ch. 711, OL 2009  
Hist.: ID 3-1996, f. & cert. ef. 2-26-96; ID 14-1997, f. & cert. ef. 10-17-97; ID 15-2006, f. & cert. ef. 7-27-06; ID 1-2010, f. & cert. ef. 1-5-10

## 836-014-0300

### Advertising Standards

(1) Advertising related to life settlement contracts, life settlement purchase agreements or related products or services must be truthful and not misleading by fact or implication.

(2) If a life settlement provider or broker mentions the speed with which the life settlement will occur, the advertising must disclose the average time from completed application to the date of offer and from acceptance of the offer to receipt of the funds by the policyholder or certificate holder during the past six months.

(3) If advertising of a life settlement contract mentions the dollar amounts available to policyholders and certificate holders, the advertising must disclose the average purchase price with regard to a particular life expectancy as a percent of face value paid to policyholders and certificate holders contracting with the life settlement provider or broker during the past six months and must disclose factors that go into determining the specific amounts charged.

Stat. Auth.: ORS 744.358  
Stats. Implemented: ORS 744.358  
Hist.: ID 3-1996, f. & cert. ef. 2-26-96; ID 15-2006, f. & cert. ef. 7-27-06; ID 1-2010, f. & cert. ef. 1-5-10

## 836-014-0310

### Reporting Requirements

(1) On or before March 1 of each year, a life settlement provider shall file an annual statement with the director. The information provided in the statement shall be limited to those transactions for which the owner is a resident of Oregon. The statement shall include at a minimum:

(a) Total number and aggregate face amount and life settlement proceeds of policies settled during the immediately preceding calendar year;

(b) A breakdown of the information by policy issue year;

(c) The names of the insurance companies whose policies have been settled; and

(d) The life settlement brokers who have settled the policies.

(2) For each policy for which a life settlement contract has been entered into during the preceding calendar year or that was entered into prior to the preceding calendar year and for which deaths had not yet been reported as of the beginning of the preceding year:

(a) The date the life settlement contract was entered into;

(b) The life expectancy of the insured at the time of the contract;

(c) The face amount of the policy.

(d) The amount paid by the life settlement provider for purposes of making a life settlement on the policy and the percentage that amount represents of the face amount;

(e) If the insured has died:

(A) The date of death; and

(B) The total insurance premiums paid by the life settlement provider to maintain the policy in force; and

(f) The amount of commission paid by the life settlement provider to the life settlement broker.

(3) The annual statement required under section (1) of this rule also shall include a breakdown, by disease category, of applications, received, accepted and rejected during the preceding calendar year.

Stat. Auth.: ORS 744.342, 744.358  
Stats. Implemented: ORS 744.342  
Hist.: ID 3-1996, f. & cert. ef. 2-26-96; ID 15-2006, f. & cert. ef. 7-27-06; ID 1-2010, f. & cert. ef. 1-5-10

## 836-014-0320

### Requirements for Brokers

(1) A life settlement broker may not seek or obtain any compensation from the policyholder or certificate holder without the written agreement of the policyholder or certificate holder obtained before the broker performs any services in connection with the life settlement.

(2)(a) Unless convicted of a felony as described in section 17(2), chapter 711, Oregon Laws 2009 (Enrolled Senate Bill 973), a life insurance producer meets the licensing requirements of this section and is permitted to

operate as a life settlement broker in this state if the producer has been duly licensed:

(A) As a resident insurance producer with a life line of authority in this state for at least one year; or

(B) In the producer's home state for at least one year and is licensed as a nonresident producer in this state.

(b) A life insurance producer qualified to operate as a life settlement broker under this section must:

(A) Not later than 30 days from the date the producer first acts as a life settlement broker, submit an application for a life settlement broker license;

(B) Have in place an anti-fraud plan as required by section 17(10), chapter 711, Oregon Laws 2009 (Enrolled Senate Bill 973); and

(C) Comply with all other requirements of ORS 744.319 to 744.358 pertaining to acting as a life settlement broker.

(3) A life settlement broker may not also be licensed as a life settlement investment agent.

(4) The anti-fraud plan required under this rule must include initiative reasonably calculated to detect, prosecute and prevent fraudulent life settlement acts. The anti-fraud plan must include but need not be limited to:

(a) A provision for use of fraud investigators;

(b) A description of the procedures for detecting and investigating possible fraudulent life settlement acts and procedures to resolve material inconsistencies between medical records and insurance applications;

(c) Procedures for reporting possible fraudulent life settlement activities to the director;

(d) A plan for anti-fraud education and training of the broker's staff and employees; and

(e) A description or organizational chart of the personnel responsible for implementing and maintaining the integrity of the anti-fraud plan.

(f) A demonstration that procedures are in place to prevent any person convicted of a felony involving dishonesty or breach of trust to participate in the life settlement operations of the applicant.

Stat. Auth.: ORS 744.358  
Stats. Implemented: ORS 744.358, 744.323, Sec. 17, Ch. 711, OL 2009  
Hist.: ID 3-1996, f. & cert. ef. 2-26-96; ID 15-2006, f. & cert. ef. 7-27-06; ID 1-2010, f. & cert. ef. 1-5-10

## 836-014-0325

### Disclosures Required by Life Insurers

(1) With respect to each policy issued by an insurance company, the insurance company shall provide notice to the owner of an individual life insurance policy when the insured person under such a policy is 60 years of age or older, and:

(a) The life insurance company receives notice from such an owner of a request to surrender, in whole or in part, an individual policy;

(b) The life insurance company receives notice from such an owner of a request to receive an accelerated death benefit under an individual policy; or

(c) The life insurance company sends to such an owner all notices of lapse of an individual policy, other than a term policy.

(2)(a) The notice must consist of the following statement in large, bold or otherwise conspicuous typeface calculated to draw the eye: "Life insurance is a critical part of a broader financial plan. There are many options available, and you have the right to shop suited to your needs." The notice may include the contact information for the Department of Consumer and Business Services as suggested in Exhibit 1 to this rule or in a form similar to the notice in Exhibit 1 to this rule. The director may update the names, telephone numbers, website information and similar information in Exhibit 1 from time to time as necessary.

(b) If the notice does not include the contact information for the department, the communication of the notice must also contain a statement advising the recipient that the recipient may contact the Insurance Division of the Department of Consumer and Business Services for more information. The insurer shall direct the recipient of the communication to either contact the Insurance Division Consumer Advocacy Unit at its toll free telephone number or visit the Division's website at the website address currently provided by the Division as Exhibit 1 to this rule as may be updated from time to time on the Division website.

Stat. Auth.: ORS 731.244, 744.331, 744.358  
Stats. Implemented: ORS 744.326, 744.328, 744.331, 744.341, 744.358, Sec. 22, Ch. 711, OL 2009  
Hist.: ID 1-2010, f. & cert. ef. 1-5-10

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**Rule Caption:** Insurance licensing: Primarily — charges for criminal records checks and qualifications for crop insurance adjusters.

**Adm. Order No.:** ID 2-2010

**Filed with Sec. of State:** 1-8-2010

**Certified to be Effective:** 2-1-10

**Notice Publication Date:** 12-1-2009

**Rules Adopted:** 836-071-0113

**Rules Amended:** 836-009-0007, 836-071-0101, 836-071-0127, 836-071-0130, 836-071-0185

# ADMINISTRATIVE RULES

**Subject:** These adopted and amended rules:

- Explain that the agency will charge a fee for the actual cost of a criminal records check, among the fees that apply to the issuance of licenses for insurance producers, adjusters and consultants. OAR 836-009-0007(4)(e);

- Provide consistent expiration time frames for producer, adjuster, and consultant licenses. OAR 836-009-0007(6);

- Clarify that the exemption to the adjuster licensing examination in ORS 744.535(2) applies only to non-resident adjuster licensing. OAR 836-071-0101(3);

- Designate crop insurance as a distinct class of insurance for the purpose of licensing crop adjusters, and that effective Feb. 1, 2011, to qualify as a crop adjuster, an applicant must pass – with an 80% minimum score – an examination given by the director. OAR 836-071-0113 & 0127;

- Require crop adjusters wishing to renew their licenses to furnish evidence of current Federal Crop Insurance Corporation certification. OAR 836-071-0130(2)(d);

- Update the name of the National Association of Securities Dealers (NASD), now the Financial Industry Regulatory Authority (FINRA). OAR 836-071-0185

**Rules Coordinator:** Sue Munson—(503) 947-7272

## 836-009-0007

### Fees

(1) The following fees apply to certificates of authority:

(a) The fee for application for a certificate of authority to transact insurance as an insurer is \$2,500. The fee for application as a domestic insurer must be paid when application for a permit to organize as a domestic insurer is made. Otherwise, the fee must be paid when the application for the certificate is made;

(b) The fee for annual continuation of a certificate of authority issued under subsection (a) of this section is \$1,500;

(c) The fee for reinstatement of a certificate of authority is \$100.

(2) The fees in this section apply to examinations for licenses for insurance producers, adjusters and insurance consultants. The fees may be charged by the examination vendor under contract with the Department of Consumer and Business Services and are as follows:

(a) Examination fees:

(A) Insurance producer, property and casualty insurance or life and health insurance — \$65;

(B) Insurance producer, property insurance only, casualty insurance only, personal lines insurance only, life insurance only or health insurance only — \$55;

(C) Surplus lines licensee — \$55;

(D) Adjuster, general lines insurance or life and health insurance — \$55;

(E) Adjuster, health insurance or any single other line designated by rule — \$55;

(F) Consultant, life and health insurance or general lines insurance — \$55;

(G) Consultant, life insurance only, health insurance only or any other single line designated by rule — \$55;

(b) Reexamination fees, to be charged when the applicant retakes an examination:

(A) Insurance producer, property and casualty insurance or life and health insurance — \$65;

(B) Insurance producer, property insurance only, casualty insurance only, personal lines insurance only, life insurance only or health insurance only — \$55;

(C) Surplus lines licensee — \$55;

(D) Adjuster, general lines insurance or life and health insurance — \$55;

(E) Adjuster, health insurance or any single other line designated by rule — \$55;

(F) Consultant, life and health insurance or general lines insurance — \$55;

(G) Consultant, life insurance only, health insurance only or any other single line designated by rule — \$55;

(c) For purposes of the fees charged under subsections (a) and (b) of this section:

(A) Surety is included in the casualty insurance line and marine and transportation insurance may be included in the property insurance line or the casualty insurance line; and

(B) The personal lines line is a subcategory of the casualty insurance line. Consequently, a person who holds a license that is endorsed to transact casualty insurance need not obtain a separate endorsement to transact personal lines insurance.

(3) The following fees apply to application for licenses for insurance producers, adjusters and insurance consultants:

(a) Resident insurance producer — \$30;

(b) Nonresident insurance producer — \$30;

(c) Adjuster — \$30;

(d) Insurance consultant — \$30.

(4) The following fees apply to issuance of licenses for insurance producers, adjusters and insurance consultants:

(a) Resident insurance producer — \$45;

(b) Nonresident insurance producer — \$45;

(c) Adjuster — \$45;

(d) Insurance consultant — \$45;

(e) In addition, the actual cost of any criminal records check under 836-072-0010. The amount charged will not exceed the actual cost of acquiring and furnishing criminal offender information as authorized by ORS 181.534(9)(g).

(5) The examination fee under section (2) of this rule must be paid to the examination vendor. The application fee under section (3) of this rule and the license issuance fee under section (4) of this rule must be paid at the same time. There is no refund of the application and examination fees. Refund of the license issuance fee is governed by section (14) of this rule.

(6) The fees established in this section apply to the renewal of licenses for insurance producers, adjusters and insurance consultants. A license expires biennially in the month of the individual's birthday anniversary. The fees are as follows:

(a) Resident insurance producer — \$45;

(b) Nonresident insurance producer — \$45;

(c) Adjuster — \$45;

(d) Insurance consultant — \$45.

(7) The applicable fee under sections (3) and (4) of this rule shall be paid for each category of insurance business appearing on a license.

(8) The following fees apply to certificates of registration for legal expense organizations:

(a) Application for a certificate of registration — \$350;

(b) Renewal of certificate of registration — \$350. The fee under this subsection shall be paid annually.

(9) Annual registration of a foreign risk retention group — \$350. The fee under this section shall be paid at the time of initial registration and annually thereafter.

(10) Annual registration of a purchasing group — \$100. The fee under this section shall be paid at the time of initial registration and annually thereafter.

(11) The license for a rating organization — \$180. The fee under this section shall be paid at the time of initial licensing and triennially thereafter.

(12) The fee for filing a statement by an acquiring party under ORS 732.521 for the purpose of acquiring a controlling interest in an insurer (a "Form A" filing as prescribed in OAR 836-027-0100) is \$50 per hour of Division staff time spent on reviewing the statement, with a minimum fee of \$5,000.

(13) The Fire Marshal shall pay \$50,000 each year for services provided by the Department in the collection of gross premium taxes on insurance covering the peril of fire under ORS 731.820.

(14) Fees paid as required under this rule are not refundable except as provided in this section. If the Director determines that an amount paid exceeds the amount legally due and payable to the Department and the amount of the overpayment is less than \$20, the Department shall refund the amount only upon receipt of a written request from the payer or the representative of the payer. A fee paid for a license under section (4) of this rule is refundable if the license applicant fails the examination or if the license is otherwise not issued to the applicant.

(15) The amendments to section (2)(a), (b) and (d) of this rule that were filed in ID 15-2002 with the Secretary of State on June 26, 2002 to become effective on July 1, 2002, are re-adopted with the operative date of July 1, 2002, and those same amendments to section (2)(a) and (b) of this rule are repealed effective July 1, 2003.

Stat. Auth.: ORS 181.534, 293.445, 731.244, 731.804 & 744.037

Stats. Implemented: ORS 181.534, 731.804, 744.001, 744.002, 744.004, 744.007, 744.058, 744.062, 744.063, 744.064, 744.072, 744.528, 744.531, 744.535, 744.619 & 744.621

Hist.: ID 6-1989(Temp), f. & cert. ef. 7-3-89; ID 14-1989, f. 12-12-89, cert. ef. 1-1-90; ID 21-1990, f. & cert. ef. 12-18-90; ID 4-1991, f. & cert. ef. 4-25-91; ID 8-1991, f. & cert. ef. 10-21-91; ID 7-1993, f. & cert. ef. 9-3-93; ID 16-1997, f. 11-25-97, cert. ef. 1-1-98; ID 6-1999, f. 12-13-99, cert. ef. 1-1-00; ID 14-2000, f. 12-27-00, cert. ef. 1-1-01; ID 13-2001, f. 11-16-01, cert. ef. 1-1-02; ID 15-2002, f. 6-26-02, cert. ef. 7-1-02; ID 4-2003(Temp), f. 6-30-03, cert. ef. 7-1-03 thru 12-19-03; ID 8-2003, f. 12-12-03, cert. ef. 12-19-03; ID 8-2005, f. 5-18-05, cert. ef. 8-1-05; ID 11-2007(Temp), f. & cert. ef. 12-11-07 thru 6-1-08; ID 7-2008, f. 5-20-08, cert. ef. 6-2-08; ID 2-2010, f. 1-8-10, cert. ef. 2-1-10

## 836-071-0101

### Adjuster and Insurance Consultant License Application; Required Information

(1) In addition to information required under ORS 744.001, an applicant for an adjuster or insurance consultant license shall provide the following information relating to the applicant, as applicable on the application form:

(a) Date and place of birth;

# ADMINISTRATIVE RULES

(b) Duration of employment in insurance. Include the beginning and ending dates and the names and addresses of each employer and prior places of business in the insurance industry;

(c) All states and provinces of Canada in which the applicant currently holds a license to engage in the transaction of insurance, or has held such a license within ten years prior to the date of the application;

(d) Any assumed business name or alias ever used;

(e) Whether any firm or corporation of which the applicant is or has been a member, officer or director has ever filed for bankruptcy or been adjudged a bankrupt;

(f) The Social Security number of the applicant; and

(g) If the applicant is a firm or corporation, the name of all current officers, directors and stockholders who own more than ten percent of any class of equity security of the applicant.

(2) An applicant for a resident adjuster or insurance consultant license who is or has been licensed as a resident producer, adjuster or insurance consultant in another state or a province of Canada within five years prior to the date of application shall include with the application a statement that the resident license is inactive or no longer valid from the insurance department of the state or province in which the applicant is or was last authorized to transact insurance.

(3) An applicant for a non-resident adjuster or insurance consultant license who is licensed as a resident producer, adjuster or insurance consultant in another state or province of Canada shall include with the application a statement of current licensure from the insurance department of the state or province in which the applicant was authorized to transact insurance as a resident licensee. The statement must indicate that the applicant has a current license for the class or classes of insurance that are being applied for in Oregon. The statement must be dated not earlier than the 90th day prior to the date of application. The exemption to the adjuster licensing examination in ORS 744.535(2) applies only to non-resident adjuster licensing.

(4) The Director may collect Social Security numbers submitted in applications under this rule and may use a Social Security number of an individual when authorized to do so for the purposes specified in this section. In addition to the governmental uses for which a Social Security number is required in an application under federal and state law, when authorized by the holder of a Social Security number, the Director may use a Social Security number for any of the following purposes:

(a) As an identification number in maintaining records and reporting grades or examination scores;

(b) For licensing purposes; and

(c) For use by other government agencies to carry out their statutory duties.

(5) An applicant may voluntarily allow the Director to use the Social Security number of the applicant, as the Director may request in the application form, for the purposes specified in section (4) of this rule. Refusal to voluntarily allow such use of the Social Security number will not result in the denial of any individual right, benefit or privilege provided by law. The use authorized by an applicant is in addition to uses authorized by state and federal law for which collection of Social Security numbers is mandatory.

Stat. Auth.: ORS 731.244 & ORS 744.001

Stats. Implemented: ORS 744.001, ORS 744.002, & ORS 744.535

Hist.: ID 3-1990, f. & cert. ef. 1-19-90; ID 15-1996, f. & cert. ef. 11-12-96; ID 9-2002, f. & cert. ef. 3-18-02; ID 2-2010, f. 1-8-10, cert. ef. 2-1-10

## 836-071-0113

### Crop Insurance

(1) The director designates crop insurance as a class of insurance, for the purpose of licensing crop adjusters, under the director's authority in ORS 744.531(3).

(2) Effective Feb. 1, 2011, to qualify as a crop adjuster, an applicant must pass an examination given by the director.

Stat. Auth.: ORS 731.244 & ORS 744

Stats. Implemented: ORS 744.531

Hist.: ID 2-2010, f. 1-8-10, cert. ef. 2-1-10

## 836-071-0127

### Examination Scores

(1) For the purpose of obtaining authorization to transact a category or class of insurance, an applicant passes an examination for the class or category when the applicant obtains a score of 70 percent or higher, with the exception of a crop insurance adjuster examination, for which the minimum passing score is 80 percent.

(2) An applicant for a surplus lines licensee's license must take a written examination approved by the Director and must achieve a score of 70 percent or higher.

Stat. Auth.: ORS 731.244, 731.804, 744.001, 744.003, 744.066, 744.069, 744.075, 744.535, 744.619 & 744.621

Stats. Implemented: ORS 744.535

Hist.: ID 3-1990, f. & cert. ef. 1-19-90; ID 4-1991, f. & cert. ef. 4-25-91; ID 8-2005, f. 5-18-05, cert. ef. 8-1-05; ID 2-2010, f. 1-8-10, cert. ef. 2-1-10

## 836-071-0130

### Adjuster or Insurance Consultant License Renewal

(1) The adjuster or insurance consultant license of an individual expires biennially in the month of the individual's birthday anniversary. The adjuster or insurance consultant license of a person other than an individual expires on the last day of the month in which the second anniversary of the initial issuance date occurs. Thereafter, the license of a person other than an individual shall expire on the second anniversary following each renewal.

(2) An adjuster or insurance consultant licensee applying for renewal must do the following, as applicable:

(a) Submit a completed renewal application, on a form provided by the Director. If mailed, the renewal application must be postmarked by the United States Postal Service not later than the license expiration date;

(b) Submit the renewal fee;

(c) Submit a statement of current license status from the insurance department of the state of residence of the licensee, if the licensee is a non-resident licensee; and

(d) Furnish evidence of current Federal Crop Insurance Corporation certification, if the applicant is a crop insurance adjuster.

(3) The Director may allow an adjuster or insurance consultant licensee not more than 30 days to submit missing information on the application form if the fees have been submitted on or before the expiration date.

(4) The Director may request on the renewal application any information requested on the original application for a license.

(5) For the purpose of making the transition to renewal according to birth date month as provided in this rule, the adjuster or insurance consultant license of an individual that would have expired on or after November 27, 2007 according to this rule as the rule read prior to November 27, 2007 expires instead in the birth date month next following the former expiration date.

Stat. Auth.: ORS 731.244 & 744.007

Stats. Implemented: ORS 744.007

Hist.: ID 3-1990, f. & cert. ef. 1-19-90; ID 3-1997, f. 4-7-97, cert. ef. 6-1-97; ID 6-1999, f. 12-13-99, cert. ef. 1-1-00; ID 9-2002, f. & cert. ef. 3-18-02; ID 11-2007(Temp), f. & cert. ef. 12-11-07 thru 6-1-08; ID 7-2008, f. 5-20-08, cert. ef. 6-2-08; ID 2-2010, f. 1-8-10, cert. ef. 2-1-10

## 836-071-0185

### Qualification of Agents Selling Variable Life Insurance, Including Annuities

A person shall not solicit, place or procure variable life insurance contracts or policies, including annuities, unless the person has completed to the Director's satisfaction an examination of the Financial Industry Regulatory Authority (FINRA) that is Series 6 or Series 7 and is licensed to a securities dealer in Oregon.

Stat. Auth.: ORS 731.244

Stats. Implemented: ORS 744.062

Hist.: ID 3-1990, f. & cert. ef. 1-19-90; ID 4-1991, f. & cert. ef. 4-25-91; ID 9-2002, f. & cert. ef. 3-18-02; ID 2-2010, f. 1-8-10, cert. ef. 2-1-10

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**Rule Caption:** Correcting Rules Extending Program for Continuation of Health Benefit Plans and Eligibility for Federal Subsidy.

**Adm. Order No.:** ID 3-2010(Temp)

**Filed with Sec. of State:** 1-8-2010

**Certified to be Effective:** 1-8-10 thru 6-18-10

**Notice Publication Date:**

**Rules Amended:** 836-053-0855, 836-053-0860, 836-053-0865

**Rules Suspended:** 836-053-0855(T), 836-053-0860(T), 836-053-0865(T)

**Subject:** This rulemaking amends temporary rules adopted December 22, 2009 to reflect changes necessary to correct an erroneous calculation of the effective date of federal legislation that the temporary rules adopted on December 22, 2009 were intended to implement. Because eligibility dates and notice requirements are tied to the effective date of the federal legislation, it is necessary to amend the temporary rules to correctly align with the federal provisions, which provide a subsidy for Oregonians who continue their health insurance coverage in the state continuation program.

Oregonians who lose their jobs have two options to continue coverage under their group health plan. If their former employer has twenty or more workers, they are eligible under the Consolidated Omnibus Budget Reconciliation Act (COBRA). If their former employer has fewer than twenty workers, they are eligible under Oregon's state continuation law. In February 2009, the federal economic stimulus package extended a 65 percent subsidy for up to nine months of coverage. Recognizing the need for changes to state law to allow Oregonians to obtain the full advantage of the federal sub-



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sity, the Oregon Legislative Assembly enacted House Bill 2433, which extends the period of eligibility for state continuation coverage from six to nine months and allows the Director of the Department of Consumer and Business Services to adopt rules as necessary to allow Oregonians to take full advantage of the benefits provided by the federal law including additional extensions of the period of eligibility to match future extensions or changes in the federal subsidy or COBRA program. On December 19, 2009, President Obama signed HR 3326, the Fiscal Year 2010 Defense Appropriations Act, which extends the COBRA benefits. This date was first mistakenly reported as December 21, 2009. These rules amend earlier-adopted provisions to implement House Bill 2433 to match extensions of the federal benefits included in HR 3326. The federal act extends the eligibility period for the American Recovery and Reinvestment Act premium reduction for an additional two months (through February 28, 2010) and the maximum period for receiving the subsidy for an additional six months (from nine to 15 months). These temporary rules make the same changes to the state continuation program allowing Oregonians enrolled in the state continuation plans to receive the maximum subsidy provided by the federal law.

**Rules Coordinator:** Sue Munson—(503) 947-7272

## 836-053-0855

### Definitions

As used in OAR 836-053-0850 to 836-053-0885:

(1) "American Recovery and Reinvestment Act of 2009" means the Public Law 111-5 as amended by the Fiscal Year 2010 Defense Appropriations Act (HR 3326).

(2) "Certificate holder" means any covered employee or qualified beneficiary who:

- Is eligible for continuation coverage;
- Elects continuation coverage;
- Is subject to a qualifying event; and
- Is considered an assistance eligible individual under the American Recovery and Reinvestment Act of 2009 (P.L. 111-5).

(3) "Covered employee" means a certificate holder who has been insured continuously under a policy or similar predecessor policy during the three-month period ending on the date of the termination of employment or membership.

(4)(a) "Qualified beneficiary" means a covered employee under a group health plan or any other individual who, on the day before the qualifying event for that employee, is a beneficiary under that plan as the spouse of the covered employee or as the dependent child of the employee, including a child born or placed for adoption after the qualifying event or during the period the covered employee is eligible for continuation coverage.

(b) An individual is not a qualified beneficiary if:

(A) The individual is eligible for Federal Medicare coverage.

(B) The individual is eligible for any other group health plan. This limitation does not apply to coverage consisting only of:

- Dental, vision, counseling, or referral services;
- Coverage under a health flexible spending arrangement as defined in section 106(c)(2) of the Internal Revenue Code of 1986; or
- Treatment that is furnished in an on-site medical facility maintained by an employer.

(C) An individual is not a qualified beneficiary only for purposes of receiving a premium subsidy if the individual is a domestic partner.

(5) "Qualifying event" means involuntary termination of employment during the period beginning September 1, 2008 and ending February 28, 2010.

(6)(a) "Transition period" means, with respect to any assistance eligible individual, any period of coverage if:

(A) The period begins before December 19, 2009; and

(B) The subsidy allowed under the American Recovery and Reinvestment Act of 2009 applies to such period due to the extension of the state continuation period to 15 months.

(b) Any period of time during the transition period for which the assistance eligible individual pays the applicable premium under OAR 836-053-0865(9) shall be treated as a period of coverage for which timely payment of premium was paid, irrespective of any failure to timely pay the applicable premium for such period.

Stat. Auth.: ORS 731.244, 743.610 & Ch. 73 OL 2009 (HB 2433)

Stats. Implemented: ORS 743.610 & Ch. 73 OL 2009 (HB 2433)

Hist.: ID 2-2009(Temp), f. & cert. ef. 4-28-09 thru 10-24-09; ID 8-2009, f. & cert. ef. 10-23-09; ID 13-2009(Temp), f. & cert. ef. 12-23-09 thru 6-18-10; ID 3-2010(Temp), f. & cert. ef. 1-8-10 thru 6-18-10

## 836-053-0860

### Notification

(1) An insurer subject to the requirements of ORS 743.610 and chapter 73, Oregon Laws 2009 (Enrolled House Bill 2433) shall provide a notice explaining continuation of benefits directly to individuals losing group coverage, for any reason other than group replacement of coverage, within 10 days following the date of any administrative action taken by an insurer to initiate or document the loss of coverage.

(2) The insurer providing the notice required under section (1) of this rule shall include in the notice at least the following information:

- Contact information for the employee to reach the insurer;
- Forms and instructions about how to complete and return the forms and to whom (i.e., going through employer or direct to insurer);
- A clear statement explaining availability of premium subsidy;
- Premium information or directions for determining the premium amount for each qualified beneficiary and instructions for submitting the premium;
- A clear statement about who is eligible to continue coverage;
- Information about how to enroll in different coverage if allowed by the employer;
- Instructions about the employee's responsibility to notify the insurer if the employee becomes ineligible for the subsidy; and
- Instructions about how to appeal denials for treatment as a certificate holder.

(3)(a) In the case of an individual who was an assistance eligible individual at any time on or after October 31, 2009, or experiences a qualifying event (consisting of termination of employment) relating to state continuation coverage on or after October 31, 2009, the insurer shall provide, no later than February 17, 2010, an additional notification consisting of the following:

(A) A qualifying event means involuntary termination of employment during the period of September 1, 2008 and ending February 28, 2010;

(B) Assistance eligible individuals are eligible to continue coverage for a period of fifteen months beginning with the coverage month first following the qualifying event;

(C) A transition period exists for assistance eligible individuals who became eligible for a premium subsidy under the American Recovery and Reinvestment Act of 2009 before December 19, 2009 and whose state continuation coverage has now been extended to fifteen months due to availability of the subsidy for that period of time;

(D) Assistance eligible individuals who did not timely pay the premium for any period of coverage during their transition period may now pay premiums retroactively in accordance with OAR 836-053-0865(9).

(b) In the case of a qualifying event occurring after December 19, 2009, the insurer shall provide notification consistent with this rule.

(4) In the case of an assistance eligible individual who did not timely pay the premium for any period of coverage during the individual's transition period the insurer shall provide to the individual, within the first 60 days of the start of the individual's transition period, an additional notification. The additional notification shall include the information required in section (3) of this rule and information on the ability to make retroactive premium payments in accordance with OAR 836-053-0865(9) with respect to the transition period of the individual in order to maintain state continuation coverage.

Stat. Auth.: ORS 731.244, 743.610 & Ch. 73 OL 2009 (HB 2433)

Stats. Implemented: ORS 743.610 & Ch. 73 OL 2009 (HB 2433)

Hist.: ID 2-2009(Temp), f. & cert. ef. 4-28-09 thru 10-24-09; ID 8-2009, f. & cert. ef. 10-23-09; ID 13-2009(Temp), f. & cert. ef. 12-23-09 thru 6-18-10; ID 3-2010(Temp), f. & cert. ef. 1-8-10 thru 6-18-10

## 836-053-0865

### Provisions Relating to Premium Subsidy for State Continuation Coverage

(1) In order to maximize the benefit to Oregonians under the federal American Recovery and Reinvestment Act of 2009 (P.L. 111-5), certain qualified beneficiaries are eligible for:

- Premium subsidy for continuation of coverage;
- An opportunity to elect continuation of coverage that is in addition to the period allowed under ORS 743.610(5);
- Continuation of coverage for a period of time that exceeds the period allowed under ORS 743.610(7)(a); and
- An option to enroll in different coverage if the employer permits certificate holders to elect enrollment in different coverage.

(2) After receiving the attestation from an employer stating that the employee meets the requirements of a certificate holder and the date of the qualifying event, an insurer is required to accept timely payment of the certificate holder's 35 percent share of the total premium as full payment of the premium and process claims as though 100 percent of the total premium due has been paid.

(3) (a) The following certificate holders qualify for a second opportunity to elect continuation of coverage if the group health plan remains in effect:

(A) Certificate holders who did not elect to continue coverage during the period allowed under ORS 743.610(5) prior to April 28, 2009; and

(B) Certificate holders who elected continuation coverage during the period allowed under ORS 743.610(5) but whose continuation coverage ended for any reason prior to April 28, 2009;

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(b) Within 31 calendar days after the insurer provides the notice required under OAR 836-053-0860(1), certificate holders who received the notice under paragraph (a) of this subsection must return the following items according to instructions provided by the insurer:

- (A) Completed forms for electing state continuation coverage and requesting treatment as a certificate holder;
- (B) The individual's tax identification number;
- (C) Form for Switching State Continuation Coverage Benefit Options, if offered; and
- (D) The initial premium if required.

(c) Certificate holders who became eligible on or after September 1, 2008 and prior to April 28, 2009 are eligible to continue coverage while the group health plan remains in effect, and upon timely payment of their portion of the premium, for 15 months of continuation coverage beginning with the coverage month first following the qualifying event.

(d) The effective date for continuation coverage issued in response to a second election of coverage will be the later of the first day of the coverage month on or after February 17, 2009 or the first day of the coverage month first following the qualifying event.

(4)(a) Within 31 calendar days after the insurer provides the notice required under OAR 836-053-0860(1), certificate holders who become eligible on or after April 28, 2009 must return the following items according to any instructions provided by the insurer:

- (A) Forms for electing state continuation coverage and requesting treatment as a certificate holder;
- (B) The individual's tax identification number;
- (C) The form for switching state continuation coverage benefit options, if offered; and
- (D) The initial premium, if required.

(b) A certificate holder who becomes eligible on or after April 28, 2009 is eligible to continue coverage for a period of 15 months beginning with the coverage month first following the qualifying event. However, the premium subsidy available to the individual shall not exceed any period of limitation specified in the American Recovery and Reinvestment Act of 2009 (P.L. 111-5)

(5) A certificate holder may elect to enroll in different coverage as described in subsection (1) (d) of this rule if:

(a) The employer permits certificate holders to enroll in different coverage;

(b) The premium for the different coverage does not exceed the premium for coverage in which the certificate holder was enrolled at the time of the qualifying event;

(c) The different coverage in which the individual elects to enroll is coverage that is also offered to the active employees of the employer at the time the individual makes the election; and

(d) The different coverage is not:

(A) Coverage that provides only dental, vision, counseling or referral services, or a combination of such services;

(B) A flexible spending arrangement as defined in section 106(c) (2) of the Internal Revenue Code of 1986; or

(C) Coverage that provides coverage for services or treatments furnished in an on-site medical facility maintained by the employer and that consists primarily of first-aid services, prevention and wellness care or similar care, or a combination of such care.

(6) The period of time beginning on the date of the qualifying event and ending with the effective date of continuation coverage shall be disregarded for purposes of determining periods of creditable coverage under ORS 743.754, 743.737, and 743.766.

(7) A premium subsidy is not available to a certificate holder who becomes eligible for coverage under any other group health plan or Medicare. An individual paying a reduced premium for continuation coverage as described in this section must promptly notify the insurer if they become eligible for other group health plan coverage or Medicare.

(8) Certificate holders who elected continuation on or after September 1, 2008 and prior to April 28, 2009, are eligible to continue coverage while the group health plan remains in effect, and upon timely payment of their portion of the premium, for a period of 15 months beginning with the coverage month first following the qualifying event

(9) In the case of any premium for a period of coverage during an assistance eligible individual's transition period, the individual shall be treated for purposes of any state continuation provision as having timely paid the amount of such premium if:

(a) The individual was covered under the state continuation coverage to which the premium relates for the period of coverage immediately preceding the transition period; and

(b) The individual pays the individual's 35 percent share of the total premium:

(A) Not later than February 17, 2010; or

(B) If the transition period extends beyond February 17, 2010, not later than 30 days after the date notification required under OAR 836-053-0860(4) is provided to the individual.

(10) In the case of an assistance eligible individual who pays, with respect to any period of state continuation coverage during the individual's

transition period, the full premium amount for such coverage, the insurer shall:

- (a) Make a reimbursement payment to the individual for the amount of premium paid in excess of the 35 percent share of the total premium; or
- (b) Provide credit to the individual for the amount in a manner that reduces one or more subsequent premium payments that the individual is required to pay for the coverage involved.

Stat. Auth.: ORS 731.244, 743.610 & Ch. 73 OL 2009 (HB 2433)

Stats. Implemented: ORS 743.610 & Ch. 73 OL 2009 (HB 2433)

Hist.: ID 2-2009(Temp), f. & cert. ef. 4-28-09 thru 10-24-09; ID 8-2009, f. & cert. ef. 10-23-09; ID 13-2009(Temp), f. & cert. ef. 12-23-09 thru 6-18-10; ID 3-2010(Temp), f. & cert. ef. 1-8-10 thru 6-18-10

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## Department of Corrections Chapter 291

**Rule Caption:** Interstate Compact.

**Adm. Order No.:** DOC 1-2010(Temp)

**Filed with Sec. of State:** 1-4-2010

**Certified to be Effective:** 1-4-10 thru 7-3-10

**Notice Publication Date:**

**Rules Adopted:** 291-180-0274

**Subject:** Adoption of this rule is necessary to establish an application fee for offenders seeking to transfer supervision to another state under the Interstate Compact for Adult Offender Supervision as required in Oregon Laws 2009, Ch 742 (Senate Bill 74). The supervisory authority collects the fee and forwards it to the Governor's office for deposit in the Arrest and Return Account.

**Rules Coordinator:** Janet R. Worley—(503) 945-0933

### 291-180-0274

#### Application Fee for Interstate Compact Transfers

(1) Payment of NonRefundable Application Fee Required:

(a) Offenders on probation, parole, or post-prison supervision who request transfer of their supervision to another state under the compact must submit a nonrefundable application fee of \$50.00 to the supervisory authority before the Department of Corrections will process the offender's transfer request.

(b) Payment of an additional application fee will not be required of offenders for processing revised or subsequent requests for transfer of their supervision to the same state. However, offenders who request transfer of their supervision to the same state after being returned to Oregon from the receiving state from a previous compact transfer, and offenders that make a subsequent request for transfer of their supervision to a different state must pay a new application fee.

(2) The supervisory authority shall collect the application fee and forward it to the Governor's Office for deposit in the Arrest and Return Account as defined in ORS 133.865.

(a) The fee shall be paid and collected in the form of a bank money order or cashier's check made payable and mailed to "State of Oregon, c/o Director of Extradition Services, Governor's Office, Room 160 State Capitol Building, Salem, OR 97310"

(b) The payment should be identified as an Interstate Compact Application fee and include the offender's name and SID number.

(3) The application fee is not subject to waiver; however, upon the recommendation of the supervisory authority, the Department of Corrections may reduce the amount of the fee by up to 50%. In determining if a fee reduction is warranted, the supervisory authority shall consider:

(a) The offender's financial resources;

(b) The burden the application fee will impose in light of the offender's overall obligations;

(c) The rehabilitative effect of the application fee and compact transfer; and

(d) The community's interests in the transfer of the offender.

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

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

Hist.: DOC 1-2010(Temp), f. & cert. ef. 1-4-10 thru 7-3-10

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## Department of Energy Chapter 330

**Rule Caption:** Establishes procedural and other requirements including timeframes for assessing energy resource suppliers.

**Adm. Order No.:** DOE 3-2009(Temp)

**Filed with Sec. of State:** 12-21-2009

**Certified to be Effective:** 12-21-09 thru 6-17-10

**Notice Publication Date:**

**Rules Amended:** 330-075-0005, 330-075-0010, 330-075-0015, 330-075-0025, 330-075-0035

# ADMINISTRATIVE RULES

## Rules Suspended: 330-075-0030

**Subject:** During the 2009 session the legislature, through House Bill 2626, the definition of energy supplier changed for the purposes of assessment. This change added generation and distribution to the definition of activities eligible for inclusion under the energy supplier assessment. To implement this change and remain consistent with statute the ESA rules require amendment. In addition, changes were made to the timing of the assessment related to the gross operating revenue for 2008 and the one time special assessment.

**Rules Coordinator:** Kathy Stuttaford—(503) 378-4128

## 330-075-0005

### Purpose

These rules specify the form and content of information regarding Oregon gross operating revenues and energy sales to be submitted to the Department of Energy by energy resource suppliers. Such submittals are pursuant to ORS 469.421 as amended by Oregon Laws 2009, Chapter 753. The information will be used to calculate annual assessments on energy resource suppliers.

Stat. Auth.: ORS 183 & 469  
Stats. Implemented: ORS 469.421  
Hist.: DOE 3-1981(Temp), f. & ef. 8-26-81; DOE 4-1981(Temp), f. & ef. 9-14-81; DOE 5-1981(Temp), f. & ef. 11-2-81; DOE 7-1982, f. & ef. 5-3-82; DOE 6-1984, f. & ef. 5-10-84; DOE 3-2009(Temp), f. & cert. ef. 12-21-09 thru 6-17-10

## 330-075-0010

### Timing

(1) Annual Assessment for the 2009 calendar year. The energy supplier assessment based on 2008 operating revenue shall be assessed to energy resource suppliers who supply electricity, natural gas or petroleum products in Oregon.

(2) Special Assessment. For the purposes of assessing the special assessment, the department may collect information relating to the annual gross operating revenue from all energy resource suppliers who supply, generate, transmit or distribute electricity, natural gas or petroleum products in Oregon. The submission deadline of May 2009 is extended to allow reporting and special assessment of gross operating revenues from the 2008 calendar year. Reporting forms shall be provided by the Department to energy resource suppliers who have not previously reported 2008 revenues, with a submission deadline of two weeks following the distribution of forms. The information shall be used to determine the gross operating revenue for that supplier ratio.

(3) For the purposes of determining the assessment under ORS 469.421 and these rules, the director will enter an order establishing the amount assessed to each energy resource supplier. Any assessment shall not be considered due and payable until the director enters an order. Penalties may be assessed by the director on amounts remaining due 60 days following the distribution of a copy of the order to an energy resource supplier.

Stat. Auth.: ORS 183 & 469  
Stats. Implemented: ORS 469.421  
Hist.: DOE 3-1981(Temp), f. & ef. 8-26-81; DOE 4-1981(Temp), f. & ef. 9-14-81; DOE 5-1981(Temp), f. & ef. 11-2-81; DOE 7-1982, f. & ef. 5-3-82; DOE 6-1984, f. & ef. 5-10-84; DOE 3-2009(Temp), f. & cert. ef. 12-21-09 thru 6-17-10

## 330-075-0015

### Definitions

For the purposes of OAR division 330, division 75, unless otherwise specified, the following definitions shall apply:

- (1) "Department" means the Oregon Department of Energy.
- (2) "Director" means the Director of the Oregon Department of Energy.
- (3) "Electric Utility" has the meaning given that term in ORS 469.300.
- (4) "Energy Resource Supplier" has the meaning given that term in

ORS 469.421.

(5) "Gross Operating Revenue" has the meaning given that term in ORS 469.421.

(6) "Imported" relates to natural gas and petroleum products and includes those products not produced or salvaged from the earth or waters of the State of Oregon.

(7) "Natural Gas Utility" means a person engaged in or authorized to engage in the business of transmission or distribution of natural or synthetic gas.

(8) "Petroleum Products" means those petroleum products subject to assessments under Section 3(4) and Section 5(4) of Oregon Laws 1981, Chapter 792. These products include:

- (a) Crude petroleum;
- (b) Fuel oil (distillate and residual);
- (c) Kerosene;
- (d) Liquefied petroleum gases;
- (e) Motor vehicle fuel (when used as fuel for agricultural purposes); and
- (f) Petroleum coke (when used as fuel in metal processing). "Petroleum products" does not include fuels subject to the requirements of Section 3 of Article IX of the Oregon Constitution, ORS 319.020 relating to aircraft and motor vehicle fuel, and ORS 319.530.

(9) "Petroleum Supplier" has the meaning given that term in ORS 469.421.

(10) "Person" has the meaning given that term in ORS 469.300.

(11) "Proprietary Information" means information in which its owner has an important, established financial or competitive interest and value. Proprietary information shall be determined by these indicators:

- (a) Whether the information is treated as confidential by its owner;
- (b) Whether its owner has made the information available to others, and the reason for such disclosure;
- (c) The potential for competitive advantage that the information provides;
- (d) The cost of developing the information;
- (e) The potential for financial or competitive loss to its owner if the information is disclosed;
- (f) Whether the information legally is protected by patents or copyrights, etc.

(12) "Retail Sales" means sales to the ultimate consumer.

(13) "Ultimate Consumer" means a customer who purchases energy for his own use and not for resale.

(14) "Utility" has the meaning given that term in ORS 469.300.

(15) "Wholesale sales" means sales of electricity, natural gas or petroleum products for subsequent resale.

Stat. Auth.: ORS 183 & 469  
Stats. Implemented: ORS 469.421

Hist.: DOE 3-1981(Temp), f. & ef. 8-26-81; DOE 4-1981(Temp), f. & ef. 9-14-81; DOE 5-1981(Temp), f. & ef. 11-2-81; DOE 7-1982, f. & ef. 5-3-82; DOE 6-1984, f. & ef. 5-10-84; DOE 3-2009(Temp), f. & cert. ef. 12-21-09 thru 6-17-10

## 330-075-0025

### Energy Resource Suppliers Gross Operating Revenue Reporting Requirements

(1) Energy resource suppliers with one or more locations or service areas in Oregon shall complete and submit the appropriate Department-supplied form or forms based on the suppliers energy type. The information provided on the forms shall when appropriate: Contain information relating to total gross operating revenue derived from the energy resource supplier's operations within Oregon during the most recently completed calendar year. Energy resource suppliers whose energy generation, transmission or distribution activities within Oregon are undertaken to directly supply the suppliers operations at the same location and not for the primary purpose of distribution or sale, shall report only gross operating revenue from supplying, generating, transmitting or distributing energy to another person when the person is not an energy resource supplier; and contain gross operating revenues relating to wholesale and retail sales by the petroleum supplier of distillate fuel oil within Oregon during the most recently completed calendar year.

(2) Except as provided in OAR 330-075-0035, every energy resource supplier with one or more locations in Oregon shall submit a completed Department-supplied form on or before May 1 of each year. Forms shall be considered submitted as of the post mark date or receipt at the Department, whichever is earlier.

[Forms: Forms referenced are available from the agency.]

Stat. Auth.: ORS 183 & 469

Stats. Implemented: ORS 469.421

Hist.: DOE 3-1981(Temp), f. & ef. 8-26-81; DOE 4-1981(Temp), f. & ef. 9-14-81; DOE 5-1981(Temp), f. & ef. 11-2-81; DOE 7-1982, f. & ef. 5-3-82; DOE 6-1984, f. & ef. 5-10-84; DOE 3-2009(Temp), f. & cert. ef. 12-21-09 thru 6-17-10

## 330-075-0030

### Submission Deadline

(1) Except as provided in OAR 330-075-0035, every energy resource supplier shall submit the completed ODOE Form ESA-1 required by 330-075-0025(1) on or before May 1 of each year.

(2) Except as provided in OAR 330-075-0035, every petroleum supplier shall submit the completed ODOE Form ESA-2, required by 330-075-0025(2), on or before May 1, of each year.

(3) Forms subject to this rule shall be deemed submitted as of the post mark date or receipt at the Department, whichever is earlier. Submissions shall be properly addressed and postage shall be prepaid. Each form shall be legible and complete.

Stat. Auth.: ORS 183 & 469

Stats. Implemented: ORS 469.421

Hist.: DOE 3-1981(Temp), f. & ef. 8-26-81; DOE 5-1981(Temp), f. & ef. 11-2-81; DOE 7-1982, f. & ef. 5-3-82; DOE 6-1984, f. & ef. 5-10-84; Suspended by DOE 3-2009(Temp), f. & cert. ef. 12-21-09 thru 6-17-10

## 330-075-0035

### Extension of Submission Deadline

(1) Any energy resource supplier which finds it cannot meet the deadline set forth in OAR 330-075-0025 may apply to the Director for an extension of time. The written application shall include the following:

- (a) The reasons why the deadline cannot be met;
- (b) The measures being taken to comply with the deadline; and
- (c) The date on which the energy resource supplier intends to submit the required form(s).

(2) A petition for extension of time must be submitted no later than 15 days before the deadline from which an extension is sought.

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(3) The Director may grant an extension of not more than fifteen days if:

(a) The energy supplier makes a showing of hardship caused by the deadline;

(b) The energy supplier provides reasonable assurance that the energy supplier can comply with the revised deadline; and

(c) The extension of time does not prevent the department from fulfilling its statutory responsibilities.

Stat. Auth.: ORS 183 & 469

Stats. Implemented: ORS 469.421

Hist.: DOE 3-1981(Temp), f. & ef. 8-26-81; DOE 5-1981(Temp), f. & ef. 11-2-81; DOE 7-1982, f. & ef. 5-3-82; DOE 6-1984, f. & ef. 5-10-84; DOE 3-2009(Temp), f. & cert. ef. 12-21-09 thru 6-17-10

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**Rule Caption:** Procedure for determining price of credits transferred under the business Energy Tax Credit Program.

**Adm. Order No.:** DOE 1-2010

**Filed with Sec. of State:** 1-8-2010

**Certified to be Effective:** 1-8-10

**Notice Publication Date:** 12-1-2009

**Rules Amended:** 330-090-0140

**Rules Repealed:** 330-090-0140(T)

**Subject:** Revise rule to provide formula for calculating net present value of Business Energy Tax Credits for purposes of establishing prices of transferred credits under ORS 469.206 (as amended by section 2, chapter 288, Oregon Laws 2009 (HB 2068)). Formula for calculating net present value of tax credits incorporates adjustments for inflation and changes to market real rates of return. Provide that tax credit transfer prices will be recalculated quarterly according to the formula established by rule.

**Rules Coordinator:** Kathy Stuttaford—(503) 378-4128

## 330-090-0140

### Pass-through Option Facilities

(1) A Pass-through Partner may accept a Business Energy Tax Credit certificate on behalf of an applicant with a facility that is otherwise eligible for the tax credit in return for a cash lump-sum pass through payment equivalent to the net present value of the transferable tax credit. For the purposes of these rules, the net present value of the pass through payment is calculated based on the formulas below:

(a) For original precertifications issued on or after January 1, 2010:

(A) For a five year tax credit issued to a renewable energy resource equipment manufacturing facility as defined in ORS 469.185(13), to a public body as defined in ORS 174.109 or to a Federally recognized Indian tribe in Oregon. The net present value is determined by taking the total tax credit amount divided by the sum of one plus three times the five year United States Treasury Note minus the average of the net change for the three previous calendar years of the urban Consumer Price Index (CPI) for the west region based on the index published on the first day of the calendar quarter and the first day of the same calendar quarter for the previous three calendar years exponentially raised by 5. Tax Credit/[1+ (3(5 year Treasury Note) - 3 Year average net change of the Urban CPI for West region)]5

(B) For a five year tax credit issued to an applicant other than those described in subsection (A) of this rule. The net present value is determined by taking the tax credit amount divided by the sum of one plus two times the five year United States Treasury Note minus the net change for the three previous calendar years of the urban Consumer Price Index (CPI) for the west region based on the index published on the first day of the calendar quarter and the first day of the same calendar quarter for the same calendar quarter for the previous three calendar years exponentially raised by 5. Tax Credit/[1+ (2(5 year Treasury Note) - 3 Year average net change of the Urban CPI for West region)]5

(C) For a one year tax credit. The net present value is determined by taking the tax credit amount divided by the sum of one plus two times the two year United States Treasury Note minus the urban CPI for the west region published on the first day of the same calendar quarter for the tax credit year in which pre-certification is issued. Tax Credit/[1 +(2(2 year Treasury Note) - Urban CPI for West region)]

(D) The formula shall be calculated on the first of each calendar quarter by using the appropriate treasury note rate published by the United States Treasury on the 15th of the month preceding the calendar quarter and the appropriate current and past urban consumer price index values as published by the U.S. Federal Bureau of Labor Statistics on the first day of the appropriate calendar quarter and the first day of the appropriate calendar quarter of the previous three years as determined by the formulas contained in this rule.

(E) The net present value of the tax credit shall be calculated on the first of each calendar quarter beginning January 1, 2010. If the five year or two year United States Treasury Note yield changes by less than a whole percentage point from the rate used in the previous calendar quarter, then the department shall continue to use the previous quarters' net present value for

the new calendar quarter. For the purposes of this subsection, when a net present value is used for more than one quarter, the United States Treasury Note rate used to calculate the net present value shall be considered the quarters' United States Treasury Note rate.

(b) For original pre certifications issued on or before December 31, 2009:

(A) 50% BETC more than \$20,000 in eligible costs — 33.5% pass-through rate;

(B) 50% BETC \$20,000 or less in eligible costs — 43.5% pass-through rate.

(C) 35% BETC more than \$20,000 in eligible costs — 25.5% pass-through rate.

(D) 35% BETC \$20,000 or less in eligible costs — 30.5% pass-through rate.

(E) Homebuilder Installed Renewable Energy Facility or High Performance Home tax credits — 87% of tax credit amount.

(c) If an applicant elects to use the pass through option, the net present value of the pass through payment for a facility is determined by the date the department issues the initial preliminary certification for the project.

(2) An Investor-Owned Utility may choose to become a utility Pass-Through Partner under the provisions of this section or participate as a Pass-Through Partner under other Provisions of these rules that would apply to any other Pass-Through Partner.

(a) An investor-owned utility (IOU) that complies with this section may choose to become a Utility Pass-Through Partner.

(b) Preliminary certification standards and process:

(A) The application for preliminary certification must include an estimate of the total installation cost of the qualifying measures for which the applicant expects to make payments under OAR 330-090-0140(2) for that year.

(B) Within 60 days after an application for preliminary certification of the pass-through is filed, the Director shall decide if it is complete. If it is not complete, the application will be rejected and returned to the applicant. The applicant may resubmit a complete application.

(C) Within 120 days after a completed application is filed, the Director shall notify the applicant of the status of the application, if the applicant has not been notified otherwise that the application has been approved or denied.

(D) The application for preliminary certification of the pass-through must include a supplemental work plan, which includes a copy, or reference to any proposed or required OPUC tariff and all evaluations of the program through which the pass-through will be delivered. The applicant and ODOE must mutually agree upon the work plan and program.

(c) Final certification standards and process: Final application for a pass-through tax credit must include a summary and total of each facility's owner, site address, facility description or type, number of dwelling units for multifamily facilities, total facility cost, energy savings, energy type saved and tax credit amount passed through. The applicant must retain records for each facility including all of the information required in 110-090-0130(4) of these rules.

(A) By the last working day of each month but not more than once per month, an applicant may apply to the Director for final certification. An application must contain:

(i) An itemized list of costs for each rental dwelling unit weatherized, premium efficient appliance, each alternative fuel vehicle, alternative fuel vehicle for company use, and alternative fuel fueling station, solar or other renewable resource and the total facility costs made that period for which the applicant is applying for credit.

(ii) The nominal value of credits for which the applicant applies.

(iii) The name, address, and phone number of the owner of each rental unit, alternative fuel vehicle, or alternative fuel fueling station listed in OAR 330-090-0140(2)(c)(A)(i).

(iv) Certification that each rental dwelling unit energy conservation measure (ECM) is defined in the BETC Technical Requirements as a measure that would qualify under or is a measure recommended in an energy audit completed under ORS 469.633(2).

(v) Certification that the ECMs paid for were installed and inspected in accordance with the IOU's appropriate allowed tariff(s),

(vi) Certification that the ECMs paid for were installed and inspected in accordance with the IOUs' Model Conservation Standards tariff or equivalent program as approved by ODOE.

(vii) If the facility costs are \$50,000 or more or if required by the Director, a written review and summary completed by a certified public accountant, who is not otherwise employed by the facility owner or pass-through partner, of costs paid based on canceled checks, invoices, receipts, a binding contract or agreement, or other documentation as may be required by OAR 330-090-0110(19).

(viii) If a contractor installed fueling station: the name, address, and phone number of the contractor as defined under OAR 330-090-0130(4) of this rule and the site at which the fueling station is installed.

(ix) The last final certification application filed each year must include complete evaluation(s) as defined in the applicant approved preliminary certification(s).



# ADMINISTRATIVE RULES

(b) Category II — The Department will provide public notice of the proposed permit action and a minimum of 30 days to submit written comments.

(c) Category III — The Department will provide notice of the proposed permit action and a minimum of 35 days to submit written comments. The Department will provide a minimum of 30 days notice for a hearing, if one is scheduled. The Department will schedule a hearing to allow interested persons to submit oral or written comments if:

(A) The Department determines that a hearing is necessary; or

(B) Within 35 days of the mailing of the public notice, the Department receives written requests from ten persons, or from an organization representing at least ten persons, for a hearing.

(d) Category IV — Once an application is considered complete under OAR 340-216-0040, the Department will:

(A) Provide notice of the completed application and requested permit action;

(B) Schedule an informational meeting within the community where the facility will be or is located and provide public notice of the meeting;

(C) Once a draft permit is completed, provide public notice of the proposed permit and a minimum of 40 days to submit written comments; and

(D) Schedule a public hearing to allow interested persons to submit oral or written comments and provide a minimum of 30 days public notice for the hearing.

(4) Except for title V permit actions, the Department may move a permit action to a higher category under section (3) of this rule based on, but not limited to the following factors:

(a) Anticipated public interest in the facility;

(b) Compliance and enforcement history of the facility or owner; or

(c) Potential for significant environmental or public harm due to location or type of facility.

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468 & 468A

Hist.: DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; DEQ 8-2009, f. & cert. ef. 12-16-09

## 340-210-0100

### Registration in General

(1) Any air contaminant source not subject to Air Contaminant Discharge Permits, OAR 340 division 216, or Oregon Title V Operating Permits, OAR 340 division 218, must register with the Department upon request pursuant to 340-210-0110 through 340-210-0120.

(2) The following air contaminant sources that are certified through a Department approved environmental certification program and subject to an Area Source NESHAP may register with the Department pursuant to 340-210-0110 through 340-210-0120 in lieu of obtaining a permit in accordance with OAR 340-216-0020, unless the Department determines that the source has not complied with the requirements of the environmental certification program.

(a) Motor vehicle surface coating operations.

(b) Dry cleaners using perchloroethylene.

(3) Approved environmental certification program. To be approved, the environmental certification program must, at a minimum, require certified air contaminant sources to comply with all applicable state and federal rules and regulations and require additional measures to increase environmental protection.

(4) Fees. In order to obtain and maintain registration, owners and operators of air contaminant sources registered pursuant to section (2) of this rule must pay the following annual fees by March 1 of each year:

(a) Motor vehicle surface coating operations — \$240.00.

(b) Dry cleaners using perchloroethylene — \$180.00.

(c) Late fees.

(A) 30 days late: 5% of annual fee.

(B) 31-60 days late: 10% of annual fee.

(C) 61 or more days late: 20% of annual fee.

(d) Failure to pay fees. Registration is automatically terminated upon failure to pay annual fees within 90 days of invoice by the Department, unless prior arrangements for payment have been approved in writing by the Department.

(5) Recordkeeping. In order to maintain registration, owners and operators of air contaminant sources registered pursuant to section (2) of this rule must maintain records required by the approved environmental performance program under section (3) of this rule. The records must be kept on site and in a form suitable and readily available for expeditious inspection and review.

(6) Revocation. The Department may revoke a registration if a source fails to meet any requirement in OAR 340-210-0110.

**NOTE:** This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-200-0040.

Stat. Auth.: ORS 468.020, 468A.050 & 468A.310

Stats. Implemented: ORS 468 & 468A

Hist.: DEQ 15, f. 6-12-70, ef. 9-1-70; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 12-1993, f. & cert. ef. 9-24-93, Renumbered from 340-020-0005; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-0500; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; DEQ 8-2009, f. & cert. ef. 12-16-09

## 340-210-0110

### Registration Requirements

(1) Registration must be completed within 30 days following the mailing date of the request by the Department.

(2) Registration must be made on forms furnished by the Department and completed by the owner, lessee of the source, or agent.

(3) In order to obtain registration pursuant to OAR 340-210-0100(1), the following information must be reported by registrants:

(a) Name, address, and nature of business;

(b) Name of local person responsible for compliance with these rules;

(c) Name of person authorized to receive requests for data and information;

(d) A description of the production processes and a related flow chart;

(e) A plot plan showing the location and height of all air contaminant sources. The plot plan must also indicate the nearest residential or commercial property;

(f) Type and quantity of fuels used;

(g) Amount, nature, and duration of air contaminant emissions;

(h) Estimated efficiency of air pollution control equipment under present or anticipated operating conditions;

(i) Any other information requested by the Department.

(4) In order to obtain registration pursuant to OAR 340-210-0100(2), a source must submit the information in section (3)(a), (b), (c), and (i) of this rule and the following:

(a) Information demonstrating that the air contaminant source is operating in compliance with all applicable state and federal rules and regulations, as requested by the Department.

(b) Information demonstrating that the source is certified through an approved environmental certification program.

(c) A signed statement that the submitted information is true, accurate, and complete. This signed statement shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.

**NOTE:** This rule is included in the State of Oregon Clean Air Act Implementation

Plan as adopted by the EQC under OAR 340-200-0040.

Stat. Auth.: ORS 468.020, 468A.050 & 468A.310

Stats. Implemented: ORS 468 & 468A

Hist.: DEQ 15, f. 6-12-70, ef. 9-1-70; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 12-1993, f. & cert. ef. 9-24-93, Renumbered from 340-020-0010; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-0510; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; DEQ 8-2009, f. & cert. ef. 12-16-09

## 340-210-0120

### Re-Registration

(1) In order to re-register or maintain registration, a person responsible for an air contaminant source must reaffirm in writing, by March 1 of each year, the correctness and current status of the information furnished to the Department.

(2) Any change in any of the factual data reported under OAR 340-210-0110(3) or (4) must be reported to the Department, at which time re-registration may be required on forms furnished by the Department.

(3) In order to re-register, a person must not have had their registration terminated or revoked within the last 3 years, unless the air contaminant source has changed ownership since termination or revocation.

**NOTE:** This rule is included in the State of Oregon Clean Air Act Implementation

Plan as adopted by the EQC under OAR 340-200-0040.

Stat. Auth.: ORS 468.020, 468A.050 & 468A.310

Stats. Implemented: ORS 468 & 468A

Hist.: DEQ 15, f. 6-12-70, ef. 9-1-70; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 12-1993, f. & cert. ef. 9-24-93, Renumbered from 340-020-0015; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-0520; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; DEQ 8-2009, f. & cert. ef. 12-16-09

## 340-216-0020

### Applicability

This division applies to all sources referred to in **Table 1**. This division also applies to Oregon Title V Operating Permit program sources when an ACDP is required by OAR 340-218-0020 or 340-224-0010. Sources referred to in **Table 1** are subject to fees as set forth in **Table 2**.

(1) No person may construct, install, establish, develop or operate any air contaminant source which is referred to in **Table 1** without first obtaining an Air Contaminant Discharge Permit (ACDP) from the Department or Regional Authority, unless otherwise deferred from the requirement to obtain an ACDP in subsection (1)(c) or (d) of this rule. No person may continue to operate an air contaminant source if the ACDP expires, or is terminated or revoked; except as provided in OAR 340-216-0082.

(a) For portable sources, a single permit may be issued for operating at any area of the state if the permit includes the requirements from both the Department and Regional Authorities.

(b) The Department or Regional Authority where the portable source's Corporate offices are located will be responsible for issuing the permit. If the corporate office of a portable source is located outside of the state, the Department will be responsible for issuing the permit.

(c) An air contaminant source required to obtain an ACDP or ACDP Attachment pursuant to a NESHAP or NSPS adopted by the Commission by rule is not required to submit an application for an ACDP or ACDP

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Attachment until four months after the effective date of the Commission's adoption of the NESHAP or NSPS, and is not required to obtain an ACDP or ACDP Attachment until six months after the Commission's adoption of the NESHAP or NSPS. In addition, the Department may defer the requirement to submit an application for, or to obtain an ACDP or ACDP Attachment, or both, for up to an additional six months.

(d) Gasoline dispensing facilities are not required to submit an application for an ACDP or ACDP Attachment until May 1, 2010 or obtain an ACDP or ACDP attachment until June 1, 2010. The Department may defer the requirement to submit an application for, or to obtain an ACDP or ACDP Attachment, or both, for up to an additional six months.

(e) Deferrals of Oregon permitting requirements do not relieve an air contaminant source from the responsibility of complying with federal NESHAP or NSPS requirements.

(2) No person may construct, install, establish, or develop any source that will be subject to the Oregon Title V Operating Permit program without first obtaining an ACDP from the Department or Regional Authority.

(3) No person may modify any source that has been issued an ACDP without first complying with the requirements of OAR 340-210-0205 through 340-210-0250.

(4) No person may modify any source required to have an ACDP such that the source becomes subject to the Oregon Title V Operating Permit program without complying with the requirements of OAR 340-210-0205 through 340-210-0250.

(5) No person may increase emissions above the PSEL by more than the de minimis levels specified in OAR 340-200-0020 without first applying for and obtaining a modified ACDP.

**NOTE:** This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-211-0040.

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

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A

Hist.: DEQ 47, f. 8-31-72, ef. 9-15-72; DEQ 63, f. 12-20-73, ef. 1-11-74; DEQ 107, f. & ef. 1-6-76; Renumbered from 340-020-0033; DEQ 125, f. & ef. 12-16-76; DEQ 20-1979, f. & ef. 6-29-79; DEQ 23-1980, f. & ef. 9-26-80; DEQ 13-1981, f. 5-6-81, ef. 7-1-81; DEQ 11-1983, f. & ef. 5-31-83; DEQ 3-1986, f. & ef. 2-12-86; DEQ 12-1987, f. & ef. 6-15-87; DEQ 27-1991, f. & cert. ef. 11-29-91; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 12-1993, f. & cert. ef. 9-24-93, Renumbered from 340-020-0155; DEQ 19-1993, f. & cert. ef. 11-4-93; DEQ 22-1994, f. & cert. ef. 10-4-94; DEQ 22-1995, f. & cert. ef. 10-6-95; DEQ 19-1996, f. & cert. ef. 9-24-96; DEQ 22-1996, f. & cert. ef. 10-22-96; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-1720; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; DEQ 4-2002, f. & cert. ef. 3-14-02; DEQ 7-2007, f. & cert. ef. 10-18-07; DEQ 8-2007, f. & cert. ef. 11-8-07; DEQ 15-2008, f. & cert. ef. 12-31-08; DEQ 8-2009, f. & cert. ef. 12-16-09

## 340-216-0060

### General Air Contaminant Discharge Permits

(1) Applicability.

(a) The Department may issue a General ACDP under the following circumstances:

(A) There are several sources that involve the same or substantially similar types of operations;

(B) All requirements applicable to the covered operations can be contained in a General ACDP;

(C) The emission limitations, monitoring, recordkeeping, reporting and other enforceable conditions are the same for all operations covered by the General ACDP; and

(D) The pollutants emitted are of the same type for all covered operations.

(b) Permit content. Each General ACDP must include the following:

(A) All relevant requirements for the operations covered by the General ACDP;

(B) Generic PSELS for all pollutants emitted at more than the de minimis level in accordance with OAR 340, division 222;

(C) Testing, monitoring, recordkeeping, and reporting requirements necessary to ensure compliance with the PSEL and other applicable emissions limits and standards; and

(D) A permit expiration date not to exceed 10 years from the date of issuance.

(c) Permit issuance procedures: A new General ACDP requires public notice and opportunity for comment in accordance with OAR 340 division 209 for Category III permit actions. A reissued General ACDP or a modification to a General ACDP requires public notice and opportunity for comment in accordance with OAR 340 division 209 for Category II permit actions. All General ACDPs are on file and available for review at the Department's headquarters.

(2) Source assignment:

(a) Application requirements. Any person requesting that a source be assigned to a General ACDP must submit a written application in accordance with OAR 340-216-0040 that includes the information in OAR 340-216-0040(1), specifies the General ACDP source category, and shows that the source qualifies for the General ACDP.

(b) Fees. Applicants must pay the fees set forth in Table 2 of OAR 340-216-0020. The fee class for each General ACDP is as follows:

(A) Hard chrome platers — Fee Class Three;

(B) Decorative chrome platers — Fee Class Two;

(C) Halogenated solvent degreasers — batch cold — Fee Class Two;

(D) Halogenated solvent degreasers — batch vapor and in-line — Fee Class Two;

(E) Halogenated solvent degreasers — batch cold, batch vapor, and in-line — Fee Class Two;

(F) Perchloroethylene dry cleaners — Fee Class Six;

(G) Asphalt plants — Fee Class Three;

(H) Rock crushers — Fee Class Two;

(I) Ready-mix concrete — Fee Class One;

(J) Sawmills, planing mills, millwork, plywood manufacturing and veneer drying — Fee Class Three;

(K) Boilers — Fee Class Two;

(L) Crematories — Fee Class Two;

(M) Grain elevators — Fee Class One;

(N) Prepared feeds, flour, and cereal — Fee Class One;

(O) Seed cleaning — Fee Class One;

(P) Coffee roasters — Fee Class One;

(Q) Bulk gasoline plants — Fee Class One;

(R) Electric power generators — Fee Class Two;

(S) Clay ceramics — Fee Class One;

(T) Hospital sterilizers — Fee Class Four;

(U) Secondary nonferrous metals — Fee Class One;

(V) Gasoline dispensing facilities — stage I — Fee Class Five;

(W) Gasoline dispensing facilities — stage II — Fee Class Four;

(X) Wood preserving — Fee Class Four;

(Y) Metal fabrication and finishing — Fee Class Two;

(Z) Plating and polishing — Fee Class One;

(AA) Miscellaneous surface coating operations — Fee Class One;

(BB) Paint stripping — Fee Class One;

(CC) Motor vehicle and mobile equipment surface coating operations — Fee Class One;

(DD) Aluminum, copper, and nonferrous foundries — Fee Class Two;

(EE) Any General ACDP not listed above — Fee Class One.

(c) Source assignment procedures:

(A) Assignment of a source to a General ACDP is a Category I permit action and is subject to the Category I public notice requirements in accordance with OAR 340, division 209.

(B) A person is not a permittee under the General ACDP until the Department assigns the General ACDP to the person.

(C) Assignments to General ACDPs and attachment(s) terminate when the General ACDP or attachment expires or is modified, terminated or revoked.

(D) Once a source has been assigned to a General ACDP, if the assigned General ACDP does not cover all requirements applicable to the source, the other applicable requirements must be covered by assignment to one or more General ACDP Attachments in accordance with OAR 340-216-0062, otherwise the source must obtain a Simple or Standard ACDP.

(E) A source requesting to be assigned to a General ACDP Attachment, in accordance with OAR 340-216-0062, for a source category in a higher annual fee class than the General ACDP the source is currently assigned to, must be reassigned to the General ACDP for the source category in the higher annual fee class.

(3) Department Initiated Modification. If the Department determines that the conditions have changed such that a General ACDP for a category needs to be modified, the Department may issue a new General ACDP for that category and assign all existing General ACDP permit holders to the new General ACDP.

(4) Rescission. In addition to OAR 340-216-0082 (Termination or Revocation of an ACDP), the Department may rescind an individual source's assignment to a General ACDP if the source no longer meets the requirements of this rule or the conditions of the permit, including, but not limited to a source having an ongoing, reoccurring or serious compliance problem. Upon rescinding a source's assignment to a General ACDP the Department will place the source on a Simple or Standard ACDP. The Department may also revoke a General ACDP or attachment or both if conditions, standards or rules have changed so the permit or attachment no longer meets the requirements of this rule.

**NOTE:** This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-200-0040.

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

Stat. Auth.: ORS 468 & 468A

Stats. Implemented: ORS 468.020 & 468A.025

Hist.: DEQ 14-1998, f. & cert. ef. 9-14-98; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-1725; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; DEQ 10-2001, f. & cert. ef. 8-30-01; DEQ 4-2002, f. & cert. ef. 3-14-02; DEQ 2-2006, f. & cert. ef. 3-14-06; DEQ 8-2007, f. & cert. ef. 11-8-07; DEQ 15-2008, f. & cert. ef. 12-31-08; DEQ 8-2009, f. & cert. ef. 12-16-09

## 340-216-0062

### General ACDP Attachments

(1) Purpose. This rule allows a source to be assigned to one General ACDP and one or more General ACDP Attachments, as long as the General ACDP and General ACDP Attachment(s) contain all requirements applicable to the source. This would allow a source to avoid having to obtain a more costly Simple or Standard ACDP if there are no General ACDPs that contain all requirements applicable to the source.

# ADMINISTRATIVE RULES

## (2) Applicability.

(a) The Department may issue a General ACDP Attachment under the following circumstances:

(A) There are several sources that involve the same or substantially similar types of operations;

(B) All requirements applicable to the covered operations can be contained in a General ACDP Attachment;

(C) The emission limitations, monitoring, recordkeeping, reporting and other enforceable conditions are the same for all operations covered by the General ACDP Attachment;

(D) The pollutants emitted are of the same type for all covered operations. If a General ACDP and a General ACDP Attachment(s) cannot address all activities at a source, the owner or operator of the source must apply for Simple or Standard ACDP in accordance with this Division.

(b) Attachment content. Each General ACDP Attachment must include the following:

(A) All relevant requirements for the operations covered by the General ACDP Attachment;

(B) Testing, monitoring, recordkeeping, and reporting requirements necessary to ensure compliance with the applicable emissions limits and standards; and

(C) An attachment expiration date not to exceed 10 years from the date of issuance.

(c) Attachment issuance procedures: A General ACDP Attachment requires public notice and opportunity for comment in accordance with OAR 340 division 209 for Category II permit actions. All General ACDP Attachments will be on file and available for review at the Department's headquarters.

## (3) Source assignment:

(a) Application requirements. Any person requesting to be assigned to a General ACDP Attachment must submit a written application for each requested General ACDP Attachment that specifies the requested General ACDP Attachment and shows that the source qualifies for the requested General ACDP Attachment.

(b) Fees. Permittees must pay an annual fee of \$120 for each assigned General ACDP Attachment.

## (c) Assignment procedures:

(A) Assignment to a General ACDP Attachment is a Category I permit action and is subject to the Category I public notice requirements in accordance with OAR 340, division 209.

(B) A person is not a permittee under the General ACDP Attachment until the Department assigns the General ACDP Attachment to the person.

(C) Assignments to a General ACDP Attachments terminate when the General ACDP Attachment expires or is modified, terminated or revoked.

(D) A source may not be assigned to a General ACDP Attachment for a source category in a higher annual fee class than the General ACDP the source is currently assigned to. Instead a source must be reassigned to the General ACDP for the source category in the higher annual fee class in accordance with OAR 340-216-0060(2)(c)(E) and may be assigned to one or more General ACDP Attachments associated with source categories in an equal or lower annual fee class.

(d) If all activities at a source cannot be addressed by a General ACDP and General ACDP Attachments, the owner or operator of the source must apply for a Simple or Standards ACDP in accordance with this Division.

**NOTE:** This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-200-0040.

Stat. Auth.: ORS 468 & 468A

Stats. Implemented: ORS 468.020 & 468A.025

Hist.: DEQ 8-2009, f. & cert. ef. 12-16-09

## 340-216-0064

### Simple ACDP

## (1) Applicability.

(a) Sources and activities listed in Table 1, Part B of OAR 340-216-0020 that do not qualify for a General ACDP and are not required to obtain a Standard ACDP must, at a minimum, obtain a Simple ACDP.

(b) Any source required to obtain a Simple ACDP may obtain a Standard ACDP.

(c) The Department may determine that a source is ineligible for a Simple ACDP and must obtain a Standard ACDP based upon, but not limited to, the following considerations:

(A) The nature, extent, and toxicity of the source's emissions;

(B) The complexity of the source and the rules applicable to that source;

(C) The complexity of the emission controls and potential threat to human health and the environment if the emission controls fail;

(D) The location of the source; and

(E) The compliance history of the source.

(2) Application Requirements. Any person requesting a new, modified, or renewed Simple ACDP must submit an application in accordance with OAR 340-216-0040.

(3) Fees. Applicants for a new, modified, or renewed Simple ACDP must pay the fees set forth in Table 2 of 340-216-0020. Annual fees for Simple ACDPs will be assessed based on the following:

(a) Low Fee — A Source may qualify for the Low Fee if:

(A) the source is, or will be, permitted under only one of the following categories from OAR 340-216-0020 Table 1, Part B (category 25. Electric Power Generation, may be included with any category listed below):

(i) Category 7. Asphalt felt and coatings;

(ii) Category 13. Boilers and other fuel burning equipment;

(iii) Category 33. Galvanizing & Pipe coating;

(iv) Category 39. Gray iron and steel foundries, malleable iron foundries, steel investment foundries, steel foundries 100 or more tons/yr. metal charged (not elsewhere identified);

(v) Category 40. Gypsum products;

(vi) Category 45. Liquid Storage Tanks subject to OAR Division 232;

(vii) Category 56. Non-Ferrous Metal Foundries 100 or more tons/yr. of metal charged;

(viii) Category 57. Organic or Inorganic Industrial Chemical Manufacturing;

(ix) Category 61. Perchloroethylene Dry Cleaning;

(x) Category 72. Secondary Smelting and/or Refining of Ferrous and Non-Ferrous Metals; or

(xi) Category 84. All Other Sources not listed in Table 1 which would have actual emissions, if the source were to operate uncontrolled, of 5 or more tons a year of PM<sub>10</sub> if located in a PM<sub>10</sub> non-attainment or maintenance area, or 10 or more tons of any single criteria pollutant in any part of the state; and

(B) The actual emissions from the 12 months immediately preceding the invoice date, and future projected emissions are less than 5 tons/yr. PM<sub>10</sub> in a PM<sub>10</sub> nonattainment or maintenance area, and less than 10 tons/yr. for each criteria pollutant; and

(C) The source is not considered an air quality problem or nuisance source by the Department.

(b) High Fee — Any source required to have a Simple ACDP (OAR 340-216-0020 Table 1 Part B) that does not qualify for the Low Fee will be assessed the High Fee.

(c) If the Department determines that a source was invoiced for the Low Annual Fee but does not meet the Low Fee criteria outlined above, the source will be required to pay the difference between the Low and High Fees, plus applicable late fees in accordance with OAR 340-216-0020 Table 2. Late fees start upon issuance of the initial invoice. In this case, the Department will issue a new invoice specifying applicable fees.

## (4) Permit Content.

(a) All relevant applicable requirements for source operation, including general ACDP conditions for incorporating generally applicable requirements;

(b) Generic PSELS for all pollutants emitted at more than the de minimis level in accordance with OAR 340 division 222;

(c) Testing, monitoring, recordkeeping, and reporting requirements sufficient to determine compliance with the PSEL and other emission limits and standards, as necessary; and

(d) A permit duration not to exceed 5 years

## (5) Permit issuance procedures:

(a) Issuance of a new or renewed Simple ACDP requires public notice in accordance with OAR 340 division 209 for Category II permit actions.

(b) Issuance of a modification to a Simple ACDP requires one of the following procedures, as applicable:

(A) Non-technical and non-NSR/PSD Basic and Simple technical modifications require public notice in accordance with OAR 340, division 209 for Category I permit actions; or

(B) Issuance of non-NSR/PSD Moderate and Complex technical modifications require public notice in accordance with OAR 340 division 209 for Category II permit actions.

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

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A

Hist.: DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; DEQ 4-2002, f. & cert. ef. 3-14-02; DEQ 8-2009, f. & cert. ef. 12-16-09

## 340-228-0606

### Hg Emission Standards

(1) Mercury reduction plan. By July 1, 2009 or 1-year prior to commencement of commercial operation, whichever is later, the owner or operator of each coal-fired electric generating unit must develop and submit for Department approval a mercury reduction plan for each coal-fired electric generating unit. The plan must propose a control strategy for mercury that is most likely to result in the capture of at least 90 percent of the mercury emitted from the unit or that will limit mercury emissions to 0.60 pounds per trillion BTU of heat input. The owner or operator must demonstrate that the plan reflects technology that could reasonably be expected to meet the limits in this section if the technology operates as anticipated by the manufacturer. The plan must provide a timeframe for implementation of the selected control strategy including major milestones, installation and operation requirements, and work practice standards for the selected technology. The owner and operator of the coal-fired electric generating unit may proceed with the plan within 60 days of submittal unless, within the 60 day period, the Department notifies the owner or operator of the coal-fired electric generating unit that the plan must be revised.



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(2) Mercury emission standards. On and after July 1, 2012 or at commencement of commercial startup, whichever is later, except as allowed under section (3) of this rule, each coal-fired electric generating unit must have implemented the approved control strategy projected to achieve at least 90 percent mercury capture or that will limit mercury emissions to 0.60 pounds per trillion BTU of heat input.

(3) Compliance extension. Up to a 2-year extension of the requirement to implement the approved control strategy may be granted by the Department if the owner or operator of a coal-fired electric generating unit demonstrates that it is not practical to install mercury control equipment by July 1, 2012 due to supply limitations, ESP fly ash contamination, or other extenuating circumstances that are beyond the control of the owner or operator.

(4) Compliance demonstration. Commencing in July 2013 or 12 months after commercial startup or 12 months after expiration of the extension granted under section (3) of this rule, whichever is later, each coal-fired electric generating unit must thereafter demonstrate compliance with one of the standards in subsections (4)(a) or (4)(b) of this rule for each compliance period, except as allowed under sections (5) and (6) of this rule. A compliance period consists of twelve months. Each month commencing with June 2013 or the twelfth month after commencement of commercial operation or twelfth month after expiration of the extension granted under section (3) of this rule, whichever is later, is the end of a compliance period consisting of that month and the previous 11 months.

(a) A mercury emission standard of 0.60 pounds per trillion BTU of heat input calculated by dividing the Hg mass emissions determined using a mercury CEMS or sorbent trap monitoring system by heat input as determined according to 40 CFR part 75, appendix F (procedure 5); or

(b) A minimum 90 percent capture of inlet mercury determined as follows:

(A) Inlet mercury must be determined as specified in subparagraph (4)(b)(A)(i) or (4)(b)(A)(ii) of this rule:

(i) Coal sampling and analysis. To demonstrate compliance by coal sampling and analysis, the owner or operator of a coal-fired electric generating unit must test its coal for mercury consistent with a coal sampling and analysis plan. The coal sampling and analysis plan must be consistent with the requirements of OAR 340-228-0639.

(ii) Hg mass emissions prior to any control device(s). To demonstrate compliance by measuring Hg mass emissions, the owner or operator of a coal-fired electric generating unit must measure mercury emissions prior to any control device(s) using a Hg CEMS or sorbent trap.

(B) The mercury capture efficiency must be calculated using the Hg emissions determined using a mercury CEMS or sorbent trap monitoring system and the inlet mercury determined using the coal mercury content data obtained in accordance with subparagraph (4)(b)(A)(i) of this rule or the measured inlet mercury data obtained in accordance with subparagraph (4)(b)(A)(ii) of this rule and a calculation methodology approved by the Department.

(5) Temporary compliance alternative. If the owner or operator of a coal-fired electric generating unit properly implements the approved control strategy and the strategy fails to achieve at least 90 percent mercury capture or limit mercury emissions to 0.60 pounds per trillion BTU of heat input:

(a) The owner or operator must notify the Department of the failure within 30 days of the end of the initial compliance period; and

(b) The owner or operator must file an application with the Department for a permit or permit modification in accordance with OAR 340 division 216 to establish a temporary alternative mercury emission limit. The application must be filed within 60 days of the end of the initial compliance period, and must include a continual program of mercury control progression able to achieve at least 90 percent mercury capture or to limit mercury emissions to 0.60 pounds per trillion BTU of heat input and all monitoring and operating data for the coal-fired electric generating unit.

(c) The Department may establish a temporary alternative mercury emission limit only if the owner or operator applies for a permit or permit modification, that includes a control strategy that the Department determines constitutes a continual program of mercury control progression able to achieve at least 90 percent mercury capture or to limit mercury emissions to 0.60 pounds per trillion BTU of heat input.

(d) Establishment of a temporary alternative mercury emission limit requires public notice in accordance with OAR 340 division 209 for Category III permit actions

(e) If the owner or operator files an application under subsection (5)(b) of this rule, the coal-fired electric generating unit must operate according to the temporary alternative mercury emission limit proposed in the permit or permit modification application until the Department either denies the application or issues the permit or permit modification. Compliance with the proposed temporary alternative mercury emission limit prior to final Department action on the application shall constitute compliance with the limits in section (2) of this rule.

(f) A temporary alternative mercury emission limit established in a permit expires July 1, 2016 or within 2 years of commencement of commercial operation, whichever is later.

(6) Permanent compliance alternative. If the owner or operator of a coal-fired electric generating unit is unable to achieve at least 90 percent mercury capture or an emission level of 0.60 pounds per trillion BTU of heat input by July 1, 2016 or within 2 years of commencement of commercial operation, whichever is later, despite properly implementing the continual program of mercury progression required in section (5) of this rule:

(a) The owner or operator of the coal-fired electric generating unit may file an application with the Department for a permit modification in accordance with OAR 340 division 216 to establish a permanent alternative mercury emission limit that comes as near as technically possible to achieving 90 percent mercury capture or an emission level of 0.60 pounds per trillion BTU of heat input.

(b) The Department may establish a permanent alternative mercury emission limit only if the owner or operator applies for a permit modification, that proposes an alternative mercury emission limit that the Department determines comes as near as technically possible to achieving 90 percent mercury capture or an emission level of 0.60 pounds per trillion BTU of heat input.

(c) Establishment of a permanent alternative mercury emission limit requires public notice in accordance with OAR 340 division 209 for Category IV permit actions.

(d) If the owner or operator files an application under subsection (6)(a) of this rule, the coal-fired electric generating unit must operate according to the permanent alternative mercury emission limit proposed in the permit modification application until the Department either denies the application or modifies the permit. Compliance with the proposed permanent alternative mercury emission limit prior to final Department action on the application shall constitute compliance with the limits in section (4) of this rule.

(7) Emission Caps. Beginning in calendar year 2018, the following coal-fired electric generating unit specific emission caps shall apply.

(a) Existing Boardman coal-fired electric generating unit cap. The existing coal-fired electric generating unit in Boardman shall emit no more than:

(A) 60 pounds of mercury in any calendar year in which there are no new coal-fired electric generating units operated in Oregon.

(B) 35 pounds of mercury in any calendar year in which there are new coal-fired electric generating units operated in Oregon.

(b) New coal-fired electric generating unit cap:

(A) New coal-fired electric generating units, in aggregate, shall emit no more than:

(i) 25 pounds of mercury in any calendar year in which the existing coal-fired electric generating unit in Boardman is operated.

(ii) 60 pounds of mercury in any calendar year in which the existing coal-fired electric generating unit in Boardman is not operated.

(B) The owner or operator of each new coal-fired electric generating unit must submit to the Department a request, in a format specified by the Department, to receive a portion of the new coal-fired electric generating unit cap. The request may not be submitted until the new coal-fired electric generating unit has received its Site Certification from the Facility Siting Council, or if the new coal-fired electric generating unit is not required to obtain a Site Certificate, all governmental approvals necessary to commence construction.

(C) The Department will allocate the new coal-fired electric generating unit cap in order of receipt of requests and, once allocated, the new coal-fired electric generating unit shall be entitled to receive an equal allocation in future years unless the new coal-fired electric generating unit permanently ceases operations.

(D) Each individual new coal-fired electric generating unit shall emit no more than the lesser of:

(i) An amount of mercury determined by multiplying the design heat input in TBtu of such coal-fired electric generating unit by 0.60 pounds per TBtu rounded to the nearest pound as appropriate, or

(ii) The amount of the emission cap under (7)(b) less the amount of the emission cap under (7)(b) that has been allocated to other new coal-fired electric generating units.

(c) Compliance demonstration. Each coal-fired electric generating unit must demonstrate compliance with the applicable calendar year emission cap in subsection (7)(a) or (7)(b) of this rule using a mercury CEMS or sorbent trap monitoring system.

Stat. Auth.: ORS 468.020 & 468A.310

Stats. Implemented: ORS 468A.025

Hist.: DEQ 13-2006, f. & cert. ef. 12-22-06; DEQ 15-2008, f. & cert. ef. 12-31-08; DEQ 3-2009, f. & cert. ef. 6-30-09; DEQ 8-2009, f. & cert. ef. 12-16-09

## 340-228-0621

### Initial Certification and Recertification Procedures

(1) The owner or operator of a coal-fired electric generating unit shall be exempt from the initial certification requirements of this rule for a monitoring system under OAR 340-228-0609(1)(a) if the following conditions are met:

(a) The monitoring system has been previously certified; and

(b) The applicable quality-assurance and quality-control requirements are fully met for the certified monitoring system described in subsection (1)(a) of this rule.

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(2) The recertification provisions of this rule shall apply to a monitoring system under OAR 340-228-0609(1)(a) exempt from initial certification requirements under section (1) of this rule.

(3) Initial certification and recertification procedures. Except as provided in section (1) of this rule, the owner or operator of a coal-fired electric generating unit must comply with the following initial certification and recertification procedures for a continuous monitoring system (e.g., a continuous emission monitoring system or sorbent trap monitoring system). The owner or operator must meet any additional requirements for Hg concentration monitoring systems, sorbent trap monitoring systems (as defined in OAR 340-228-0602(36)), flow monitors, CO<sub>2</sub> monitors, O<sub>2</sub> monitors, or moisture monitors, as set forth under OAR 340-228-0613, under the common stack provisions in OAR 340-228-0615. The owner or operator of a unit that qualifies to use an alternative monitoring system must comply with the procedures in section (4) of this rule.

(a) Requirements for initial certification. The owner or operator must ensure that each monitoring system under OAR 340-228-0609(1)(a) (including the automated data acquisition and handling system) successfully completes all of the initial certification testing by the applicable deadline in OAR 340-228-0609(2). In addition, whenever the owner or operator installs a monitoring system to meet the requirements of this rule in a location where no such monitoring system was previously installed, initial certification is required.

(b) Requirements for recertification. Whenever the owner or operator makes a replacement, modification, or change in any certified continuous emission monitoring system or sorbent trap monitoring system that may significantly affect the ability of the system to accurately measure or record the CO<sub>2</sub> concentration, stack gas volumetric flow rate, Hg concentration, Hg mass emissions, percent moisture, or heat input rate or to meet the quality-assurance and quality-control requirements of 40 CFR 75.21, OAR 340-228-0623, or appendix B to 40 CFR part 75, the owner or operator must recertify the monitoring system in accordance with 40 CFR 75.20(b). Furthermore, whenever the owner or operator makes a replacement, modification, or change to the flue gas handling system or the unit's operation that may significantly change the stack flow or concentration profile, the owner or operator must recertify each continuous emission monitoring system or sorbent trap monitoring system, whose accuracy is potentially affected by the change, in accordance with 40 CFR 75.20(b). Examples of changes to a continuous emission monitoring system that require recertification include replacement of the analyzer, complete replacement of an existing continuous emission monitoring system, or change in location or orientation of the sampling probe or site.

(c) Approval process for initial certification and recertification. Paragraphs (3)(c)(A) through (D) of this rule apply to both initial certification and recertification of a continuous monitoring system under OAR 340-228-0609(1)(a). For recertifications, apply the word "recertification" instead of the words "certification" and "initial certification" and apply the word "recertified" instead of the word "certified," and follow the procedures in 40 CFR 75.20(b)(5) in lieu of the procedures in paragraph (3)(c)(E) of this rule.

(A) Notification of certification. The owner or operator must submit to the Department written notice of the dates of certification testing, in accordance with 40 CFR 75.61.

(B) Certification application. The owner or operator must submit to the Department a certification application for each monitoring system. A complete certification application must include the information specified in 40 CFR 75.63.

(C) Provisional certification date. The provisional certification date for a monitoring system must be determined in accordance with 40 CFR 75.20(a)(3). A provisionally certified monitoring system may be used for a period not to exceed 120 days after receipt by the Department of the complete certification application for the monitoring system under paragraph (3)(c)(B) of this rule. Data measured and recorded by the provisionally certified monitoring system will be considered valid quality-assured data (retroactive to the date and time of provisional certification), provided that the Department does not invalidate the provisional certification by issuing a notice of disapproval within 120 days of the date of receipt of the complete certification application by the Department.

(D) Certification application approval process. The Department will issue a written notice of approval or disapproval of the certification application to the owner or operator within 120 days of receipt of the complete certification application under paragraph (3)(c)(B) of this rule. In the event the Department does not issue such a notice within such 120-day period, each monitoring system that meets the applicable performance requirements and is included in the certification application will be deemed certified for use.

(i) Approval notice. If the certification application is complete and shows that each monitoring system meets the applicable performance requirements, then the Department will issue a written notice of approval of the certification application within 120 days of receipt.

(ii) Incomplete application notice. If the certification application is not complete, then the Department will issue a written notice of incompleteness that sets a reasonable date by which the owner or operator must submit the additional information required to complete the certification application. If the owner or operator does not comply with the notice of incompleteness by

the specified date, then the Department may issue a notice of disapproval under subparagraph (3)(c)(D)(iii) of this rule. The 120-day review period must not begin before receipt of a complete certification application.

(iii) Disapproval notice. If the certification application shows that any monitoring system does not meet the performance requirements or if the certification application is incomplete and the requirement for disapproval under subparagraph (3)(c)(D)(ii) of this rule is met, then the Department will issue a written notice of disapproval of the certification application. Upon issuance of such notice of disapproval, the provisional certification is invalidated by the Department and the data measured and recorded by each uncertified monitoring system must not be considered valid quality-assured data beginning with the date and hour of provisional certification (as defined under 40 CFR 75.20(a)(3)). The owner or operator must follow the procedures for loss of certification in paragraph (3)(c)(E) of this rule for each monitoring system that is disapproved for initial certification.

(iv) Audit decertification. The Department may issue a notice of disapproval of the certification status of a monitor in accordance with OAR 340-228-0629(2).

(E) Procedures for loss of certification. If the Department issues a notice of disapproval of a certification application under subparagraph (3)(c)(D)(iii) of this rule or a notice of disapproval of certification status under subparagraph (3)(c)(D)(iv) of this rule, then:

(i) The owner or operator must substitute the following values, as applicable, for each disapproved monitoring system, for each hour of unit operation during the period of invalid data specified under 40 CFR 75.20(a)(4)(iii), 40 CFR 75.21(e) and continuing until such time, date, and hour as the continuous emission monitoring system can be adjusted, repaired, or replaced and certification tests successfully completed (or, if the conditional data validation procedures in 40 CFR 75.20(b)(3)(ii) through (ix) are used, until a probationary calibration error test is passed following corrective actions in accordance with 40 CFR 75.20(b)(3)(ii)):

(I) For a disapproved Hg pollutant concentration monitor and disapproved flow monitor, respectively, the maximum potential Hg concentration, as defined in OAR 340-228-0602(25), and the maximum potential flow rate, as defined in section 2.1.4.1 of appendix A to 40 CFR part 75; and

(II) For a disapproved moisture monitoring system and disapproved diluent gas monitoring system, respectively, the minimum potential moisture percentage and either the maximum potential CO<sub>2</sub> concentration or the minimum potential O<sub>2</sub> concentration (as applicable), as defined in sections 2.1.5, 2.1.3.1, and 2.1.3.2 of appendix A to 40 CFR part 75.

(III) For a disapproved sorbent trap monitoring system and disapproved flow monitor, respectively, the maximum potential Hg concentration, as defined in OAR 340-228-0602(25), and maximum potential flow rate, as defined in section 2.1.4.1 of appendix A to 40 CFR part 75.

(ii) The owner or operator must submit a notification of certification retest dates as specified in 40 CFR 75.61(a)(1)(ii) and a new certification application in accordance with paragraphs (3)(c)(A) and (B) of this rule.

(iii) The owner or operator must repeat all certification tests or other requirements that were failed by the monitoring system, as indicated in the Department's notice of disapproval, no later than 30 unit operating days after the date of issuance of the notice of disapproval.

(d) For each Hg concentration monitoring system, the owner or operator must perform the following tests for initial certification or recertification of a Hg continuous emission system:

(A) A 7-day calibration error test in accordance with section 6.3 of appendix A to 40 CFR part 75. The owner or operator may perform this test using either NIST-traceable elemental Hg standards, a NIST-traceable source of oxidized Hg, or other standards subject to the approval of the Department. The calibration error of a Hg concentration monitor must not deviate from the reference value of either the zero or upscale calibration gas by more than 5.0 percent of the span value, as calculated using Equation A-5 of appendix A to 40 CFR part 75. Alternatively, if the span value is 10 µg/m<sup>3</sup>, the calibration error test results are also acceptable if the absolute value of the difference between the monitor response value and the reference value, |R-A| in Equation A-5 of appendix A to 40 CFR part 75, is ≤ 1.0 µg/m<sup>3</sup>. If moisture is added to the calibration gas, the added moisture must be accounted for and the dry-basis concentration of the calibration gas must be used to calculate the calibration error.

(B) A linearity check in accordance with section 6.2 of appendix A to 40 CFR part 75. Design and equip each mercury monitor to permit the introduction of known concentrations of elemental Hg and HgCl<sub>2</sub> separately, at a point immediately preceding the sample extraction filtration system, such that the entire measurement system can be checked. If the Hg monitor does not have a converter, the HgCl<sub>2</sub> injection capability is not required. Follow the applicable procedures in section 6.2 of appendix A to 40 CFR part 75 when performing the 3-level system integrity checks described in paragraph (3)(d)(F) of this rule. Perform the linearity check using NIST-traceable elemental Hg standards and the 3-level system integrity checks using NIST-traceable source of oxidized Hg or other standards subject to the approval of the Department. If moisture is added to the calibration gas during the required linearity checks or system integrity checks, the moisture content of the calibration gas must be accounted for. Under these circumstances, the dry basis

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concentration of the calibration gas must be used to calculate the linearity error or measurement error (as applicable).

(C) A relative accuracy test audit (RATA) in accordance with section 6.5 of appendix A to 40 CFR part 75 and as follows:

(i) The RATA must be performed on a  $\mu\text{g}/\text{m}^3$  basis and while the unit is combusting coal.

(ii) Calculate the relative accuracy, in accordance with section 7.3 or 7.4 of appendix A to 40 CFR part 75, as applicable.

(iii) The relative accuracy shall not exceed 20.0 percent. Alternatively, for affected units where the average of the reference method measurements of Hg concentration during the relative accuracy test audit is less than 5.0  $\mu\text{g}/\text{m}^3$ , the test results are acceptable if the difference between the mean value of the monitor measurements and the reference method mean value does not exceed 1.0  $\mu\text{g}/\text{m}^3$ , in cases where the relative accuracy specification of 20.0 percent is not achieved.

(iv) For the RATA of a Hg CEMS using the Ontario Hydro Method, or for the RATA of a sorbent trap system (irrespective of the reference method used), the time per run must be long enough to collect a sufficient mass of Hg to analyze. For the RATA of a sorbent trap monitoring system, use the same-size trap that is used for daily operation of the monitoring system. Spike the third section of each sorbent trap with elemental Hg, as described in OAR 340-228-0627(7)(a)(B). Install a new pair of sorbent traps prior to each test run. For each run, the sorbent trap data must be validated according to the quality assurance criteria in OAR 340-228-0627(8).

(v) Use the same basic approach for traverse point selection that is used for other gas monitoring system RATAs, except that the stratification test provisions in sections 8.1.3 through 8.1.3.5 of Method 30A shall apply, rather than the provisions of section 6.5.6.1 through 6.5.6.3 of appendix A to 40 CFR part 75.

(vi) Up to 336 consecutive unit or stack operating hours may be taken to complete the RATA of a Hg monitoring system, when the Ontario Hydro Method or Method 29 is used as the reference method.

(D) A bias test in accordance with section 7.6 of appendix A to 40 CFR part 75 and as follows:

(i) To calculate bias for a Hg monitoring system when using the Ontario Hydro Method or Method 29, "d" is, for each data point, the difference between the average Hg concentration value (in  $\mu\text{g}/\text{m}^3$ ) from the paired Ontario Hydro or Method 29 sampling trains and the concentration measured by the monitoring system. For sorbent trap systems, use the average Hg concentration measured by the paired traps in calculation of "d".

(ii) For single-load RATAs of Hg concentration monitoring systems, and sorbent trap monitoring systems, the appropriate BAF is determined directly from the RATA results at normal load, using Equation A-12.

(iii) For multiple-load flow RATAs, perform a bias test at each load level designated as normal under section 6.5.2.1 of appendix A to 40 CFR part 75.

(iv) Mercury concentration monitoring systems and sorbent trap monitoring systems shall not be biased low.

(v) For Hg concentration and sorbent trap monitoring systems, where the average Hg concentration during the RATA is  $< 5.0 \mu\text{g}/\text{dscm}$ , if the monitoring system meets the normal or the alternative relative accuracy specification in subparagraph (3)(d)(C)(iii) of this rule but fails the bias test, the owner or operator may either use the bias adjustment factor (BAF) calculated from Equation A-12 appendix A to 40 CFR part 75 and in accordance with sections 7.6.4 and 7.6.5 of appendix A to 40 CFR part 75, using the data from the relative accuracy test audits, or may use a default BAF of 1.250 for reporting purposes.

(vi) Use the bias-adjusted values in computing substitution values in the missing data procedure and in reporting the concentration of Hg during the quarter and calendar year. In addition, when using a Hg concentration or sorbent trap monitoring system and a flow monitor to calculate Hg mass emissions, use bias-adjusted values for Hg concentration and flow rate in the mass emission calculations and use bias-adjusted Hg concentrations to compute the appropriate substitution values for Hg concentration in the missing data routines.

(E) A cycle time test in accordance with section 6.4 of appendix A to 40 CFR part 75. For Hg monitors, the calibration gas used for this test may either be the elemental or oxidized form of Hg. As an alternative, the reading is considered stable if it changes by no more than 0.5  $\mu\text{g}/\text{m}^3$  for two minutes.

(F) A 3-level system integrity check, using a NIST-traceable source of oxidized Hg, or other standards subject to the approval of the Department. This test is not required for an Hg monitor that does not have a converter. The system measurement error must not exceed 10.0 percent of the reference value at any of the three gas levels. To calibrate the measurement error at each level, take the absolute value of the difference between the reference value and mean CEM response, divide the result by the reference value, and then multiply by 100. Alternatively, the results at any gas level are acceptable if the absolute value of the difference between the average monitor response and the average reference value, i.e.,  $|\text{R}-\text{A}|$  in equation A-4 of appendix A to 40 CFR part 75, does not exceed 0.8  $\mu\text{g}/\text{m}^3$ .

(4) Certification/recertification procedures for alternative monitoring systems. The owner or operator of each unit for which the owner or operator intends to use an alternative monitoring system approved by the Department

must comply with the applicable notification and application procedures of 40 CFR 75.20(f).

Stat. Auth.: ORS 468.020 & 468A.310

Stats. Implemented: ORS 468A.025

Hist.: DEQ 15-2008, f. & cert. of 12-31-08; DEQ 8-2009, f. & cert. of 12-16-09

## 340-228-0623

### Quality Assurance and Quality Control Requirements

(1) For units that use continuous emission monitoring systems to account for Hg mass emissions, the owner or operator must meet the applicable quality assurance and quality control requirements in 40 CFR 75.21, appendix B to 40 CFR part 75, and as follows, for the flow monitoring systems, Hg concentration monitoring systems, moisture monitoring systems, and diluent monitors required under OAR 340-228-0613. Units using sorbent trap monitoring systems must meet the applicable quality assurance requirements in OAR 340-228-0617, 340-228-0627, and as follows.

(a) Calibration Error Test. Except as provided in section 2.1.1.2 of appendix B to 40 CFR part 75, perform the daily calibration error test of each Hg monitoring system according to the procedures in OAR 340-228-0621(3)(d)(A). For Hg monitors, the daily assessments may be made using either NIST-traceable elemental Hg standards, a NIST-traceable source of oxidized Hg, or other standards subject to the approval of the Department.

(b) Data Validation. For a Hg monitor, an out-of-control period occurs when the calibration error exceeds 5.0% of the span value. Notwithstanding, the Hg monitor shall not be considered out-of-control if  $|\text{R}-\text{A}|$  in Equation A-6 of appendix A to 40 CFR part 75 does not exceed 1.0  $\mu\text{g}/\text{m}^3$ .

(c) Linearity Check. Unless a particular monitor (or monitoring range) is exempted under this subsection or under section 6.2 of appendix A to 40 CFR part 75, perform a linearity check, in accordance with the procedures in section 6.2 of appendix A to 40 CFR part 75, for each primary and redundant backup Hg at least once during each QA operating quarter, as defined in 40 CFR 72.2. For Hg monitors, perform the linearity checks using NIST-traceable elemental Hg standards, or other standards subject to the approval of the Department. Alternatively, the owner or operator may perform 3-level system integrity checks at the same three calibration gas levels (i.e., low, mid, and high), using a NIST-traceable source of oxidized Hg, or other standards subject to the approval of the Department. If choosing this option, the performance specification in paragraph (1)(i)(B) of this rule must be met at each gas level. For units using both a low and high span value, a linearity check is required only on the range(s) used to record and report emission data during the QA operating quarter. Conduct the linearity checks no less than 30 days apart, to the extent practicable.

(d) Standard RATA Frequencies. For each primary and redundant backup Hg concentration monitoring system and each sorbent trap monitoring system, RATAs must be performed annually, i.e., once every four successive QA operating quarters (as defined in 40 CFR 72.2).

(e) RATA Load (or Operating) Levels and Additional RATA Requirements. For Hg concentration monitoring systems and sorbent trap monitoring systems, the required semiannual or annual RATA tests must be done at the load level (or operating level) designated as normal under section 6.5.2.1(d) of appendix A to 40 CFR part 75. If two load levels (or operating levels) are designated as normal, the required RATA(s) may be done at either load level (or operating level).

(f) Data Validation. Each time that a hands-off RATA of a Hg concentration monitoring system or a sorbent trap monitoring system is passed, perform a bias test in accordance with section 7.6.4 of appendix A to 40 CFR part 75. Apply the appropriate bias adjustment factor to the reported Hg data, in accordance with subsection (1)(g) of this rule.

(g) Bias Adjustment Factor. Except as otherwise specified in section 7.6.5 of appendix A to 40 CFR part 75, if an Hg concentration monitoring system or sorbent trap monitoring system fails the bias test, use the bias adjustment factor given in Equations A-11 and A-12 of appendix A to 40 CFR part 75, or a default bias adjustment factor of 1.250, to adjust the monitored data.

(h) Bias Adjusted Values. Use the bias-adjusted values in computing substitution values in the missing data procedure and in reporting the concentration of Hg during the quarter and calendar year. In addition, when using a Hg concentration or sorbent trap monitoring system and a flow monitor to calculate Hg mass emissions, use bias-adjusted values for Hg concentration and flow rate in the mass emission calculations and use bias-adjusted Hg concentrations to compute the appropriate substitution values for Hg concentration in the missing data routines.

(i) System Integrity Checks for Hg Monitors. For each Hg concentration monitoring system (except for a Hg monitor that does not have a converter), perform a single-point system integrity check weekly, i.e., at least once every 168 unit or stack operating hours, using a NIST-traceable source of oxidized Hg, or other standards subject to the approval of the Department. Perform this check as follows using a mid- or high-level gas concentration, as defined in section 5.2 of appendix A to 40 CFR part 75.

(A) The performance specification in paragraph (1)(i)(B) must be met, otherwise the monitoring system is considered out-of-control, from the hour of the failed check until a subsequent system integrity check is passed. If a required system integrity check is not performed and passed within 168 unit

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or stack operating hours of last successful check, the monitoring system shall also be considered out of control, beginning with the 169th unit of stack operating hour after the last successful check, and continuing until a subsequent system integrity check is passed. This weekly check is not required if the daily calibration assessments in subsection (1)(a) of this rule are performed using a NIST-traceable source of oxidized Hg, or other standards subject to the approval of the Department.

(B) The measurement error for the linearity check must not exceed 10.0 percent of the reference value at any of the three gas levels. To calibrate the measurement error at each level, take the absolute value of the difference between the reference value and mean CEM response, divide the result by the reference value, and then multiply by 100. Alternatively, the results at any gas level are acceptable if the absolute value of the difference between the average monitor response and the average reference value, i.e.,  $|R-A|$  in equation A-4 of appendix A to 40 CFR part 75, does not exceed  $0.8 \mu\text{g}/\text{m}^3$ .

(2) Missing data procedures. Except as provided in OAR 340-228-0617(11) and 340-228-0631(2), the owner or operator must provide substitute data from monitoring systems required under OAR 340-228-0613 for each affected unit as follows:

(a) For an owner or operator using an Hg concentration monitoring system, substitute for missing data in accordance with the applicable missing data procedures in 40 CFR 75.31 through 75.37 and OAR 340-228-0631 and 0633 whenever the unit combusts fuel and:

(A) A valid, quality-assured hour of Hg concentration data (in  $\mu\text{g}/\text{m}^3$ ) has not been measured and recorded, either by a certified Hg concentration monitoring system, by an appropriate reference method under OAR 340-228-0602(33) or 40 CFR 75.22, or by an approved alternative monitoring method under 40 CFR part 75 subpart E; or

(B) A valid, quality-assured hour of flow rate data (in scfh) has not been measured and recorded for a unit either by a certified flow monitor, by an appropriate EPA reference method under 40 CFR 75.22, or by an approved alternative monitoring system under 40 CFR part 75 subpart E; or

(C) A valid, quality-assured hour of moisture data (in percent H<sub>2</sub>O) has not been measured or recorded for an affected unit, either by a certified moisture monitoring system, by an appropriate EPA reference method under 40 CFR 75.22, or an approved alternative monitoring method under 40 CFR part 75 subpart E. This requirement does not apply when a default percent moisture value, as provided in 40 CFR 75.11(b), is used to account for the hourly moisture content of the stack gas, or when correction of the Hg concentration for moisture is not necessary; or

(D) A valid, quality-assured hour of heat input rate data (in MMBtu/hr) has not been measured and recorded for a unit, either by certified flow rate and diluent (CO<sub>2</sub> or O<sub>2</sub>) monitors, by appropriate EPA reference methods under 40 CFR 75.22, or by approved alternative monitoring systems under 40 CFR part 75 subpart E.

(b) For an owner or operator using a sorbent trap monitoring system to quantify Hg mass emissions, substitute for missing data in accordance with the missing data procedures in OAR 340-228-0633.

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## 340-228-0625

### Specifications and Test Procedures for Total Vapor Phase Mercury CEMS

(1) Analyte. Mercury (Hg), CAS No. 7439-97-6.

(2) Applicability.

(a) This specification is for evaluating the acceptability of total vapor phase Hg CEMS installed on the exit gases from fossil fuel fired boilers at the time of or soon after installation and whenever specified in the regulations. The Hg CEMS must be capable of measuring the total concentration in  $\mu\text{g}/\text{m}^3$  (regardless of speciation) of vapor phase Hg, and recording that concentration on a wet or dry basis.

(b) Particle bound Hg is not included in the measurements.

(c) This specification is not designed to evaluate an installed CEMS's performance over an extended period of time nor does it identify specific calibration techniques and auxiliary procedures to assess the CEMS's performance. The source owner or operator, however, is responsible to calibrate, maintain, and operate the CEMS properly.

(d) The Department may require the operator to conduct CEMS performance evaluations at other times besides the initial test to evaluate the CEMS performance.

(e) The owner or operator must conduct the performance evaluation of the Hg CEMS according to OAR 340-228-0621(3)(d) and the following procedures:

(3) Summary of Performance Specification. Procedures for measuring CEMS relative accuracy, measurement error and drift are outlined. CEMS installation and measurement location specifications, and data reduction procedures are included. Conformance of the CEMS with the Performance Specification is determined.

(4) Definitions.

(a) "Continuous Emission Monitoring System (CEMS)" means the total equipment required for the determination of a pollutant concentration. The system consists of the following major subsystems:

(A) "Sample Interface" means that portion of the CEMS used for one or more of the following: sample acquisition, sample transport, sample conditioning, and protection of the monitor from the effects of the stack effluent.

(B) "Hg Analyzer" means that portion of the Hg CEMS that measures the total vapor phase Hg mass concentration and generates a proportional output.

(C) "Data Recorder" means that portion of the CEMS that provides a permanent electronic record of the analyzer output. The data recorder may provide automatic data reduction and CEMS control capabilities.

(b) "Span Value" means the upper limit of the intended Hg concentration measurement range. The span value is a value equal to two times the emission standard. Alternatively, the Hg span value(s) may be determined as follows:

(A) For each Hg monitor, determine a high span value, by rounding the maximum potential Hg concentration value from OAR 340-228-0602(25) upward to the next highest multiple of  $10 \mu\text{g}/\text{m}^3$ .

(B) For an affected unit equipped with an FGD system or a unit with add-on Hg emission controls, if the maximum expected Hg concentration value from OAR 340-228-0602(24) is less than 20 percent of the high span value from paragraph (4)(b)(A) of this rule, and if the high span value is  $20 \mu\text{g}/\text{m}^3$  or greater, define a second, low span value of  $10 \mu\text{g}/\text{m}^3$ .

(C) If only a high span value is required, set the full-scale range of the Hg analyzer to be greater than or equal to the span value.

(D) If two span values are required, the owner or operator may either:

(i) Use two separate (high and low) measurement scales, setting the range of each scale to be greater than or equal to the high or low span value, as appropriate; or

(ii) Quality-assure two segments of a single measurement scale.

(c) "Measurement Error (ME)" means the absolute value of the difference between the concentration indicated by the Hg analyzer and the known concentration generated by a reference gas, expressed as a percentage of the span value, when the entire CEMS, including the sampling interface, is challenged. An ME test procedure is performed to document the accuracy and linearity of the Hg CEMS at several points over the measurement range.

(d) "Upscale Drift (UD)" means the absolute value of the difference between the CEMS output response and an upscale Hg reference gas, expressed as a percentage of the span value, when the entire CEMS, including the sampling interface, is challenged after a stated period of operation during which no unscheduled maintenance, repair, or adjustment took place.

(e) "Zero Drift (ZD)" means the absolute value of the difference between the CEMS output response and a zero-level Hg reference gas, expressed as a percentage of the span value, when the entire CEMS, including the sampling interface, is challenged after a stated period of operation during which no unscheduled maintenance, repair, or adjustment took place.

(f) "Relative Accuracy (RA)" means the absolute mean difference between the pollutant concentration(s) determined by the CEMS and the value determined by the reference method (RM) plus the 2.5 percent error confidence coefficient of a series of tests divided by the mean of the RM tests. Alternatively, for low concentration sources, the RA may be expressed as the absolute value of the difference between the mean CEMS and RM values.

(5) Safety. The procedures required under this performance specification may involve hazardous materials, operations, and equipment. This performance specification may not address all of the safety problems associated with these procedures. It is the responsibility of the user to establish appropriate safety and health practices and determine the applicable regulatory limitations prior to performing these procedures. The CEMS user's manual and materials recommended by the RM should be consulted for specific precautions to be taken.

(6) Equipment and Supplies.

(a) CEMS Equipment Specifications.

(A) Data Recorder Scale. The Hg CEMS data recorder output range must include zero and a high level value. The high level value must be approximately two times the Hg concentration corresponding to the emission standard level for the stack gas under the circumstances existing as the stack gas is sampled. A lower high level value may be used, provided that the measured values do not exceed 95 percent of the high level value. Alternatively, the owner or operator may set the full-scale range(s) of the Hg analyzer according to subsection (4)(b) of this rule.

(B) The CEMS design should also provide for the determination of calibration drift at a zero value (zero to 20 percent of the span value) and at an upscale value (between 50 and 100 percent of the high-level value).

(b) Reference Gas Delivery System. The reference gas delivery system must be designed so that the flowrate of reference gas introduced to the CEMS is the same at all three challenge levels specified in subsection (7)(a) of this rule and at all times exceeds the flow requirements of the CEMS.

(c) Other equipment and supplies, as needed by the applicable reference method used. See paragraph (8)(f)(B) of this rule.

(7) Reagents and Standards.

(a) Reference Gases. Reference gas standards are required for both elemental and oxidized Hg (Hg and mercuric chloride, HgCl<sub>2</sub>). The use of

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National Institute of Standards and Technology (NIST)-certified or NIST-traceable standards and reagents is required. However, other standards approved by the Department may be used if NIST-certified or traceable standards are not available. The following gas concentrations are required.

- (A) Zero-level. 0 to 20 percent of the span value.
- (B) Mid-level. 50 to 60 percent of the span value.
- (C) High-level. 80 to 100 percent of the span value.
- (b) Reference gas standards may also be required for the reference methods. See paragraph (8)(f)(B) of this rule.

(8) Performance Specification (PS) Test Procedure.

(a) Installation and Measurement Location Specifications.

(A) CEMS Installation. Install the CEMS at an accessible location downstream of all pollution control equipment. Since the Hg CEMS sample system normally extracts gas from a single point in the stack, use a location that has been shown to be free of stratification for SO<sub>2</sub> and NO<sub>x</sub> through concentration measurement traverses for those gases. If the cause of failure to meet the RA test requirement is determined to be the measurement location and a satisfactory correction technique cannot be established, the Administrator may require the CEMS to be relocated. Measurement locations and points or paths that are most likely to provide data that will meet the RA requirements are listed below.

(B) Measurement Location. The measurement location should be (1) at least two equivalent diameters downstream of the nearest control device, point of pollutant generation or other point at which a change of pollutant concentration may occur, and (2) at least half an equivalent diameter upstream from the effluent exhaust. The equivalent duct diameter is calculated as per appendix A to 40 CFR part 60, Method 1.

(C) Hg CEMS Sample Extraction Point. Use a sample extraction point (1) no less than 1.0 meter from the stack or duct wall, or (2) within the centroidal velocity traverse area of the stack or duct cross section.

(b) RM Measurement Location and Traverse Points. Refer to PS 2 of appendix B to 40 CFR part 60. The RM and CEMS locations need not be immediately adjacent.

(c) ME Test Procedure. The Hg CEMS must be constructed to permit the introduction of known concentrations of Hg and HgCl<sub>2</sub> separately into the sampling system of the CEMS immediately preceding the sample extraction filtration system such that the entire CEMS can be challenged. Sequentially inject each of the three reference gases (zero, mid-level, and high level) for each Hg species. Record the CEMS response and subtract the reference value from the CEMS value, and express the absolute value of the difference as a percentage of the span value. For each reference gas, the absolute value of the difference between the CEMS response and the reference value must not exceed 5 percent of the span value. If this specification is not met, identify and correct the problem before proceeding.

(d) UD Test Procedure.

(A) UD Test Period. While the affected facility is operating at more than 50 percent of normal load, or as specified in an applicable subpart, determine the magnitude of the UD once each day (at 24-hour intervals, to the extent practicable) for 7 consecutive unit operating days according to the procedure given in paragraphs (8)(d)(B) through (C) of this rule. The 7 consecutive unit operating days need not be 7 consecutive calendar days. Use either Hg<sub>0</sub> or HgCl<sub>2</sub> standards for this test.

(B) The purpose of the UD measurement is to verify the ability of the CEMS to conform to the established CEMS response used for determining emission concentrations or emission rates. Therefore, if periodic automatic or manual adjustments are made to the CEMS zero and response settings, conduct the UD test immediately before these adjustments, or conduct it in such a way that the UD can be determined.

(C) Conduct the UD test at either the mid-level or high-level point specified in subsection (7)(a) of this rule. Introduce the reference gas to the CEMS. Record the CEMS response and subtract the reference value from the CEMS value, and express the absolute value of the difference as a percentage of the span value. For the reference gas, the absolute value of the difference between the CEMS response and the reference value must not exceed 5 percent of the span value. If this specification is not met, identify and correct the problem before proceeding.

(e) ZD Test Procedure.

(A) ZD Test Period. While the affected facility is operating at more than 50 percent of normal load, or as specified in an applicable subpart, determine the magnitude of the ZD once each day (at 24-hour intervals, to the extent practicable) for 7 consecutive unit operating days according to the procedure given in paragraphs (8)(e)(B) through (C) of this rule. The 7 consecutive unit operating days need not be 7 consecutive calendar days. Use either nitrogen, air, Hg<sub>0</sub>, or HgCl<sub>2</sub> standards for this test.

(B) The purpose of the ZD measurement is to verify the ability of the CEMS to conform to the established CEMS response used for determining emission concentrations or emission rates. Therefore, if periodic automatic or manual adjustments are made to the CEMS zero and response settings, conduct the ZD test immediately before these adjustments, or conduct it in such a way that the ZD can be determined.

(C) Conduct the ZD test at the zero level specified in subsection (7)(a) of this rule. Introduce the zero gas to the CEMS. Record the CEMS response and subtract the zero value from the CEMS value and express the absolute

value of the difference as a percentage of the span value. For the zero gas, the absolute value of the difference between the CEMS response and the reference value must not exceed 5 percent of the span value. If this specification is not met, identify and correct the problem before proceeding.

(f) RA Test Procedure.

(A) RA Test Period. Conduct the RA test according to the procedure given in paragraphs (8)(f)(B) through (F) of this rule while the affected facility is operating at normal full load, or as specified in an applicable subpart. The RA test may be conducted during the ZD and UD test period.

(B) RM. Use one of the reference methods specified in OAR 340-228-0602(33). Do not include the filterable portion of the sample when making comparisons to the CEMS results. When Method 29 or ASTM D6784-02 is used, conduct the RM test runs with paired or duplicate sampling systems. When an approved instrumental method is used, paired sampling systems are not required. If the RM and CEMS measure on a different moisture basis, data derived with Method 4 in appendix A to 40 CFR part 60 must also be obtained during the RA test.

(C) Sampling Strategy for RM Tests. Conduct the RM tests in such a way that they will yield results representative of the emissions from the source and can be compared to the CEMS data. It is preferable to conduct moisture measurements (if needed) and Hg measurements simultaneously, although moisture measurements that are taken within an hour of the Hg measurements may be used to adjust the Hg concentrations to a consistent moisture basis. In order to correlate the CEMS and RM data properly, note the beginning and end of each RM test period for each paired RM run (including the exact time of day) on the CEMS chart recordings or other permanent record of output.

(D) Number and length of RM Tests. Conduct a minimum of nine RM test runs. When Method 29 or ASTM D6784-02 is used, only test runs for which the data from the paired RM trains meet the relative deviation (RD) criteria of this PS must be used in the RA calculations. In addition, for Method 29 and ASTM D 6784-02, use a minimum sample run time of 2 hours. Note: More than nine sets of RM tests may be performed. If this option is chosen, paired RM test results may be excluded so long as the total number of paired RM test results used to determine the CEMS RA is greater than or equal to nine. However, all data must be reported, including the excluded data.

(E) Correlation of RM and CEMS Data. Correlate the CEMS and the RM test data as to the time and duration by first determining from the CEMS final output (the one used for reporting) the integrated average pollutant concentration for each RM test period. Consider system response time, if important, and confirm that the results are on a consistent moisture basis with the RM test. Then, compare each integrated CEMS value against the corresponding RM value. When Method 29 or ASTM D6784-02 is used, compare each CEMS value against the corresponding average of the paired RM values.

(F) Paired RM Outliers.

(i) When Method 29 or ASTM D6784-02 is used, outliers are identified through the determination of relative deviation (RD) of the paired RM tests. Data that do not meet this criteria should be flagged as a data quality problem. The primary reason for performing paired RM sampling is to ensure the quality of the RM data. The percent RD of paired data is the parameter used to quantify data quality. Determine RD for two paired data points as follows:

$$RD = 100 \times |(Ca - Cb)| / (Ca + Cb)$$

where Ca and Cb are concentration values determined from each of the two samples respectively.

(ii) A minimum performance criteria for RM Hg data is that RD for any data pair must be  $\leq 10$  percent as long as the mean Hg concentration is greater than 1.0  $\mu\text{g}/\text{m}^3$ . If the mean Hg concentration is less than or equal to 1.0  $\mu\text{g}/\text{m}^3$ , the RD must be  $\leq 20$  percent. Pairs of RM data exceeding these RD criteria should be eliminated from the data set used to develop a Hg CEMS correlation or to assess CEMS RA.

(G) Calculate the mean difference between the RM and CEMS values in the units of micrograms per cubic meter ( $\mu\text{g}/\text{m}^3$ ), the standard deviation, the confidence coefficient, and the RA according to the procedures in section (10) of this rule.

(g) Reporting. At a minimum (check with the Department for additional requirements, if any), summarize in tabular form the results of the RD tests and the RA tests or alternative RA procedure, as appropriate. Include all data sheets, calculations, charts (records of CEMS responses), reference gas concentration certifications, and any other information necessary to confirm that the performance of the CEMS meets the performance criteria.

(9) Analytical Procedure. Sample collection and analysis are concurrent for this PS (see section (8) of this rule). Refer to the RM employed for specific analytical procedures.

(10) Calculations and Data Analysis. Summarize the results on a data sheet similar to that shown in Figure 2-2 for PS 2.

(a) Consistent Basis. All data from the RM and CEMS must be compared in units of  $\mu\text{g}/\text{m}^3$ , on a consistent and identified moisture and volumetric basis (STP = 20°C, 760 millimeters (mm) Hg).

(b) Moisture Correction (as applicable). If the RM and CEMS measure Hg on a different moisture basis, using the following equation to make the appropriate corrections to the Hg concentrations.

$$\text{Concentration(dry)} = \text{Concentration(wet)} / (1 - Bws)$$

In the above equation, Bws is the moisture content of the flue gas from Method 4, expressed as a decimal fraction (e.g., for 8.0 percent H<sub>2</sub>O, Bws = 0.08).

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(c) Arithmetic Mean. Calculate the arithmetic mean of the difference,  $d$ , of a data set using equation 2 to this division.

(d) Standard Deviation. Calculate the standard deviation,  $S_d$ , using equation 3 to this division.

(e) Confidence Coefficient (CC). Calculate the 2.5 percent error confidence coefficient (one-tailed),  $CC$ , using equation 4 to this division.

(f) RA. Calculate the RA of a set of data using equation 5 to this division.

(11) Performance Specifications.

(a) ME. ME is assessed at zero-level, mid-level and high-level values as given below using standards for both Hg<sub>0</sub> and HgCl<sub>2</sub>. The mean difference between the indicated CEMS concentration and the reference concentration value for each standard must be no greater than 5 percent of the span value.

(b) UD. The UD must not exceed 5 percent of the span value on any of the 7 days of the UD test.

(c) ZD. The ZD must not exceed 5 percent of the span value on any of the 7 days of the ZD test.

(d) RA. The RA of the CEMS must be no greater than 20 percent of the mean value of the RM test data in terms of units of  $\mu\text{g}/\text{m}^3$ . Alternatively, if the mean RM is less than 5.0  $\mu\text{g}/\text{m}^3$ , the results are acceptable if the absolute value of the difference between the mean RM and CEMS values does not exceed 1.0  $\mu\text{g}/\text{m}^3$ .

(12) Bibliography.

(a) 40 CFR part 60, appendix B, "Performance Specification 2 — Specifications and Test Procedures for SO<sub>2</sub> and NO<sub>x</sub> Continuous Emission Monitoring Systems in Stationary Sources."

(b) 40 CFR part 60, appendix A, "Method 29 — Determination of Metals Emissions from Stationary Sources."

(c) ASTM Method D6784-02, "Standard Test Method for Elemental, Oxidized, Particle-Bound and Total Mercury in Flue Gas Generated from Coal-Fired Stationary Sources (Ontario Hydro Method)."

(13) The following values are already corrected for  $n-1$  degrees of freedom. Use  $n$  equal to the number of individual values.

(a) For  $n = 2$ ,  $t_{0.975} = 12.706$ .

(b) For  $n = 3$ ,  $t_{0.975} = 4.303$ .

(c) For  $n = 4$ ,  $t_{0.975} = 3.182$ .

(d) For  $n = 5$ ,  $t_{0.975} = 2.776$ .

(e) For  $n = 6$ ,  $t_{0.975} = 2.571$ .

(f) For  $n = 7$ ,  $t_{0.975} = 2.447$ .

(g) For  $n = 8$ ,  $t_{0.975} = 2.365$ .

(h) For  $n = 9$ ,  $t_{0.975} = 2.306$ .

(i) For  $n = 10$ ,  $t_{0.975} = 2.262$ .

(j) For  $n = 11$ ,  $t_{0.975} = 2.228$ .

(k) For  $n = 12$ ,  $t_{0.975} = 2.201$ .

(l) For  $n = 13$ ,  $t_{0.975} = 2.179$ .

(m) For  $n = 14$ ,  $t_{0.975} = 2.160$ .

(n) For  $n = 15$ ,  $t_{0.975} = 2.145$ .

(o) For  $n = 16$ ,  $t_{0.975} = 2.131$ .

Stat. Auth.: ORS 468.020 & 468A.310

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## 340-228-0627

### Quality Assurance and Operating Procedures for Sorbent Trap Monitoring Systems

(1) Scope and Application. This rule specifies sampling, and analytical, and quality-assurance criteria and procedures for the performance-based monitoring of vapor-phase mercury (Hg) emissions in combustion flue gas streams, using a sorbent trap monitoring system (as defined in OAR 340-228-0602). The principle employed is continuous sampling using in-stack sorbent media coupled with analysis of the integrated samples. The performance-based approach of this rule allows for use of various suitable sampling and analytical technologies while maintaining a specified and documented level of data quality through performance criteria. Persons using this rule should have a thorough working knowledge of Methods 1, 2, 3, 4 and 5 in appendices A-1 through A-3 to 40 CFR part 60, as well as the determinative technique selected for analysis.

(a) Analytes. The analyte measured by these procedures and specifications is total vapor-phase Hg in the flue gas, which represents the sum of elemental Hg (Hg<sub>0</sub>, CAS Number 7439-97-6) and oxidized forms of Hg, in mass concentration units of micrograms per dry standard cubic meter ( $\mu\text{g}/\text{dscm}$ ).

(b) Applicability. These performance criteria and procedures are applicable to monitoring of vapor-phase Hg emissions under relatively low-dust conditions (i.e., sampling in the stack after all pollution control devices), from coal-fired electric utility steam generators. Individual sample collection times can range from 30 minutes to several days in duration, depending on the Hg concentration in the stack. The monitoring system must achieve the performance criteria specified in section (8) of this rule and the sorbent media capture ability must not be exceeded. The sampling rate must be maintained at a constant proportion to the total stack flowrate to ensure representativeness of the sample collected. Failure to achieve certain performance criteria will result in invalid Hg emissions monitoring data.

(2) Principle. Known volumes of flue gas are extracted from a stack or duct through paired, in-stack, pre-spiked sorbent media traps at an appropriate nominal flow rate. Collection of Hg on the sorbent media in the stack mitigates potential loss of Hg during transport through a probe/sample line. Paired train sampling is required to determine measurement precision and verify acceptability of the measured emissions data. The sorbent traps are recovered from the sampling system, prepared for analysis, as needed, and analyzed by any suitable determinative technique that can meet the performance criteria. A section of each sorbent trap is spiked with Hg<sub>0</sub> prior to sampling. This section is analyzed separately and the recovery value is used to correct the individual Hg sample for measurement bias.

(3) Clean Handling and Contamination. To avoid Hg contamination of the samples, special attention should be paid to cleanliness during transport, field handling, sampling, recovery, and laboratory analysis, as well as during preparation of the sorbent cartridges. Collection and analysis of blank samples (field, trip, lab) is useful in verifying the absence of contaminant Hg.

(4) Safety.

(a) Site hazards. Site hazards must be thoroughly considered in advance of applying these procedures/specifications in the field; advance coordination with the site is critical to understand the conditions and applicable safety policies. At a minimum, portions of the sampling system will be hot, requiring appropriate gloves, long sleeves, and caution in handling this equipment.

(b) Laboratory safety policies. Laboratory safety policies should be in place to minimize risk of chemical exposure and to properly handle waste disposal. Personnel must wear appropriate laboratory attire according to a Chemical Hygiene Plan established by the laboratory.

(c) Toxicity or carcinogenicity. The toxicity or carcinogenicity of any reagents used must be considered. Depending upon the sampling and analytical technologies selected, this measurement may involve hazardous materials, operations, and equipment and this rule does not address all of the safety problems associated with implementing this approach. It is the responsibility of the user to establish appropriate safety and health practices and determine the applicable regulatory limitations prior to performance. Any chemical should be regarded as a potential health hazard and exposure to these compounds should be minimized. Chemists should refer to the Material Safety Data Sheet (MSDS) for each chemical used.

(d) Wastes. Any wastes generated by this procedure must be disposed of according to a hazardous materials management plan that details and tracks various waste streams and disposal procedures.

(5) Equipment and Supplies. The following list is presented as an example of key equipment and supplies likely required to perform vapor-phase Hg monitoring using a sorbent trap monitoring system. It is recognized that additional equipment and supplies may be needed. Collection of paired samples is required. Also required are a certified stack gas volumetric flow monitor that meets the requirements of 40 CFR 75.10 and an acceptable means of correcting for the stack gas moisture content, i.e., either by using data from a certified continuous moisture monitoring system or by using an approved default moisture value (see 40 CFR 75.11(b)).

(a) Sorbent Trap Monitoring System. The monitoring system must include the following components:

(A) Sorbent Traps. The sorbent media used to collect Hg must be configured in a trap with three distinct and identical segments or sections, connected in series, that are amenable to separate analyses. Section 1 is designated for primary capture of gaseous Hg. Section 2 is designated as a backup section for determination of vapor-phase Hg breakthrough. Section 3 is designated for QA/QC purposes where this section must be spiked with a known amount of gaseous Hg<sub>0</sub> prior to sampling and later analyzed to determine recovery efficiency. The sorbent media may be any collection material (e.g., carbon, chemically-treated filter, etc.) capable of quantitatively capturing and recovering for subsequent analysis, all gaseous forms of Hg for the intended application. Selection of the sorbent media must be based on the material's ability to achieve the performance criteria contained in section (8) of this rule as well as the sorbent's vapor phase Hg capture efficiency for the emissions matrix and the expected sampling duration at the test site. The sorbent media must be obtained from a source that can demonstrate the quality assurance and control necessary to ensure consistent reliability. The paired sorbent traps are supported on a probe (or probes) and inserted directly into the flue gas stream.

(B) Sampling Probe Assembly. Each probe assembly must have a leak-free attachment to the sorbent trap(s). Each sorbent trap must be mounted at the entrance of or within the probe such that the gas sampled enters the trap directly. Each probe/sorbent trap assembly must be heated to a temperature sufficient to prevent liquid condensation in the sorbent trap(s). Auxiliary heating is required only where the stack temperature is too low to prevent condensation. Use a calibrated thermocouple to monitor the stack temperature. A single probe capable of operating the paired sorbent traps may be used. Alternatively, individual probe/sorbent trap assemblies may be used, provided that the individual sorbent traps are co-located to ensure representative Hg monitoring and are sufficiently separated to prevent aerodynamic interference.

(C) Moisture Removal Device. A robust moisture removal device or system, suitable for continuous duty (such as a Peltier cooler), must be used to remove water vapor from the gas stream prior to entering the dry gas meter.

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(D) Vacuum Pump. Use a leak-tight, vacuum pump capable of operating within the candidate system's flow range.

(E) Dry Gas Meter. A dry gas meter must be used to determine total sample volume. The meter must be sufficiently accurate to measure the total sample volume within 2 percent, must be calibrated at the selected flow rate and conditions actually encountered during sampling, and must be equipped with a temperature sensor capable of measuring typical meter temperatures accurately to within 30C for correcting final sample volume.

(F) Sample Flow Rate Meter and Controller. Use a flow rate indicator and controller for maintaining necessary sampling flow rates.

(G) Temperature Sensor. Same as Section 6.1.1.7 of Method 5 in appendix A-3 to 40 CFR part 60.

(H) Barometer. Same as Section 6.1.2 of Method 5 in appendix A-3 to 40 CFR part 60.

(I) Data Logger (Optional). Device for recording associated and necessary ancillary information (e.g., temperatures, pressures, flow, time, etc.).

(b) Gaseous Hg<sub>0</sub> Sorbent Trap Spiking System. A known mass of gaseous Hg<sub>0</sub> must be spiked onto section 3 of each sorbent trap prior to sampling. Any approach capable of quantitatively delivering known masses of Hg<sub>0</sub> onto sorbent traps is acceptable. Several technologies or devices are available to meet this objective. Their practicality is a function of Hg mass spike levels. For low levels, NIST-certified or NIST-traceable gas generators or tanks may be suitable, but will likely require long preparation times. A more practical, alternative system, capable of delivering almost any mass required, makes use of NIST-certified or NIST-traceable Hg salt solutions (e.g., Hg(NO<sub>3</sub>)<sub>2</sub>). With this system, an aliquot of known volume and concentration is added to a reaction vessel containing a reducing agent (e.g., stannous chloride); the Hg salt solution is reduced to Hg<sub>0</sub> and purged onto section 3 of the sorbent trap using an impinger sparging system.

(c) Sample Analysis Equipment. Any analytical system capable of quantitatively recovering and quantifying total gaseous Hg from sorbent media is acceptable provided that the analysis can meet the performance criteria in section (8) of this rule. Candidate recovery techniques include leaching, digestion, and thermal desorption. Candidate analytical techniques include ultraviolet atomic fluorescence (UV AF); ultraviolet atomic absorption (UV AA), with and without gold trapping; and in situ X-ray fluorescence (XRF) analysis.

(6) Reagents and Standards. Only NIST-certified or NIST-traceable calibration gas standards and reagents (or other standards approved by the Department, if NIST-certified or traceable standards are not available) must be used for the tests and procedures required under this rule.

(7) Sample Collection and Transport.

(a) Pre-Test Procedures.

(A) Selection of Sampling Site. Sampling site information should be obtained in accordance with Method 1 in appendix A-1 to 40 CFR part 60. Identify a monitoring location representative of source Hg emissions. Locations shown to be free of stratification through measurement traverses for gases such as SO<sub>2</sub> and NO<sub>x</sub> may be one such approach. An estimation of the expected stack Hg concentration is required to establish a target sample flow rate, total gas sample volume, and the mass of Hg<sub>0</sub> to be spiked onto section 3 of each sorbent trap.

(B) Pre-Sampling Spiking of Sorbent Traps. Based on the estimated Hg concentration in the stack, the target sample rate and the target sampling duration, calculate the expected mass loading for section 1 of each sorbent trap (for an example calculation, see subsection (12)(a) of this rule). The pre-sampling spike to be added to section 3 of each sorbent trap must be within ± 50 percent of the expected section 1 mass loading. Spike section 3 of each sorbent trap at this level, as described in subsection (5)(b) of this rule. For each sorbent trap, keep an official record of the mass of Hg<sub>0</sub> added to section 3. This record must include, at a minimum, the ID number of the trap, the date and time of the spike, the name of the analyst performing the procedure, the mass of Hg<sub>0</sub> added to section 3 of the trap (µg), and the supporting calculations. This record must be maintained in a format suitable for inspection and audit and must be made available to the regulatory agencies upon request.

(C) Pre-test Leak Check. Perform a leak check with the sorbent traps in place. Draw a vacuum in each sample train. Adjust the vacuum in the sample train to ± 15" Hg. Using the dry gas meter, determine leak rate. The leakage rate must not exceed 4 percent of the target sampling rate. Once the leak check passes this criterion, carefully release the vacuum in the sample train then seal the sorbent trap inlet until the probe is ready for insertion into the stack or duct.

(D) Determination of Flue Gas Characteristics. Determine or measure the flue gas measurement environment characteristics (gas temperature, static pressure, gas velocity, stack moisture, etc.) in order to determine ancillary requirements such as probe heating requirements (if any), initial sample rate, proportional sampling conditions, moisture management, etc.

(b) Sample Collection.

(A) Remove the plug from the end of each sorbent trap and store each plug in a clean sorbent trap storage container. Remove the stack or duct port cap and insert the probe(s). Secure the probe(s) and ensure that no leakage occurs between the duct and environment.

(B) Record initial data including the sorbent trap ID, start time, starting dry gas meter readings, initial temperatures, setpoints, and any other appropriate information.

(C) Flow Rate Control. Set the initial sample flow rate at the target value from paragraph (7)(a)(A) of this rule. Record the initial dry gas meter reading, stack temperature, meter temperatures, etc. Then, for every operating hour during the sampling period, record the date and time, the sample flow rate, the gas meter reading, the stack temperature, the flow meter temperatures, temperatures of heated equipment such as the vacuum lines and the probes (if heated), and the sampling system vacuum readings. Also record the stack gas flow rate, as measured by the certified flow monitor, and the ratio of the stack gas flow rate to the sample flow rate. Adjust the sampling flow rate to maintain proportional sampling, i.e., keep the ratio of the stack gas flow rate to sample flow rate constant, to within ± 25 percent of the reference ratio from the first hour of the data collection period (see section (11) of this rule). The sample flow rate through a sorbent trap monitoring system during any hour (or portion of an hour) in which the unit is not operating shall be zero.

(D) Stack Gas Moisture Determination. Determine stack gas moisture using a continuous moisture monitoring system, as described in 40 CFR 75.11(b). Alternatively, the owner or operator may use the appropriate fuel-specific moisture default value provided in 40 CFR 75.11, or a site specific moisture default value approved by petition under 40 CFR 75.66.

(E) Essential Operating Data. Obtain and record any essential operating data for the facility during the test period, e.g., the barometric pressure must be obtained for correcting sample volume to standard conditions. At the end of the data collection period, record the final dry gas meter reading and the final values of all other essential parameters.

(F) Post Test Leak Check. When sampling is completed, turn off the sample pump, remove the probe/sorbent trap from the port and carefully re-plug the end of each sorbent trap. Perform a leak check with the sorbent traps in place, at the maximum vacuum reached during the sampling period. Use the same general approach described in paragraph (7)(a)(C) of this rule. Record the leakage rate and vacuum. The leakage rate must not exceed 4 percent of the average sampling rate for the data collection period. Following the leak check, carefully release the vacuum in the sample train.

(G) Sample Recovery. Recover each sampled sorbent trap by removing it from the probe, sealing both ends. Wipe any deposited material from the outside of the sorbent trap. Place the sorbent trap into an appropriate sample storage container and store/preserve in appropriate manner.

(H) Sample Preservation, Storage, and Transport. While the performance criteria of this approach provide for verification of appropriate sample handling, it is still important that the user consider, determine, and plan for suitable sample preservation, storage, transport, and holding times for these measurements. Therefore, procedures in ASTM D6911-03 "Standard Guide for Packaging and Shipping Environmental Samples for Laboratory Analysis" must be followed for all samples.

(I) Sample Custody. Proper procedures and documentation for sample chain of custody are critical to ensuring data integrity. The chain of custody procedures in ASTM D4840-99 (reapproved 2004) "Standard Guide for Sample Chain-of-Custody Procedures" must be followed for all samples (including field samples and blanks).

(8) Quality Assurance and Quality Control. The owner and operator using a sorbent trap monitoring system must develop and implement a quality assurance/quality control (QA/QC) program. At a minimum, include in each QA/QC program a written plan that describes in detail (or that refers to separate documents containing) complete, step-by-step procedures and operations. Upon request from the Department, the owner or operator must make all procedures, maintenance records, and ancillary supporting documentation from the manufacturer (e.g., software coefficients and troubleshooting diagrams) available for review during an audit. Electronic storage of the information in the QA/QC plan is permissible, provided that the information can be made available in hardcopy upon request during an audit. Table 2 to this division summarizes the QA/QC performance criteria that are used to validate the Hg emissions data from sorbent trap monitoring systems, including the relative accuracy test audit (RATA) requirement (see section 6.5.7 of appendix A to 40 CFR part 75 and section 2.3 of appendix B to 40 CFR part 75, except that for sorbent trap monitoring systems, RATAs must be performed annually, i.e., once every four successive QA operating quarters). The RATA must meet the requirements in OAR 340-228-0621(3)(d)(C)(iii). Except as provided in OAR 340-228-0617(8) and as otherwise indicated in Table 2 to this division, failure to achieve these performance criteria will result in invalidation of Hg emissions data.

(9) Quality Assurance and Quality Control Plan Content. In addition to section 1 of Appendix B to 40 CFR part 75, the QA/QC plan must contain the following:

(a) Sorbent Trap Identification and Tracking. Include procedures for inscribing or otherwise permanently marking a unique identification number on each sorbent trap, for tracking purposes. Keep records of the ID of the monitoring system in which each sorbent trap is used, and the dates and hours of each Hg collection period.

(b) Monitoring System Integrity and Data Quality. Explain the procedures used to perform the leak checks when a sorbent trap is placed in serv-

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ice and removed from service. Also explain the other QA procedures used to ensure system integrity and data quality, including, but not limited to, dry gas meter calibrations, verification of moisture removal, and ensuring air-tight pump operation. In addition, the QA plan must include the data acceptance and quality control criteria in section (8) of this rule.

(c) Hg Analysis. Explain the chain of custody employed in packing, transporting, and analyzing the sorbent traps (see paragraphs (7)(b)(H) and (I) of this rule). Keep records of all Hg analyses. The analyses must be performed in accordance with the procedures described in section (11) of this rule.

(d) Laboratory Certification. The QA Plan must include documentation that the laboratory performing the analyses on the carbon sorbent traps is certified by the International Organization for Standardization (ISO) to have a proficiency that meets the requirements of ISO 17025. Alternatively, if the laboratory performs the spike recovery study described in subsection (11)(c) of this rule and repeats that procedure annually, ISO certification is not required.

(10) Calibration and Standardization.

(a) Only NIST-certified and NIST-traceable calibration standards (i.e., calibration gases, solutions, etc.) (or other standards approved by the Department if NIST-certified or traceable standards are not available) must be used for the spiking and analytical procedures in this rule.

(b) Dry Gas Meter Calibration. Prior to its initial use, perform a full calibration of the metering system at three orifice settings to determine the average dry gas meter coefficient (Y), as described in section 10.3.1 of Method 5 in appendix A-3 to 40 CFR part 60. Thereafter, recalibrate the metering system quarterly at one intermediate orifice setting, as described in section 10.3.2 of Method 5 in appendix A-3 to 40 CFR part 60. If a quarterly recalibration shows that the value of Y has changed by more than 5 percent, repeat the full calibration of the metering system to determine a new value of Y.

(c) Thermocouples and Other Temperature Sensors. Use the procedures and criteria in section 10.3 of Method 2 in appendix A-1 to 40 CFR part 60 to calibrate in-stack temperature sensors and thermocouples. Dial thermometers must be calibrated against mercury-in-glass thermometers. Calibrations must be performed prior to initial use and at least quarterly thereafter. At each calibration point, the absolute temperature measured by the temperature sensor must agree to within  $\pm 1.5$  percent of the temperature measured with the reference sensor, otherwise the sensor may not continue to be used.

(d) Barometer. Calibrate against a mercury barometer. Calibration must be performed prior to initial use and at least quarterly thereafter. At each calibration point, the absolute pressure measured by the barometer must agree to within  $\pm 10$  mm Hg of the pressure measured by the mercury barometer, otherwise the barometer may not continue to be used.

(e) Other Sensors and Gauges. Calibrate all other sensors and gauges according to the procedures specified by the instrument manufacturer(s).

(f) Analytical System Calibration. See subsection (10)(a) of this rule.

(11) Analytical Procedures. The analysis of the Hg samples may be conducted using any instrument or technology capable of quantifying total Hg from the sorbent media and meeting the performance criteria in section (8) of this rule.

(a) Analyzer System Calibration. Perform a multipoint calibration of the analyzer at three or more upscale points over the desired quantitative range (multiple calibration ranges must be calibrated, if necessary). The field samples analyzed must fall within a calibrated, quantitative range and meet the necessary performance criteria. For samples that are suitable for aliquoting, a series of dilutions may be needed to ensure that the samples fall within a calibrated range. However, for sorbent media samples that are consumed during analysis (e.g., thermal desorption techniques), extra care must be taken to ensure that the analytical system is appropriately calibrated prior to sample analysis. The calibration curve range(s) should be determined based on the anticipated level of Hg mass on the sorbent media. Knowledge of estimated stack Hg concentrations and total sample volume may be required prior to analysis. The calibration curve for use with the various analytical techniques (e.g., UV AA, UV AF, and XRF) can be generated by directly introducing standard solutions into the analyzer or by spiking the standards onto the sorbent media and then introducing into the analyzer after preparing the sorbent/standard according to the particular analytical technique. For each calibration curve, the value of the square of the linear correlation coefficient, i.e.,  $r^2$ , must be  $\geq 0.99$ , and the analyzer response must be within  $\pm 10$  percent of reference value at each upscale calibration point. Calibrations must be performed on the day of the analysis, before analyzing any of the samples. Following calibration, an independently prepared standard (not from same calibration stock solution) must be analyzed. The measured value of the independently prepared standard must be within  $\pm 10$  percent of the expected value.

(b) Sample Preparation. Carefully separate the three sections of each sorbent trap. Combine for analysis all materials associated with each section, i.e., any supporting substrate that the sample gas passes through prior to entering a media section (e.g., glass wool, polyurethane foam, etc.) must be analyzed with that segment.

(c) Spike Recovery Study. Before analyzing any field samples, the laboratory must demonstrate the ability to recover and quantify Hg from the sorbent media by performing the following spike recovery study for sorbent media traps spiked with elemental mercury. Using the procedures described in subsections (5)(b) and (11)(a) of this rule, spike the third section of nine

sorbent traps with gaseous Hg<sub>0</sub>, i.e., three traps at each of three different mass loadings, representing the range of masses anticipated in the field samples. This will yield a 3 x 3 sample matrix. Prepare and analyze the third section of each spiked trap, using the techniques that will be used to prepare and analyze the field samples. The average recovery for each spike concentration must be between 85 and 115 percent. If multiple types of sorbent media are to be analyzed, a separate spike recovery study is required for each sorbent material. If multiple ranges are calibrated, a separate spike recovery study is required for each range.

(d) Field Sample Analyses. Analyze the sorbent trap samples following the same procedures that were used for conducting the spike recovery study. The three sections of the sorbent trap must be analyzed separately (i.e., section 1, then section 2, then section 3). Quantify the mass of total Hg for each section based on analytical system response and the calibration curve from subsection (10)(a) of this rule. Determine the spike recovery from sorbent trap section 3. Pre-sampling spike recoveries must be between 75 and 125 percent. To report final Hg mass, normalize the data for sections 1 and 2 based on the sample-specific spike recovery, and add the normalized masses together.

(12) Calculations and Data Analysis.

(a) Calculation of Pre-Sampling Spiking Level. Determine sorbent trap section 3 spiking level using estimates of the stack Hg concentration, the target sample flow rate, and the expected sample duration. First, calculate the expected Hg mass that will be collected in section 1 of the trap. The presampling spike must be within  $\pm 50$  percent of this mass. Example calculation: For an estimated stack Hg concentration of 5  $\mu\text{g}/\text{m}^3$ , a target sample rate of 0.30 L/min, and a sample duration of 5 days:

$$(0.30 \text{ L/min}) (1440 \text{ min/day}) (5 \text{ days}) (10^{-3} \text{ m}^3/\text{liter}) (5 \mu\text{g}/\text{m}^3) = 10.8 \mu\text{g}$$

A pre-sampling spike of 10.8  $\mu\text{g} \pm 50$  percent is, therefore, appropriate.

(b) Calculations for Flow-Proportional Sampling. For the first hour of the data collection period, determine the reference ratio of the stack gas volumetric flow rate to the sample flow rate, as follows:

$$\text{Rref} = K \times \text{Qref} / \text{Fref}$$

Where:

Rref = Reference ratio of hourly stack gas flow rate to hourly sample flow rate

Qref = Average stack gas volumetric flow rate for first hour of collection period, adjusted for bias, if necessary according to section 7.6.5 of appendix A to 40 CFR part 75, (scfh)

Fref = Average sample flow rate for first hour of the collection period, in appropriate units (e.g., liters/min, cc/min, dscm/min)

K = Power of ten multiplier, to keep the value of Rref between 1 and 100. The appropriate K value will depend on the selected units of measure for the sample flow rate. Then, for each subsequent hour of the data collection period, calculate ratio of the stack gas flow rate to the sample flow rate using the following equation:

$$\text{Rh} = K \times \text{Qh} / \text{Fh}$$

Where:

Rh = Ratio of hourly stack gas flow rate to hourly sample flow rate

Qh = Average stack gas volumetric flow rate for the hour, adjusted for bias, if necessary, according to section 7.6.5 of appendix A to 40 CFR part 75, (scfh)

Fh = Average sample flow rate for the hour, in appropriate units (e.g., liters/min, cc/min, dscm/min)

K = Power of ten multiplier, to keep the value of Rh between 1 and 100. The appropriate K value will depend on the selected units of measure for the sample flow rate and the range of expected stack gas flow rates.

Maintain the value of Rh within  $\pm 25$  percent of Rref throughout the data collection period.

(c) Calculation of Spike Recovery. Calculate the percent recovery of each section 3 spike, as follows:

$$\%R = (\text{M3}/\text{Ms}) \times 100$$

Where:

%R = Percentage recovery of the presampling spike

M3 = Mass of Hg recovered from section 3 of the sorbent trap, ( $\mu\text{g}$ )

Ms = Calculated Hg mass of the pre-sampling spike, from paragraph (7)(a)(B) of this rule, ( $\mu\text{g}$ )

(d) Calculation of Breakthrough. Calculate the percent breakthrough to the second section of the sorbent trap, as follows:

$$\%B = (\text{M2}/\text{M1}) \times 100$$

Where:

%B = Percent breakthrough

M2 = Mass of Hg recovered from section 2 of the sorbent trap, ( $\mu\text{g}$ )

M1 = Mass of Hg recovered from section 1 of the sorbent trap, ( $\mu\text{g}$ )

(e) Normalizing Measured Hg Mass for Section 3 Spike Recoveries. Based on the results of the spike recovery in subsection (12)(c) of this rule, normalize the Hg mass collected in sections 1 and 2 of the sorbent trap, as follows:

$$\text{M}^* = ((\text{M1} + \text{M2}) \times \text{Ms}) / \text{M3}$$

Where:

M\* = Normalized total mass of Hg recovered from sections 1 and 2 of the sorbent trap, ( $\mu\text{g}$ )

M1 = Mass of Hg recovered from section 1 of the sorbent trap, unadjusted, ( $\mu\text{g}$ )

M2 = Mass of Hg recovered from section 2 of the sorbent trap, unadjusted, ( $\mu\text{g}$ )

Ms = Calculated Hg mass of the pre-sampling spike, from paragraph (7)(a)(B) of this rule, ( $\mu\text{g}$ )

M3 = Mass of Hg recovered from section 3 of the sorbent trap, ( $\mu\text{g}$ )

(f) Calculation of Hg Concentration. Calculate the Hg concentration for each sorbent trap, using the following equation:

$$\text{C} = \text{M}^* / \text{Vt}$$

Where:

C = Concentration of Hg for the collection period, ( $\mu\text{g}/\text{dscm}$ )

M\* = Normalized total mass of Hg recovered from sections 1 and 2 of the sorbent trap, ( $\mu\text{g}$ )

Vt = Total volume of dry gas metered during the collection period, (dscm). For the purposes of this rule, standard temperature and pressure are defined as 20°C and 760 mm Hg, respectively.



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(g) Calculation of Paired Trap Agreement. Calculate the relative deviation (RD) between the Hg concentrations measured with the paired sorbent traps as follows:

$$RD = (|Ca - Cb| / (Ca + Cb)) \times 100$$

Where:

RD = Relative deviation between the Hg concentrations from traps "a" and "b" (percent)

Ca = Concentration of Hg for the collection period, for sorbent trap "a" ( $\mu\text{g}/\text{dscm}$ )

Cb = Concentration of Hg for the collection period, for sorbent trap "b" ( $\mu\text{g}/\text{dscm}$ )

(h) Calculation of Hg Mass Emissions. To calculate Hg mass emissions, follow the procedures in OAR 340-228-0619(1)(b). Use the average of the two Hg concentrations from the paired traps in the calculations, except as provided in OAR 340-228-0617(8) or in Table 2 to this division.

(13) Method Performance. These monitoring criteria and procedures have been applied to coal-fired utility boilers (including units with post-combustion emission controls), having vapor-phase Hg concentrations ranging from 0.03  $\mu\text{g}/\text{dscm}$  to 100  $\mu\text{g}/\text{dscm}$ .

Stat. Auth.: ORS 468.020 & 468A.310

Stats. Implemented: ORS 468A.025

Hist.: DEQ 15-2008, f. & cert. ef. 12-31-08; DEQ 8-2009, f. & cert. ef. 12-16-09

## 340-228-0639

### Fuel Analyses and Procedures

(1) The owner or operator must conduct fuel analyses according to the procedures in sections (2) through (5) of this rule and Table 4 to this division, as applicable.

(2) The owner or operator must develop and submit a site-specific fuel analysis plan to the Department for review and approval according to the following procedures and requirements in subsections (2)(a) and (b) of this rule.

(a) The owner or operator must submit the fuel analysis plan no later than 60 days before the date that the owner or operator intends to demonstrate compliance.

(b) The owner or operator must include the information contained in paragraphs (2)(b)(A) through (F) of this rule in the fuel analysis plan.

(A) The identification of all fuel types anticipated to be burned in each boiler or process heater.

(B) For each fuel type, the notification of whether the owner or operator or a fuel supplier will be conducting the fuel analysis.

(C) For each fuel type, a detailed description of the sample location and specific procedures to be used for collecting and preparing the composite samples if the procedures are different from section (3) or (4) of this rule. Samples should be collected at a location that most accurately represents the fuel type, where possible, at a point prior to mixing with other dissimilar fuel types.

(D) For each fuel type, the analytical methods, with the expected minimum detection levels, to be used for the measurement of selected total metals, chlorine, or mercury.

(E) If requesting to use an alternative analytical method other than those required by Table 4 to this division, the owner or operator must also include a detailed description of the methods and procedures that will be used.

(F) If using fuel analysis from a fuel supplier in lieu of site-specific sampling and analysis, the fuel supplier must use the analytical methods required by Table 4 to this division.

(3) At a minimum, the owner or operator must obtain three composite fuel samples for each fuel type according to the procedures in subsection (3)(a) or (b) of this rule.

(a) If sampling from a belt (or screw) feeder, collect fuel samples according to paragraphs (3)(a)(A) and (B) of this rule.

(A) Stop the belt and withdraw a 6-inch wide sample from the full cross-section of the stopped belt to obtain a minimum two pounds of sample. Collect all the material (fines and coarse) in the full cross-section. Transfer the sample to a clean plastic bag.

(B) Each composite sample will consist of a minimum of three samples collected at approximately equal intervals during the testing period.

(b) If sampling from a fuel pile or truck, collect fuel samples according to paragraphs (3)(b)(A) through (C) of this rule.

(A) For each composite sample, select a minimum of five sampling locations uniformly spaced over the surface of the pile.

(B) At each sampling site, dig into the pile to a depth of 18 inches. Insert a clean flat square shovel into the hole and withdraw a sample, making sure that large pieces do not fall off during sampling.

(C) Transfer all samples to a clean plastic bag for further processing.

(4) Prepare each composite sample according to the procedures in subsections (4)(a) through (f) of this rule.

(a) Thoroughly mix and pour the entire composite sample over a clean plastic sheet.

(b) Break sample pieces larger than 3 inches into smaller sizes.

(c) Make a pie shape with the entire composite sample and subdivide it into four equal parts.

(d) Separate one of the quarter samples as the first subset.

(e) Grind the sample in a mill.

(f) If the subset is too large for grinding, repeat the procedures in subsection (4)(c) of this rule to obtain a one-quarter subsample for analysis. If the quarter sample is too large, subdivide it further using the same procedure.

(5) Determine the concentration of pollutants in the fuel (mercury, chlorine, and/or total selected metals) in units of pounds per million Btu of each composite sample for each fuel type according to the procedures in Table 6 to this subpart.

Stat. Auth.: ORS 468.020 & 468A.310

Stats. Implemented: ORS 468A.025

Hist.: DEQ 8-2009, f. & cert. ef. 12-16-09

## 340-238-0040

### Definitions

The definitions in OAR 340-200-0020 and this rule apply to this division. If the same term is defined in this rule and OAR 340-200-0020, the definition in this rule applies to this division.

(1) "Administrator" means the Administrator of the EPA or authorized representative.

(2) "Alternative method" means any method of sampling and analyzing for an air pollutant that is not a reference or equivalent method but that has been demonstrated to the DEQ's satisfaction to, in specific cases, produce results adequate for determination of compliance.

(3) "Capital expenditures" means an expenditure for a physical or operational change to an existing facility that exceeds the product of the applicable "annual asset guideline repair allowance percentage" specified in **Internal Revenue Service (IRS) Publication 534** and the existing facility's basis, as defined by section 1012 of the Internal Revenue Code. However, the total expenditure for a physical or operational change to an existing facility must not be reduced by any "excluded additions" as defined in IRS Publication 534, as would be done for tax purposes.

(4) "CFR" means Code of Federal Regulations and, unless otherwise expressly identified, refers to the July 1, 2009 edition.

(5) "Closed municipal solid waste landfill" (closed landfill) means a landfill in which solid waste is no longer being placed, and in which no additional solid wastes will be placed without first filing a notification of modification as prescribed under 40 CFR 60.7(a)(4). Once a notification of modification has been filed, and additional solid waste is placed in the landfill, the landfill is no longer closed. A landfill is considered closed after meeting the criteria of 40 CFR 258.60.

(6) "Commenced", with respect to the definition of "new source" in section 111(a)(2) of the federal Clean Air Act, means that an owner or operator has undertaken a continuous program of construction or modification or that an owner or operator has entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction or modification.

(7) "Construction" means fabrication, erection, or installation of a facility.

(8) "Department" means the Department of Environmental Quality or, in the case of Lane County, the Lane Regional Air Protection Agency.

(9) "Environmental Protection Agency" or "EPA" means the United States Environmental Protection Agency.

(10) "Existing municipal solid waste landfill" (existing landfill) means a municipal solid waste landfill that began construction, reconstruction or modification before 5/30/91 and has accepted waste at any time since 11/08/87 or has additional design capacity available for future waste deposition.

(11) "Equivalent method" means any method of sampling and analyzing for an air pollutant that has been demonstrated to the Department's satisfaction to have a consistent and quantitatively known relationship to the reference method, under specified conditions.

(12) "Existing facility", with reference to a stationary source, means any apparatus of the type for which a standard is promulgated in 40 CFR Part 60, and the construction or modification of which commenced before the date of proposal by EPA of that standard; or any apparatus that could be altered in such a way as to be of that type.

(13) "Facility" means all or part of any public or private building, structure, installation, equipment, vehicle or vessel, including, but not limited to, ships.

(14) "Fixed capital cost" means the capital needed to provide all the depreciable components.

(15) "Large municipal solid waste landfill" (large landfill) means a municipal solid waste landfill with a design capacity greater than or equal to 2.5 million megagrams or 2.5 million cubic meters.

(16) "Modification:"

(a) except as provided in subsection (b) of this section, means any physical change in, or change in the method of operation of, an existing facility that increases the amount of any air pollutant (to which a standard applies) emitted into the atmosphere by that facility or that results in the emission of any air pollutant (to which a standard applies) into the atmosphere not previously emitted;

(b) As used in OAR 340-238-0100 means an action that results in an increase in the design capacity of a landfill.

(17) "Municipal solid waste landfill" (landfill) means an entire disposal facility in a contiguous geographical space where household waste is placed in or on land. A municipal solid waste landfill may also receive other types of RCRA Subtitle D wastes such as commercial solid waste, nonhaz-

# ADMINISTRATIVE RULES

ardous sludge, conditionally exempt small quantity generator waste, and industrial solid waste. Portions of a municipal solid waste landfill may be separated by access roads and may be publicly or privately owned. A municipal solid waste landfill may be a new municipal solid waste landfill, an existing municipal solid waste landfill, or a lateral expansion (modification).

(18) "New municipal solid waste landfill" (new landfill) means a municipal solid waste landfill that began construction, reconstruction or modification or began accepting waste on or after 5/30/91.

(19) "Particulate matter" means any finely divided solid or liquid material, other than uncombined water, as measured by an applicable reference method, or an equivalent or alternative method.

(20) "Reconstruction" means the replacement of components of an existing facility to such an extent that:

(a) The fixed capital cost of the new components exceeds 50 percent of the fixed capital cost that would be required to construct a comparable entirely new facility; and

(b) It is technologically and economically feasible to meet the applicable standards set forth in 40 CFR Part 60.

(21) "Reference method" means any method of sampling and analyzing for an air pollutant as specified in 40 CFR Part 60.

(22) "Small municipal solid waste landfill" (small landfill) means a municipal solid waste landfill with a design capacity less than 2.5 million megagrams or 2.5 million cubic meters.

(23) "Standard" means a standard of performance proposed or promulgated under 40 CFR Part 60.

(24) "State Plan" means a plan developed for the control of a designated pollutant provided under 40 CFR Part 60.

(25) "Stationary source" means any building, structure, facility, or installation that emits or may emit any air pollutant subject to regulation under the federal Clean Air Act.

(26) "Volatile organic compounds" or "VOC" means any organic compounds that participate in atmospheric photochemical reactions; or that are measured by a reference method, an equivalent method, an alternative method, or that are determined by procedures specified under any applicable rule.

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.025

Hist.: DEQ 97, f. & cert. ef. 9-25-75; DEQ 22-1982, f. & cert. ef. 10-21-82; DEQ 17-1983, f. & cert. ef. 10-19-83; DEQ 16-1984, f. & cert. ef. 8-21-84; DEQ 15-1985, f. & cert. ef. 10-21-85; DEQ 19-1986, f. & cert. ef. 11-7-86; DEQ 17-1987, f. & cert. ef. 8-24-87; DEQ 24-1989, f. & cert. ef. 10-26-89; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 17-1993, f. & cert. ef. 11-4-93; DEQ 22-1995, f. & cert. ef. 10-6-95; DEQ 27-1996, f. & cert. ef. 12-11-96; DEQ 8-1997, f. & cert. ef. 5-6-97; DEQ 22-1998, f. & cert. ef. 10-21-98; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-025-0510; DEQ 22-2000, f. & cert. ef. 12-18-00; DEQ 4-2003, f. & cert. ef. 2-06-03; DEQ 2-2005, f. & cert. ef. 2-10-05; DEQ 2-2006, f. & cert. ef. 3-14-06; DEQ 13-2006, f. & cert. ef. 12-22-06; DEQ 15-2008, f. & cert. ef. 12-31-08; DEQ 8-2009, f. & cert. ef. 12-16-09

## 340-244-0030

### Definitions

The definitions in OAR 340-200-0020, 340-218-0030 and this rule apply to this division. If the same term is defined in this rule and OAR 340-200-0020 or 340-218-0030, the definition in this rule applies to this division.

(1) "Accidental Release" means an unanticipated emission of a regulated substance or other extremely hazardous substance into the ambient air from a stationary source.

(2) "Act" and "FCAA" mean the Federal Clean Air Act, Public Law 88-206 as last amended by Public Law 101-549.

(3) "Annual throughput" means the amount of gasoline transferred into a gasoline dispensing facility during 12 consecutive months.

(4) "Area Source" means any stationary source which has the potential to emit hazardous air pollutants but is not a major source of hazardous air pollutants.

(5) "CFR" means Code of Federal Regulations and, unless otherwise expressly identified, refers to the July 1, 2009 edition.

(6) "Commission" means the Oregon Environmental Quality Commission.

(7) "Construct a major source" means to fabricate, erect, or install at any greenfield site a stationary source or group of stationary sources which is located within a contiguous area and under common control and which emits or has the potential to emit 10 tons per year of any HAPs or 25 tons per year of any combination of HAP, or to fabricate, erect, or install at any developed site a new process or production unit which in and of itself emits or has the potential to emit 10 tons per year of any HAP or 25 tons per year of any combination of HAP, unless the process or production unit satisfies criteria in paragraphs (a) through (f) of this definition:

(a) All HAP emitted by the process or production unit that would otherwise be controlled under the requirements of 40 CFR Part 63, Subpart B will be controlled by emission control equipment which was previously installed at the same site as the process or production unit;

(b) The Department has determined within a period of 5 years prior to the fabrication, erection, or installation of the process or production unit that the existing emission control equipment represented the best available control technology (BACT), lowest achievable emission rate (LAER) under 40 CFR part 51 or 52, toxics-best available control technology (T-BACT), or MACT

based on State air toxic rules for the category of pollutants which includes those HAP to be emitted by the process or production unit; or the Department determines that the control of HAP emissions provided by the existing equipment will be equivalent to that level of control currently achieved by other well-controlled similar sources (i.e., equivalent to the level of control that would be provided by a current BACT, LAER, T-BACT, or State air toxic rule MACT determination).

(c) The Department determines that the percent control efficiency for emission of HAP from all sources to be controlled by the existing control equipment will be equivalent to the percent control efficiency provided by the control equipment prior to the inclusion of the new process or production unit;

(d) The Department has provided notice and an opportunity for public comment concerning its determination that criteria in paragraphs (a), (b), and (c) of this definition apply and concerning the continued adequacy of any prior LAER, BACT, T-BACT, or State air toxic rule MACT determination;

(e) If any commenter has asserted that a prior LAER, BACT, T-BACT, or State air toxic rule MACT determination is no longer adequate, the Department has determined that the level of control required by that prior determination remains adequate; and

(f) Any emission limitations, work practice requirements, or other terms and conditions upon which the above determinations by the Department are predicated will be construed by the Department as applicable requirements under section 504(a) and either have been incorporated into any existing Title V permit for the affected facility or will be incorporated into such permit upon issuance.

(8) "Department" means the Department of Environmental Quality.

(9) "Director" means the Director of the Department or Regional Agency, and authorized deputies or officers.

(10) "Dual-point vapor balance system" means a type of vapor balance system in which the storage tank is equipped with an entry port for a gasoline fill pipe and a separate exit port for a vapor connection.

(11) "Emission" means a release into the atmosphere of any regulated pollutant or air contaminant.

(12) "Emissions Limitation" and "Emissions Standard" mean a requirement adopted by the Department or Regional Agency, or proposed or promulgated by the Administrator of the EPA, which limits the quantity, rate, or concentration of emissions of air pollutants on a continuous basis, including any requirements which limit the level of opacity, prescribe equipment, set fuel specifications, or prescribe operation or maintenance procedures for a source to assure continuous emission reduction.

(13) "Emissions Unit" means any part or activity of a stationary source that emits or has the potential to emit any regulated air pollutant.

(a) A part of a stationary source is any machine, equipment, raw material, product, or by-product that produces or emits air pollutants. An activity is any process, operation, action, or reaction (e.g., chemical) at a stationary source that emits air pollutants. Except as described in paragraph (d) of this definition, parts and activities may be grouped for purposes of defining an emissions unit provided the following conditions are met:

(A) The group used to define the emissions unit may not include discrete parts or activities to which a distinct emissions standard applies or for which different compliance demonstration requirements apply; and

(B) The emissions from the emissions unit are quantifiable.

(b) Emissions units may be defined on a pollutant by pollutant basis where applicable;

(c) The term "emissions unit" is not meant to alter or affect the definition of the term "unit" for purposes of Title IV of the FCAA;

(d) Parts and activities cannot be grouped for determining emissions increases from an emissions unit under OAR 340-224-0050 through 340-224-0070, or OAR 340 division 210, or for determining the applicability of a New Source Performance Standard (NSPS).

(14) "EPA" means the Administrator of the United States Environmental Protection Agency or the Administrator's designee.

(15) "Equipment leaks" means leaks from pumps, compressors, pressure relief devices, sampling connection systems, open ended valves or lines, valves, connectors, agitators, accumulator vessels, and instrumentation systems in hazardous air pollutant service.

(16) "Existing Source" means any source, the construction of which commenced prior to proposal of an applicable standard under sections 112 or 129 of the FCAA.

(17) "Facility" means all or part of any public or private building, structure, installation, equipment, or vehicle or vessel, including but not limited to ships.

(18) "Fugitive Emissions" means emissions of any air contaminant that escape to the atmosphere from any point or area that is not identifiable as a stack, vent, duct or equivalent opening.

(19) "Gasoline cargo tank" means a delivery tank truck or railcar which is loading gasoline or which has loaded gasoline on the immediately previous load.

(20) "Gasoline dispensing facility (GDF)" means any stationary facility which dispenses gasoline into the fuel tank of a motor vehicle. In Clackamas, Multnomah and Washington Counties, the Medford-Ashland Air Quality Maintenance Area, and the Salem-Keizer Area Transportation Study

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area, "gasoline dispensing facility" means any stationary facility which dispenses gasoline into the fuel tank of a motor vehicle, boat, or airplane.

(21) "Hazardous Air Pollutant" (HAP) means an air pollutant listed by the EPA pursuant to section 112(b) of the FCAA or determined by the Commission to cause, or reasonably be anticipated to cause, adverse effects to human health or the environment.

(22) "Major Source" means any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit considering controls, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants. The EPA may establish a lesser quantity, or in the case of radionuclides different criteria, for a major source on the basis of the potency of the air pollutant, persistence, potential for bioaccumulation, other characteristics of the air pollutant, or other relevant factors.

(23) "Maximum Achievable Control Technology (MACT)" means an emission standard applicable to major sources of hazardous air pollutants that requires the maximum degree of reduction in emissions deemed achievable for either new or existing sources.

(24) "Monthly throughput" means the total volume of gasoline that is loaded into all gasoline storage tanks during a month, as calculated on a rolling 30-day average.

(25) "New Source" means a stationary source, the construction of which is commenced after proposal of a federal MACT or January 3, 1993 of this Division, whichever is earlier.

(26) "Person" means the United States Government and agencies thereof, any state, individual, public or private corporation, political subdivision, governmental agency, municipality, industry, co-partnership, association, firm, trust, estate, or any other legal entity whatsoever.

(27) "Potential to Emit" means the maximum capacity of a stationary source to emit any air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation is enforceable by the EPA. This section does not alter or affect the use of this section for any other purposes under the Act, or the term "capacity factor" as used in Title IV of the Act or the regulations promulgated thereunder. Secondary emissions shall not be considered in determining the potential to emit of a source.

(28) "Reconstruct a Major Source" means the replacement of components at an existing process or production unit that in and of itself emits or has the potential to emit 10 tons per year of any HAP or 25 tons per year of any combination of HAP, whenever: the fixed capital cost of the new components exceeds 50 percent of the fixed capital cost that would be required to construct a comparable process or production unit; and; it is technically and economically feasible for the reconstructed major source to meet the applicable maximum achievable control technology emission limitation for new sources established under 40 CFR Part 63 Subpart B.

(29) "Regional Agency" means Lane Regional Air Protection Agency.

(30) "Regulated Air Pollutant" as used in this Division means:

- (a) Any pollutant listed under OAR 340-200-0400 or 340-244-0230; or
- (b) Any pollutant that is subject to a standard promulgated pursuant to Section 129 of the Act.

(31) "Secondary Emissions" means emissions from new or existing sources which occur as a result of the construction and/or operation of a source or modification, but do not come from the source itself. Secondary emissions shall be specific, well defined, and quantifiable, and impact the same general area as the source associated with the secondary emissions. Secondary emissions may include but are not limited to:

(a) Emissions from ships and trains coming to or from a facility;

(b) Emissions from onsite support facilities which would be constructed or would otherwise increase emissions as a result of the construction of a source or modification.

(32) "Section 111" means that section of the FCAA that includes standards of performance for new stationary sources.

(33) "Section 112(b)" means that subsection of the FCAA that includes the list of hazardous air pollutants to be regulated.

(34) "Section 112(d)" means that subsection of the FCAA that directs the EPA to establish emission standards for sources of hazardous air pollutants. This section also defines the criteria to be used by EPA when establishing the emission standards.

(35) "Section 112(e)" means that subsection of the FCAA that directs the EPA to establish and promulgate emissions standards for categories and subcategories of sources that emit hazardous air pollutants.

(36) "Section 112(n)" means that subsection of the FCAA that includes requirements for the EPA to conduct studies on the hazards to public health prior to developing emissions standards for specified categories of hazardous air pollutant emission sources.

(37) "Section 112(r)" means that subsection of the FCAA that includes requirements for the EPA promulgate regulations for the prevention, detection and correction of accidental releases.

(38) "Section 129" means that section of the FCAA that requires EPA to promulgate regulations for solid waste combustion.

(39) "Solid Waste Incineration Unit" as used in this Division shall have the same meaning as given in Section 129(g) of the FCAA.

(40) "Stationary Source":

(a) As used in OAR 340 division 244 means any building, structure, facility, or installation which emits or may emit any regulated air pollutant;

(b) As used in OAR 340-244-0230 means any buildings, structures, equipment, installations, or substance emitting stationary activities:

(A) That belong to the same industrial group;

(B) That are located on one or more contiguous properties;

(C) That are under the control of the same person (or persons under common control); and

(D) From which an accidental release may occur.

(41) "Submerged filling" means, for the purposes of this subpart, the filling of a gasoline storage tank through a submerged fill pipe whose discharge is no more than the applicable distance specified in OAR 340-244-0242(2) from the bottom of the tank. Bottom filling of gasoline storage tanks is included in this definition.

(42) "Topping off" means, in the absence of equipment malfunction, continuing to fill a gasoline tank after the nozzle has clicked off.

(43) "Vapor balance system" means a combination of pipes and hoses that create a closed system between the vapor spaces of an unloading gasoline cargo tank and a receiving storage tank such that vapors displaced from the storage tank are transferred to the gasoline cargo tank being unloaded.

(44) "Vapor-tight" means equipment that allows no loss of vapors. Compliance with vapor-tight requirements can be determined by checking to ensure that the concentration at a potential leak source is not equal to or greater than 100 percent of the Lower Explosive Limit when measured with a combustible gas detector, calibrated with propane, at a distance of 1 inch from the source.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 468.020 & 468A.025

Stats. Implemented: ORS 468A.040

Hist.: DEQ 13-1993, f. & cert. ef. 9-24-93; DEQ 18-1993, f. & cert. ef. 11-4-93; DEQ 24-1994, f. & cert. ef. 10-28-94; DEQ 22-1995, f. & cert. ef. 10-6-95; DEQ 26-1996, f. & cert. ef. 11-26-96; DEQ 20-1997, f. & cert. ef. 9-25-97; DEQ 18-1998, f. & cert. ef. 10-5-98; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-032-0120; DEQ 2-2005, f. & cert. ef. 2-10-05; DEQ 2-2006, f. & cert. ef. 3-14-06; DEQ 13-2006, f. & cert. ef. 12-22-06; DEQ 15-2008, f. & cert. ef. 12-31-08; DEQ 8-2009, f. & cert. ef. 12-16-09

## 340-244-0220

### Federal Regulations Adopted by Reference

(1) Except as provided in sections (2) and (3) of this rule, **40 CFR Part 61, Subparts A, C through F, J, L, N through P, V, and Y through FF and 40 CFR Part 63, Subparts A, F through TTTTTT, and WWWWWW through ZZZZZZ** are adopted by reference and incorporated herein.

(2) Where "Administrator" or "EPA" appears in 40 CFR Part 61 or 63, "Department" is substituted, except in any section of 40 CFR Part 61 or 63, for which a federal rule or delegation specifically indicates that authority will not be delegated to the state.

(3) 40 CFR Part 63 Subpart M — Dry Cleaning Facilities using Perchloroethylene: The exemptions in 40 CFR 63.320(d) and (e) do not apply.

(4) 40 CFR Part 61 Subparts adopted by this rule are titled as follows:

(a) Subpart A — General Provisions;

(b) Subpart C — Beryllium;

(c) Subpart D — Beryllium Rocket Motor Firing;

(d) Subpart E — Mercury;

(e) Subpart F — Vinyl Chloride;

(f) Subpart J — Equipment Leaks (Fugitive Emission Sources) of

Benzene;

(g) Subpart L — Benzene Emissions from Coke By-Product Recovery Plants;

(h) Subpart N — Inorganic Arsenic Emissions from Glass Manufacturing Plants;

(i) Subpart O — Inorganic Arsenic Emissions from Primary Copper Smelters;

(j) Subpart P — Inorganic Arsenic Emissions from Arsenic Trioxide and Metal Arsenic Facilities;

(k) Subpart V — Equipment Leaks (Fugitive Emission Sources);

(l) Subpart Y — Benzene Emissions from Benzene Storage Vessels;

(m) Subpart BB — Benzene Emissions from Benzene Transfer Operations; and

(n) Subpart FF — Benzene Waste Operations.

(5) 40 CFR Part 63 Subparts adopted by this rule are titled as follows:

(a) Subpart A — General Provisions;

(b) Subpart F — SOCFI;

(c) Subpart G — SOCFI — Process Vents, Storage Vessels, Transfer Operations, and Wastewater;

(d) Subpart H — SOCFI — Equipment Leaks;

(e) Subpart I — Certain Processes Subject to the Negotiated Regulation for Equipment Leaks;

(f) Subpart J — Polyvinyl Chloride and Copolymers Production;

(g) Subpart L — Coke Oven Batteries;

(h) Subpart M — Perchloroethylene Air Emission Standards for Dry Cleaning Facilities;

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- (i) Subpart N — Chromium Emissions from Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks;
- (j) Subpart O — Ethylene Oxide Emissions Standards for Sterilization Facilities;
- (k) Subpart Q — Industrial Process Cooling Towers;
- (l) Subpart R — Gasoline Distribution (Bulk Gasoline Terminals and Pipeline Breakout Stations);
- (m) Subpart S — Pulp and Paper Industry;
- (n) Subpart T — Halogenated Solvent Cleaning;
- (o) Subpart U — Group I Polymers and Resins;
- (p) Subpart W — Epoxy Resins and Non-Nylon Polyamides
- Production;
- (q) Subpart X — Secondary Lead Smelting;
- (r) Subpart Y — Marine Tank Vessel Loading Operations;
- (s) Subpart AA — Phosphoric Acid Manufacturing Plants;
- (t) Subpart BB — Phosphate Fertilizer Production Plants;
- (u) Subpart CC — Petroleum Refineries;
- (v) Subpart DD — Off-Site Waste and Recovery Operations;
- (w) Subpart EE — Magnetic Tape Manufacturing Operations;
- (x) Subpart GG — Aerospace Manufacturing and Rework Facilities;
- (y) Subpart HH — Oil and Natural Gas Production Facilities;
- (z) Subpart II — Shipbuilding and Ship Repair (Surface Coating);
- (aa) Subpart JJ — Wood Furniture Manufacturing Operations;
- (bb) Subpart KK — Printing and Publishing Industry;
- (cc) Subpart LL — Primary Aluminum Reduction Plants;
- (dd) Subpart MM — Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite and Stand-Alone Semi-Chemical Pulp Mills;
- (ee) Subpart OO — Tanks — Level 1;
- (ff) Subpart PP — Containers;
- (gg) Subpart QQ — Surface Impoundments;
- (hh) Subpart RR — Individual Drain Systems;
- (ii) Subpart SS — Closed Vent Systems, Control Devices, Recovery Devices and Routing to a Fuel Gas System or a Process;
- (jj) Subpart TT — Equipment Leaks — Control Level 1;
- (kk) Subpart UU — Equipment Leaks — Control Level 2;
- (ll) Subpart VV — Oil-Water Separators and Organic-Water Separators;
- (mm) Subpart WW — Storage Vessels (Tanks) — Control Level 2;
- (nn) Subpart XX — Ethylene Manufacturing Process Units: Heat Exchange Systems and Waste Operations;
- (oo) Subpart YY — Generic Maximum Achievable Control Technology Standards;
- (pp) Subpart CCC — Steel Pickling — HCl Process Facilities and Hydrochloric Acid Regeneration Plants;
- (qq) Subpart DDD — Mineral Wool Production;
- (rr) Subpart EEE — Hazardous Waste Combustors;
- (ss) Subpart GGG — Pharmaceuticals Production;
- (tt) Subpart HHH — Natural Gas Transmission and Storage Facilities;
- (uu) Subpart III — Flexible Polyurethane Foam Production;
- (vv) Subpart JJJ — Group IV Polymers and Resins;
- (ww) Subpart LLL — Portland Cement Manufacturing Industry;
- (xx) Subpart MMM — Pesticide Active Ingredient Production;
- (yy) Subpart NNN — Wool Fiberglass Manufacturing;
- (zz) Subpart OOO — Manufacture of Amino/Phenolic Resins;
- (aaa) Subpart PPP — Polyether Polyols Production;
- (bbb) Subpart QQQ — Primary Copper Smelting;
- (ccc) Subpart RRR — Secondary Aluminum Production;
- (ddd) Subpart TTT — Primary Lead Smelting;
- (eee) Subpart UUU — Petroleum Refineries — Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units;
- (fff) Subpart VVV — Publicly Owned Treatment Works;
- (ggg) Subpart XXX — Ferroalloys Production: Ferromanganese and Silicomanganese;
- (hhh) Subpart AAAA — Municipal Solid Waste Landfills;
- (iii) Subpart CCCC — Manufacturing of Nutritional Yeast;
- (jjj) Subpart DDDD — Plywood and Composite Wood Products;
- (kkk) Subpart EEEE — Organic Liquids Distribution (non-gasoline);
- (lll) Subpart FFFF — Miscellaneous Organic Chemical Manufacturing;
- (mmm) Subpart GGGG — Solvent Extraction for Vegetable Oil
- Production;
- (nnn) Subpart HHHH — Wet Formed Fiberglass Mat Production;
- (ooo) Subpart IIII — Surface Coating of Automobiles and Light-Duty Trucks;
- (ppp) Subpart JJJJ — Paper and Other Web Coating;
- (qqq) Subpart KKKK — Surface Coating of Metal Cans;
- (rrr) Subpart MMMM — Surface Coating of Miscellaneous Metal Parts and Products;
- (sss) Subpart NNNN — Surface Coating of Large Appliances;
- (ttt) Subpart OOOO — Printing, Coating, and Dyeing of Fabrics and Other Textiles;
- (uuu) Subpart PPPP — Surface Coating of Plastic Parts and Products;
- (vvv) Subpart QQQQ — Surface Coating of Wood Building Products;
- (www) Subpart RRRR — Surface Coating of Metal Furniture;
- (xxx) Subpart SSSS — Surface Coating of Metal Coil;
- (yyy) Subpart TTTT — Leather Finishing Operations;
- (zzz) Subpart UUUU — Cellulose Production Manufacturing;
- (aaaa) Subpart VVVV — Boat Manufacturing;
- (bbbb) Subpart WWWW — Reinforced Plastics Composites
- Production;
- (cccc) Subpart XXXX — Rubber Tire Manufacturing;
- (dddd) Subpart YYYY — Stationary Combustion Turbines;
- (eeee) Subpart ZZZZ — Reciprocating Internal Combustion Engines;
- (ffff) Subpart AAAAA — Lime Manufacturing;
- (gggg) Subpart BBBB — Semiconductor Manufacturing;
- (hhhh) Subpart CCCCC — Coke Ovens: Pushing, Quenching & Battery Stacks;
- (jjjj) Subpart EEEEE — Iron and Steel Foundries;
- (kkkk) Subpart FFFFF — Integrated Iron and Steel Manufacturing
- Facilities;
- (llll) Subpart GGGG — Site Remediation;
- (mmmm) Subpart HHHHH — Misc. Coating Manufacturing;
- (nnnn) Subpart IIII — Mercury Cell Chlor-Alkali Plants;
- (oooo) Subpart JJJJ — Brick and Structural Clay Products
- Manufacturing;
- (pppp) Subpart KKKKK — Clay Ceramics Manufacturing;
- (qqqq) Subpart LLLLL — Asphalt Processing & Asphalt Roofing
- Manufacturing;
- (rrrr) Subpart MMMMM — Flexible Polyurethane Foam Fabrication
- Operations;
- (ssss) Subpart NNNNN — Hydrochloric Acid Production;
- (tttt) Subpart PPPPP — Engine Tests Cells/Stands;
- (uuuu) Subpart QQQQQ — Friction Materials Manufacturing
- Facilities;
- (vvvv) Subpart RRRRR — Taconite Iron Ore Processing;
- (wwww) Subpart SSSSS — Refractory Products Manufacturing;
- (xxxx) Subpart TTTTT — Primary Magnesium Refining;
- (yyyy) Subpart WWWW — Area Sources: Hospital Ethylene Oxide
- Sterilization;
- (zzzz) Subpart YYYYY — Area Sources: Electric Arc Furnace
- Steelmaking Facilities;
- (aaaaa) Subpart ZZZZZ — Area Sources: Iron and Steel Foundries;
- (bbbbb) Subpart BBBB — Area Sources: Gasoline Distribution
- Bulk Terminals, Bulk Plants, and Pipeline Facilities;
- (ccccc) Subpart DDDDD — Area Sources: Polyvinyl Chloride and
- Copolymers Production;
- (ddddd) Subpart EEEEE — Area Sources: Primary Copper Smelting;
- (eeeee) Subpart FFFFF — Area Sources: Secondary Copper Smelting;
- (ffffff) Subpart GGGGG — Area Sources: Primary Nonferrous Metals — Zinc, Cadmium, and Beryllium;
- (ggggg) Subpart HHHHH — Area Sources: Paint Stripping and
- Miscellaneous Surface Coating
- Operations
- (hhhhh) Subpart LLLLL — Area Sources: Acrylic and Modacrylic
- Fibers Production;
- (iiii) Subpart MMMMM — Area Sources: Carbon Black Production;
- (jjjj) Subpart NNNNN — Area Sources: Chemical Manufacturing:
- Chromium Compounds;
- (kkkkk) Subpart OOOOO — Area Sources: Flexible Polyurethane
- Foam Production;
- (lllll) Subpart PPPPP — Area Sources: Lead Acid Battery
- Manufacturing;
- (mmmmm) Subpart QQQQQ — Area Sources: Wood Preserving;
- (nnnnn) Subpart RRRRR — Area Sources: Clay Ceramics
- Manufacturing;
- (ooooo) Subpart SSSSS — Area Sources: Glass Manufacturing;
- (ppppp) Subpart TTTTT — Area Sources: Secondary Nonferrous
- Metals Processing;
- (qqqqq) Subpart WWWW — Area Source: Plating and Polishing
- Operations;
- (rrrrr) Subpart XXXXX — Area Source: Nine Metal Fabrication and
- Finishing Source Categories;
- (sssss) Subpart YYYYY — Area Sources: Ferroalloys Production
- Facilities;
- (ttttt) Subpart ZZZZZ — Area Sources: Aluminum, Copper, and Other
- Nonferrous Foundries.

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.025

Hist.: [DEQ 16-1995, f. & cert. ef. 6-21-95; DEQ 28-1996, f. & cert. ef. 12-19-96; DEQ 18-1998, f. & cert. ef. 10-5-98]; [DEQ 18-1993, f. & cert. ef. 11-4-93; DEQ 32-1994, f. & cert. ef. 12-22-94]; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-032-0510, 340-032-5520; DEQ 11-2000, f. & cert. ef. 7-27-00; DEQ 15-2001, f. & cert. ef. 12-26-01; DEQ 4-2003, f. & cert. ef. 2-06-03; DEQ 2-2005, f. & cert. ef. 2-10-05; DEQ 2-2006, f. & cert. ef. 3-14-06; DEQ 15-2008, f. & cert. ef. 12-31-08; DEQ 8-2009, f. & cert. ef. 12-16-09

## 340-244-0238 Compliance Dates

(1) For a new or reconstructed affected source, the owner or operator must comply with the standards in OAR 340-244-0240 and 0242, as applica-

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ble, no later than January 10, 2008 or upon startup, whichever is later, except as follows:

(a) The owner or operator of a new or reconstructed GDF must comply with OAR 340-244-0240(1)(b) and (c) no later than July 1, 2009 or upon startup, whichever is later.

(b) For tanks located at a GDF with average monthly throughput less than 100,000 gallons of gasoline and not listed in OAR 340-244-0234(4)(a)(C) or (4)(b) must comply with OAR 340-244-0242, as applicable, no later than December 13, 2009 or upon startup, whichever is later.

(c) The owner or operator of a GDF subject to Table 4 of this division must comply no later than September 23, 2008 or upon startup, whichever is later.

(2) For an existing affected source, the owner or operator must comply with the standards in OAR 340-244-0240 and 0242, as applicable, by no later than January 10, 2011, except as follows:

(a) For tanks with a capacity between 1,500 and 40,000 gallons and located in the Portland AQMA, Medford AQMA, or Salem SATS, the owner or operator must comply with the standards in OAR 340-244-0240(3) and 0242 no later than December 13, 2008.

(b) For tanks located at an affected source located in Clackamas, Multnomah, or Washington County, whose annual throughput exceeds 120,000 gallons, the owner or operator must comply with the standards in OAR 340-244-0240(3) and 0242 no later than December 13, 2008.

(c) The owner or operator of an existing GDF must comply with OAR 340-244-0240(1)(b) and (c) no later than July 1, 2009 or upon startup, whichever is later.

(3) For an existing affected source that becomes subject to the control requirements in this rule because of an increase in the average monthly throughput, as specified in OAR 340-244-0234(4), the owner or operator must comply with the standards in this rule no later than January 10, 2011 or within 2 years after the affected source becomes subject to the control requirements in this rule, whichever is later.

**NOTE:** This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.

Stat. Auth.: ORS 468.020 & 468A.025

Stats. Implemented: ORS 468A.025

Hist.: DEQ 15-2008, f. & cert. ef. 12-31-08; DEQ 8-2009, f. & cert. ef. 12-16-09

## 340-244-0240

### Work Practice and Submerged Fill Requirements

(1) The owner or operator of a GDF must not allow gasoline to be handled in a manner that would result in vapor releases to the atmosphere for extended periods of time. Measures to be taken include, but are not limited to, the following:

(a) Minimize gasoline spills;

(b) Do not top off or overflow vehicle tanks. If a person can confirm that a vehicle tank is not full after the nozzle clicks off (such as by checking the vehicle's fuel tank gauge), the person may continue to dispense fuel using best judgment and caution to prevent a spill;

(c) Post a sign at the GDF instructing a person filling up a motor vehicle to not top off the vehicle tank;

(d) Clean up spills as expeditiously as practicable;

(e) Cover all open gasoline containers and all gasoline storage tank fill-pipes with a gasketed seal when not in use;

(f) Minimize gasoline sent to open waste collection systems that collect and transport gasoline to reclamation and recycling devices, such as oil/water separators.

(g) Ensure that cargo tanks unloading at the GDF comply with subsections (1)(a) through (e) of this rule.

(2) Any cargo tank unloading at a GDF equipped with a functional vapor balance system must connect to the vapor balance system whenever gasoline is being loaded.

(3) The owner or operator must only load gasoline into storage tanks at the facility by utilizing submerged filling, as defined in OAR 340-244-0030, and as specified in subsection (3)(a) or (3)(b) of this rule.

(a) Submerged fill pipes installed on or before November 9, 2006, must be no more than 12 inches from the bottom of the storage tank.

(b) Submerged fill pipes installed after November 9, 2006, must be no more than 6 inches from the bottom of the storage tank.

(4) Gasoline storage tanks with a capacity of less than 250 gallons are not required to comply with the submerged fill requirements in section (3) of this rule.

(5) The owner or operator must submit the applicable notifications as required under OAR 340-244-0246.

(6) The owner or operator must have records available within 24 hours of a request by the Department to document gasoline throughput.

(7) The owner or operator must comply with the requirements of this rule by the applicable dates specified in OAR 340-244-0238.

**NOTE:** This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.

Stat. Auth.: ORS 468.020 & 468A.025

Stats. Implemented: ORS 468A.025

Hist.: DEQ 15-2008, f. & cert. ef. 12-31-08; DEQ 8-2009, f. & cert. ef. 12-16-09

## 340-244-0242

### Vapor Balance Requirements

(1) Except as provided in section (2) of this rule, the owner or operator of gasoline storage tank listed in OAR 340-244-0234(4), must meet the requirements in either subsection (1)(a) or (1)(b) of this rule.

(a) Each management practice in Table 4 of this division that applies to the GDF.

(b) If, prior to January 10, 2008, the owner or operator operates a vapor balance system at the GDF that meets the requirements of either paragraph (1)(b)(A) or (1)(b)(B) of this rule, the owner or operator will be deemed in compliance with this section.

(A) Achieves emissions reduction of at least 90 percent.

(B) Operates using management practices at least as stringent as those in Table 4 of this division.

(2) Gasoline storage tanks equipped with floating roofs or the equivalent are not required to comply with the control requirements in section (1) of this rule.

(3) Cargo tanks unloading at a GDF must comply with the requirements of OAR 340-244-0240(1) and management practices in Table 5 of this division.

(4) The owner or operator of a GDF subject to section (1) of this rule or having a gasoline storage tank equipped with a vapor balance system, must comply with the following requirements on and after the applicable compliance date in OAR 340-244-0238:

(a) When loading a gasoline storage tank equipped with a vapor balance system, connect and ensure the proper operation of the vapor balance system whenever gasoline is being loaded.

(b) Maintain all equipment associated with the vapor balance system to be vapor tight and in good working order.

(c) In order to ensure that the vapor balance equipment is maintained to be vapor tight and in good working order, have the vapor balance equipment inspected on an annual basis to discover potential or actual equipment failures.

(d) Replace, repair or modify any worn or ineffective component or design element within 24 hours to ensure the vapor-tight integrity and efficiency of the vapor balance system. If repair parts must be ordered, either a written or verbal order for those parts must be initiated within 2 working days of detecting such a leak. Such repair parts must be installed within 5 working days after receipt.

(5) The owner or operator of a GDF subject to section (1) of this rule must also comply with the following requirements:

(a) The applicable testing requirements contained in OAR 340-244-0244.

(b) The applicable notification requirements under OAR 340-244-0246.

(c) The applicable recordkeeping and reporting requirements as specified in OAR 340-244-0248 and 0250.

(d) The owner or operator must have records available within 24 hours of a request by the Department to document gasoline throughput.

**NOTE:** This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.

Stat. Auth.: ORS 468.020 & 468A.025

Stats. Implemented: ORS 468A.025

Hist.: DEQ 15-2008, f. & cert. ef. 12-31-08; DEQ 8-2009, f. & cert. ef. 12-16-09

## 340-244-0246

### Notifications

(1) Each owner or operator subject to the control requirements in OAR 340-244-0240(3) must comply with subsections (1)(a) through (c) of this rule.

(a) The owner or operator must submit an Initial Notification that the owner or operator is subject to the Gasoline Dispensing Facilities NESHAP by May 9, 2008, or at the time the owner or operator becomes subject to the control requirements in OAR 340-244-0240(3), unless the owner or operator meets the requirements in subsection (1)(c) of this rule. The Initial Notification must contain the information specified in paragraphs (1)(a)(A) through (C) of this rule. The notification must be submitted to EPA's Region 10 Office and the Department as specified in 40 CFR 63.13.

(A) The name and address of the owner and the operator.

(B) The address (i.e., physical location) of the GDF.

(C) A statement that the notification is being submitted in response to the Gasoline Dispensing Facilities NESHAP and identifying the requirements in OAR 340-244-0240(1) through (3) that apply to the owner or operator.

(b) The owner or operator must submit a Notification of Compliance Status to EPA's Region 10 Office and the Department, as specified in 40 CFR 63.13, by the compliance date specified in OAR 340-244-0238 unless the owner or operator meets the requirements in subsection (1)(c) of this rule. The Notification of Compliance Status must be signed by a responsible official who must certify its accuracy and must indicate whether the source has complied with the requirements of OAR 340-244-0232 through 0252. If the facility is in compliance with the requirements of OAR 340-244-0232 through 0252 at the time the Initial Notification required under subsection (1)(a) of this rule is due, the Notification of Compliance Status may be sub-

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mitted in lieu of the Initial Notification provided it contains the information required under subsection (1)(a) of this rule.

(c) If, prior to January 10, 2008, the owner or operator is operating in compliance with an enforceable State rule or permit that requires submerged fill as specified in OAR 340-244-0240(3), the owner or operator is not required to submit an Initial Notification or a Notification of Compliance Status under subsection (1)(a) or (b) of this rule.

(2) Each owner or operator subject to the control requirements in OAR 340-244-0242 must comply with subsections (2)(a) through (e) of this rule.

(a) The owner or operator must submit an Initial Notification that the owner or operator is subject to the Gasoline Dispensing Facilities NESHAP by May 9, 2008, or at the time the owner or operator becomes subject to the control requirements in OAR 340-244-0242. The Initial Notification must contain the information specified in paragraphs (2)(a)(A) through (C) of this rule. The notification must be submitted to EPA's Region 10 Office and the Department as specified in 40 CFR 63.13.

(A) The name and address of the owner and the operator.

(B) The address (i.e., physical location) of the GDF.

(C) A statement that the notification is being submitted in response to the Gasoline Dispensing Facilities NESHAP and identifying the requirements in OAR 340-244-0242 that apply to the owner or operator.

(b) The owner or operator must submit a Notification of Compliance Status to EPA's Regional 10 Office and the Department, as specified in 40 CFR 63.13, by the compliance date specified in OAR 340-244-0238. The Notification of Compliance Status must be signed by a responsible official who must certify its accuracy and must indicate whether the source has complied with the requirements of OAR 340-244-0232 through 0252. If the facility is in compliance with the requirements OAR 340-244-0232 through 0252 at the time the Initial Notification required under subsection (2)(a) of this rule is due, the Notification of Compliance Status may be submitted in lieu of the Initial Notification provided it contains the information required under subsection (2)(a) of this rule.

(c) If, prior to January 10, 2008, the owner or operator satisfies the requirements in both paragraphs (2)(c)(A) and (B) of this rule, the owner or operator is not required to submit an Initial Notification or a Notification of Compliance Status if the owner or operator operates a vapor balance system at the gasoline dispensing facility that meets the requirements of either paragraphs (2)(c)(A) or (B) of this rule.

(A) Achieves emissions reduction of at least 90 percent.

(B) Operates using management practices at least as stringent as those in Table 4 of this division.

(d) The owner or operator must submit a Notification of Performance Test, as specified in 40 CFR 63.9(e), prior to initiating testing required by OAR 340-244-0244(1) and (2).

(e) The owner or operator must submit additional notifications specified in 40 CFR 63.9, as applicable.

**NOTE:** This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.

Stat. Auth.: ORS 468.020 & 468A.025

Stats. Implemented: ORS 468A.025

Hist.: DEQ 15-2008, f. & cert. ef. 12-31-08; DEQ 8-2009, f. & cert. ef. 12-16-09

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**Rule Caption:** Adoption of Greenhouse Gas Reporting Fees.

**Adm. Order No.:** DEQ 9-2009(Temp)

**Filed with Sec. of State:** 12-24-2009

**Certified to be Effective:** 1-1-10 thru 6-30-10

**Notice Publication Date:**

**Rules Adopted:** 340-215-0050

**Rules Amended:** 340-216-0020, 340-220-0050

**Subject:** The temporary rule adoption and amendments create fees for sources subject to Oregon's greenhouse gas reporting rules, pursuant to ORS 468A.050(1)(4)(a). The new fees for the calendar year are equal to fifteen percent of the permit fees paid by affected sources in 2009. The new fees apply to subset of sources that hold Air Contaminant Discharge Permits and a subset of sources that hold Title V operating permits. The new fees are capped at \$6,000 for any individual source holding a Title V operating permit.

**Rules Coordinator:** Maggie Vandehey — (503) 229-6878

## 340-215-0050

### Greenhouse Gas Reporting Fees

(1) Any person required to register and report under OAR 340-215-0030(1)(a) must submit greenhouse gas reporting fees to the Department as specified in OAR 340-220-0050(4). The fees must be received by the Department within 30 days after the Department mails the fee invoice.

(2) Any person required to register and report under OAR 340-215-0030(1)(b)–(c) must submit greenhouse gas reporting fees to the Department as specified in OAR Chapter 340, Division 216, Table 2, Part 3. The fees must

be received by the Department within 30 days after the Department mails the fee invoice.

Stat. Auth.: 468A.050

Stats. Implemented: ORS 468 & 468A

Hist.: DEQ 9-2009(Temp), f. 12-24-09, cert. ef. 1-1-10 thru 6-30-10

## 340-216-0020

### Applicability

This division applies to all sources referred to in Table 1. This division also applies to Oregon Title V Operating Permit program sources when an ACDP is required by OAR 340-218-0020 or 340-224-0010. Sources referred to in **Table 1** are subject to fees as set forth in **Table 2**.

(1) No person may construct, install, establish, develop or operate any air contaminant source which is referred to in Table 1 without first obtaining an Air Contaminant Discharge Permit (ACDP) from the Department or Regional Authority, unless otherwise deferred from the requirement to obtain an ACDP in subsection (1)(c) or (d) of this rule. No person may continue to operate an air contaminant source if the ACDP expires, or is terminated or revoked; except as provided in OAR 340-216-0082.

(a) For portable sources, a single permit may be issued for operating at any area of the state if the permit includes the requirements from both the Department and Regional Authorities.

(b) The Department or Regional Authority where the portable source's Corporate offices are located will be responsible for issuing the permit. If the corporate office of a portable source is located outside of the state, the Department will be responsible for issuing the permit.

(c) An air contaminant source required to obtain an ACDP or ACDP Attachment pursuant to a NESHAP or NSPS adopted by the Commission by rule is not required to submit an application for an ACDP or ACDP Attachment until four months after the effective date of the Commission's adoption of the NESHAP or NSPS, and is not required to obtain an ACDP or ACDP Attachment until six months after the Commission's adoption of the NESHAP or NSPS. In addition, the Department may defer the requirement to submit an application for, or to obtain an ACDP or ACDP Attachment, or both, for up to an additional six months.

(d) Gasoline dispensing facilities are not required to submit an application for an ACDP or ACDP Attachment until May 1, 2010 or obtain an ACDP or ACDP attachment until June 1, 2010. The Department may defer the requirement to submit an application for, or to obtain an ACDP or ACDP Attachment, or both, for up to an additional six months.

(e) Deferrals of Oregon permitting requirements do not relieve an air contaminant source from the responsibility of complying with federal NESHAP or NSPS requirements.

(2) No person may construct, install, establish, or develop any source that will be subject to the Oregon Title V Operating Permit program without first obtaining an ACDP from the Department or Regional Authority.

(3) No person may modify any source that has been issued an ACDP without first complying with the requirements of OAR 340-210-0205 through 340-210-0250.

(4) No person may modify any source required to have an ACDP such that the source becomes subject to the Oregon Title V Operating Permit program without complying with the requirements of OAR 340-210-0205 through 340-210-0250.

(5) No person may increase emissions above the PSEL by more than the de minimis levels specified in OAR 340-200-0020 without first applying for and obtaining a modified ACDP.

**NOTE:** This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-211-0040.

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

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A

Hist.: DEQ 47, f. 8-31-72, ef. 9-15-72; DEQ 63, f. 12-20-73, ef. 1-11-74; DEQ 107, f. & ef. 1-6-76; Renumbered from 340-020-0033; DEQ 125, f. & ef. 12-16-76; DEQ 20-1979, f. & ef. 6-29-79; DEQ 23-1980, f. & ef. 9-26-80; DEQ 13-1981, f. 5-6-81, ef. 7-1-81; DEQ 11-1983, f. & ef. 5-31-83; DEQ 3-1986, f. & ef. 2-12-86; DEQ 12-1987, f. & ef. 6-15-87; DEQ 27-1991, f. & cert. ef. 11-29-91; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 12-1993, f. & cert. ef. 9-24-93, Renumbered from 340-020-0155; DEQ 19-1993, f. & cert. ef. 11-4-93; DEQ 22-1994, f. & cert. ef. 10-4-94; DEQ 22-1995, f. & cert. ef. 10-6-95; DEQ 19-1996, f. & cert. ef. 9-24-96; DEQ 22-1996, f. & cert. ef. 10-22-96; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-1720; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; DEQ 4-2002, f. & cert. ef. 3-14-02; DEQ 7-2007, f. & cert. ef. 10-18-07; DEQ 8-2007, f. & cert. ef. 11-8-07; DEQ 15-2008, f. & cert. ef. 12-31-08; DEQ 8-2009, f. & cert. ef. 12-16-09; DEQ 9-2009(Temp), f. 12-24-09, cert. ef. 1-1-10 thru 6-30-10

## 340-220-0050

### Specific Activity Fees

(1) The Department will assess specific activity fees for an Oregon Title V Operating Permit program source for the period of August 21, 2007 to August 25, 2008 as follows:

(a) Existing Source Permit Revisions:

(A) Administrative\* — \$406;

(B) Simple — \$1,626;

(C) Moderate — \$12,194;

(D) Complex — \$24,387.

(b) Ambient Air Monitoring Review — \$3,252.

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(2) The Department will assess specific activity fees for an Oregon Title V Operating Permit program source for the period of August 26, 2008 to August 25, 2009 as follows:

(a) Existing Source Permit Revisions:

(A) Administrative\* — \$418;

(B) Simple — \$1,672;

(C) Moderate — \$12,540;

(D) Complex — \$25,081.

(b) Ambient Air Monitoring Review — \$3,344.

(3) The Department will assess specific activity fees for an Oregon Title V Operating Permit program source as of August 26, 2009 as follows:

(a) Existing Source Permit Revisions:

(A) Administrative\* — \$437;

(B) Simple — \$1,748;

(C) Moderate — \$13,115;

(D) Complex — \$26,231.

(b) Ambient Air Monitoring Review — \$3,497.

(4) The Department will assess the following specific activity fee for an Oregon Title V Operating Permit program source for greenhouse gas reporting, as required by OAR 340-215-0050(1), due in calendar year 2010 — Fifteen percent of the following, not to exceed \$6,000:

(a) The applicable annual base fee paid for the period 11/15/2009 to 11/14/2010; and

(b) The applicable annual emission fee paid for emissions during calendar year 2008.

\*Includes revisions specified in OAR 340-218-0150(1)(a) through (g). Other revisions specified in 340-218-0150 are subject to simple, moderate or complex revision fees.

Stat. Auth.: ORS 468 & 468A

Stats. Implemented: ORS 468 & 468A

Hist.: DEQ 20-1993(Temp), f. & cert. ef. 11-4-93; DEQ 13-1994, f. & cert. ef. 5-19-94; DEQ 12-1998, f. & cert. ef. 6-30-98; DEQ 10-1999, f. & cert. ef. 7-1-99; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-2600; DEQ 8-2000, f. & cert. ef. 6-6-00; DEQ 6-2001, f. & cert. ef. 7-1-01; DEQ 7-2001, f. & cert. ef. 6-28-01, cert. ef. 7-1-01; DEQ 11-2003, f. & cert. ef. 7-23-03; DEQ 6-2004, f. & cert. ef. 7-29-04; DEQ 6-2005, f. & cert. ef. 7-11-05; DEQ 7-2006, f. & cert. ef. 6-30-06; DEQ 6-2007(Temp), f. & cert. ef. 8-17-07 thru 2-12-08; Administrative correction 2-22-08; DEQ 10-2008, f. & cert. ef. 8-25-08; DEQ 4-2009(Temp), f. & cert. ef. 8-27-09 thru 2-20-10; DEQ 9-2009(Temp), f. 12-24-09, cert. ef. 1-1-10 thru 6-30-10

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**Rule Caption:** Onsite program application fee increase.

**Adm. Order No.:** DEQ 10-2009

**Filed with Sec. of State:** 12-28-2009

**Certified to be Effective:** 1-4-10

**Notice Publication Date:** 9-1-2009

**Rules Amended:** 340-071-0140

**Subject:** Onsite program costs have increased 3.89% per year on average over the past 9 years. Applications fees have not increased in the past 10 years. Application fees are proposed to increase by up to 60% to account for these cost increases and take into account rising costs through 2015. The fee increase will support 2.5 staff positions that are currently unaffordable and will provide year round operating reserves. These fees are found in Tables 9 A, B, C, & F, which will be updated through this rulemaking.

The fee increase will primarily impact the estimated 2,500 applicants per year for site evaluations, permits and other reports associated with development and redevelopment of properties that utilize septic systems in counties where DEQ administers the onsite program directly (currently 14 of 36 counties). Manufacturers of products proposed for use in septic systems in Oregon will also be impacted by this fee increase.

**Rules Coordinator:** Maggie Vandehey—(503) 229-6878

## 340-071-0140

### Onsite System Fees

(1) This rule establishes the fees for site evaluations, permits, reports, variances, licenses, and other services the department provides under this division.

(2) Site evaluation and existing system evaluation fees are listed in Table 9A.

(3) Permitting fees for systems not subject to WPCF permits are listed in Table 9B and Table 9C.

(4) WPCF permit fees. Fees in this section apply to WPCF permits issued pursuant to OAR 340-071-0162. WPCF permit fees are listed in Table 9D.

(5) Innovative or Alternative Technology or Material Review fees are listed in Table 9F.

(6) Material Plan Review fees are listed in Table 9F.

(7) Sewage Disposal Service License and Truck Inspection fees are listed in Table 9E.

(8) Contract county fee schedules.

(a) Each county having an agreement with the department under ORS 454.725 must adopt a fee schedule for services rendered and permits issued. The county fee schedule may not include the department's surcharge established in section (9) of this rule unless identified as a department surcharge.

(b) A copy of the fee schedule and any subsequent amendments to the schedule must be submitted to the department.

(c) Fees may not exceed actual costs for efficiently conducted services.

(9) Department surcharge.

(a) To offset a portion of the administrative and program oversight costs of the statewide onsite wastewater management program, the department and contract counties must levy a surcharge for each site evaluation, report permit, and other activity for which an application is required in this division. The surcharge fee is listed in Table 9F. This surcharge does not apply to sewage disposal service license applications, pumper truck inspections, annual report evaluation fees, or certification of installers or maintenance providers.

(b) Proceeds from surcharges collected by the department and contract counties must be accounted for separately. Each contract county must forward the proceeds to the department in accordance with its agreement with the department.

(10) Refunds. The department may refund all or a portion of a fee accompanying an application if the applicant withdraws the application before any field work or other substantial review of the application has been done.

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

Stat. Auth.: ORS 454.625, 468.020 & 468.065(2)

Stats. Implemented: ORS 454.745, 468.065 & 468B.050

Hist.: DEQ 10-1981, f. & cert. ef. 3-20-81; DEQ 19-1981, f. 7-23-81, ef. 7-27-81; DEQ 5-1982, f. & cert. ef. 3-9-82; DEQ 8-1983, f. & cert. ef. 5-25-83; DEQ 9-1984, f. & cert. ef. 5-29-84; DEQ 13-1986, f. & cert. ef. 6-18-86; DEQ 15-1986, f. & cert. ef. 8-6-86; DEQ 6-1988, f. & cert. ef. 3-17-88; DEQ 11-1991, f. & cert. ef. 7-3-91; DEQ 18-1994, f. 7-28-94, cert. ef. 8-1-94; DEQ 27-1994, f. & cert. ef. 11-15-94; DEQ 12-1997, f. & cert. ef. 6-19-97; Administrative correction 1-28-98; DEQ 8-1998, f. & cert. ef. 6-5-98; DEQ 16-1999, f. & cert. ef. 12-29-99; Administrative correction 2-16-00; DEQ 9-2001(Temp), f. & cert. ef. 7-16-01 thru 12-28-01; DEQ 14-2001, f. & cert. ef. 12-26-01; DEQ 2-2002, f. & cert. ef. 2-12-02; DEQ 11-2004, f. 12-22-04, cert. ef. 3-1-05; DEQ 7-2008, f. 6-27-08, cert. ef. 7-1-08; DEQ 10-2009, f. 12-28-09, cert. ef. 1-4-10

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## Department of Fish and Wildlife Chapter 635

**Rule Caption:** Diamond Lake Management Plan.

**Adm. Order No.:** DFW 150-2009

**Filed with Sec. of State:** 12-16-2009

**Certified to be Effective:** 1-1-10

**Notice Publication Date:** 8-1-2009

**Rules Amended:** 635-500-0703

**Subject:** Amended rule modifies the Diamond Lake Management Plan and directs Diamond Lake be managed under the Basic Yield Management Alternative of the Oregon Trout Management Plan. Additions have been made to the plan to provide management direction to monitor the fishery to evaluate potential impacts and avoid stressing the lake's ecosystem. The updated plan also provides for the prevention and control of illegal fish introductions and other invasive species.

**Rules Coordinator:** Therese Kucera—(503) 947-6033

## 635-500-0703

### Diamond Lake

Policies and objectives for fish management in Diamond Lake in the upper Umpqua Basin.

(1) Policies:

(a) Fingerling, legal and trophy sized rainbow trout shall be managed for hatchery production consistent with the Basic Yield Management Alternative of Oregon's Trout Plan (OAR 635-500-0115(4));

(b) Annual fingerling rainbow trout stocking will provide the primary fish production in Diamond Lake; and

(c) Legal and trophy sized rainbow trout may be stocked annually to enhance trout production;

(2) Objectives:

(a) Provide quality, consumptive angling opportunities for hatchery produced trout;

(b) Conduct ecologically based fishery monitoring and evaluations necessary to maintain ecologically based fishery objectives and healthy lake ecology; and

(c) Provide for the prevention and control of illegally introduced fish species.

Stat. Auth.: ORS 496.138, 496.146, 506.119

Stats. Implemented: ORS 506.109, 506.129

Hist.: FWC 117-1990, f. & cert. ef. 10-15-90; DFW 150-2009, f. 12-16-09, cert. ef. 1-1-10





# ADMINISTRATIVE RULES

(d) 6:00 p.m. Tuesday February 9 to 6:00 p.m. Wednesday February 10, 2010; and

(e) 6:00 p.m. Tuesday February 16 to 6:00 p.m. Wednesday February 17, 2010.

(4) White sturgeon and salmon must be delivered to wholesale fish dealers, cannerys, or fish buyers undressed (in the round).

(5) It is unlawful to:

(a) Take sturgeon and salmon by angling from any vessel that is engaged in commercial fishing (including the period of time the gear is fished) or has been engaged in commercial fishing on that same day or has commercially caught sturgeon or salmon aboard;

(b) Steal or otherwise molest or disturb any lawful fishing gear;

(c) Keep any fish taken under a commercial license for personal use;

(d) Remove the head or tail of any white sturgeon taken for commercial purposes prior to being received at the premises of a wholesale fish dealer or cannery;

(e) Sell or attempt to sell unprocessed or processed sturgeon eggs that have been taken from the Columbia River below Bonneville Dam;

(f) Purchase from commercial fishermen sturgeon eggs which have been removed from the body cavity prior to sale;

(g) Have in possession any white sturgeon smaller than 43 inches or larger than 54 inches in fork length;

(h) Gaff or penetrate sturgeon in any way while landing or releasing it.

(6) The Sandy River closed sanctuary, described in OAR 625-042-0005, is in effect during the fishing periods described in subsection (3) of this rule.

Stat. Auth.: ORS 183.325, 506.109 & 506.119

Stats. Implemented: ORS 506.129 & 507.030

Hist.: FWC 85, f. & ef. 1-28-77; FWC 2-1978, f. & ef. 1-31-78; FWC 7-1978, f. & ef. 2-21-78; FWC 2-1979, f. & ef. 1-25-79; Renumbered from 635-035-0320; FWC 6-1980, f. & ef. 1-28-80; FWC 1-1981, f. & ef. 1-19-81; FWC 6-1982, f. & ef. 1-28-82; FWC 20-1982(Temp), f. & ef. 3-25-82; FWC 3-1983, f. & ef. 1-21-83; FWC 4-1984, f. & ef. 1-31-84; FWC 4-1986 (Temp), f. & ef. 1-28-86; FWC 79-1986(Temp), f. & ef. 12-22-86; FWC 2-1987, f. & ef. 1-23-87; FWC 8-1992, f. & cert. ef. 2-11-92; FWC 11-1993, f. 2-11-93, cert. ef. 2-16-93; FWC 9-1994, f. 2-14-94, cert. ef. 2-15-94; FWC 16-1994(Temp), f. & cert. ef. 3-3-94; FWC 3-1997, f. & cert. ef. 1-27-97; FWC 8-1997(Temp), f. & cert. ef. 2-14-97; FWC 42-1997, f. & cert. ef. 8-4-97; DFW 2-1998(Temp), f. 1-9-98, cert. ef. 1-12-98 thru 1-23-98; DFW 58-1998(Temp), f. & cert. ef. 8-4-98 thru 8-21-98; DFW 82-1998(Temp), f. 10-6-98, cert. ef. 10-7-98 thru 10-23-98; DFW 84-1998(Temp), f. & cert. ef. 10-22-98 thru 10-23-98; DFW 86-1998(Temp), f. & cert. ef. 10-28-98 thru 10-30-98; DFW 87-1998(Temp), f. & cert. ef. 11-5-98 thru 11-6-98; DFW 101-1998, f. & cert. ef. 12-24-98; DFW 7-1999(Temp), f. 2-12-99 & cert. ef. 2-15-99 thru 2-19-99; DFW 11-1999(Temp), f. 2-24-99, cert. ef. 2-25-99 thru 2-26-99; DFW 52-1999(Temp), f. & cert. ef. 8-2-99 thru 8-6-99; Administrative correction 11-17-99; DFW 95-1999(Temp), f. 12-22-99, cert. ef. 12-26-99 thru 1-21-00; DFW 3-2000, f. & cert. ef. 1-24-00; DFW 42-2000, f. & cert. ef. 8-3-00; DFW 80-2000(Temp), f. 12-22-00, cert. ef. 1-1-01 thru 3-31-01; DFW 3-2001, f. & cert. ef. 2-6-01; DFW 115-2001(Temp), f. 12-13-01, cert. ef. 1-1-02 thru 3-31-02; DFW 9-2002, f. & cert. ef. 2-1-02; DFW 11-2002(Temp), f. & cert. ef. 2-8-02 thru 8-7-02; DFW 134-2002(Temp), f. & cert. ef. 12-19-02 thru 4-1-03; DFW 8-2003(Temp), f. 1-27-03, cert. ef. 1-28-03 thru 4-1-03; DFW 10-2003(Temp), f. & cert. ef. 2-3-03 thru 4-1-03; DFW 131-2003(Temp), f. 12-26-03, cert. ef. 1-1-04 thru 4-1-04; DFW 7-2004(Temp), f. & cert. ef. 2-2-04 thru 4-1-04; DFW 130-2004(Temp), f. 12-23-04, cert. ef. 1-1-05 thru 4-1-05; DFW 7-2005(Temp), f. & cert. ef. 2-22-05 thru 4-1-05; Administrative correction 4-20-05; DFW 145-2005(Temp), f. 12-21-05, cert. ef. 1-1-06 thru 3-31-06; DFW 3-2006(Temp), f. & cert. ef. 1-27-06 thru 3-31-06; DFW 5-2006, f. & cert. ef. 2-15-06; DFW 131-2006(Temp), f. 12-20-06, cert. ef. 1-1-07 thru 6-29-07; DFW 8-2007(Temp), f. 2-12-07, cert. ef. 2-13-07 thru 8-11-07; DFW 9-2007, f. & cert. ef. 2-14-07; DFW 135-2007(Temp), f. 12-28-07, cert. ef. 1-1-08 thru 6-28-08; DFW 6-2008(Temp), f. 1-29-08, cert. ef. 1-31-08 thru 7-28-08; DFW 10-2008, f. & cert. ef. 2-11-08; DFW 14-2008(Temp), f. & cert. ef. 2-21-08 thru 8-18-08; Administrative correction 9-29-08; DFW 148-2008(Temp), f. 12-19-08, cert. ef. 1-1-09 thru 6-29-09; DFW 6-2009(Temp), f. 1-30-09, cert. ef. 2-2-09 thru 8-1-09; Administrative correction 8-21-09; DFW 151-2009(Temp), f. 12-22-09, cert. ef. 1-1-10 thru 3-31-10

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**Rule Caption:** Adopt Temporary Rules Related to Wolves in Captivity in Oregon.

**Adm. Order No.:** DFW 152-2009(Temp)

**Filed with Sec. of State:** 12-23-2009

**Certified to be Effective:** 1-1-10 thru 6-29-10

**Notice Publication Date:**

**Rules Adopted:** 635-044-0051

**Subject:** These rules regulate the holding of wolves in captivity.

**Rules Coordinator:** Therese Kucera—(503) 947-6033

## 635-044-0051

### Holding Wolves in Captivity

On January 1, 2010, SB 391 (Oregon Laws 2009, Chapter 492) will change the agency responsible for regulating the holding of wolves in captivity from the Department of Agriculture to the Department of Fish and Wildlife. This temporary rule is intended to maintain the current substance of regulation until the Fish and Wildlife Commission can consider permanent rules in the Spring of 2010. This rule governs the holding in captivity of pure

bred wolves in Oregon, with the objective of protecting the public's native wildlife. Any person who, as of December 31, 2009, held a wolf or wolves in captivity under a current Oregon Department of Agriculture, Class 1 Exotic Canine, Exotic Animal Permit may continue to hold such wolf or wolves so long as the person complies with all requirements of OAR 603-011-0725 (as in effect December 31, 2009). The Department will not issue any new authorizations to hold a wolf or wolves in captivity.

Stat. Auth.: ORS 498.002, 496.171 - 182

Stats. Implemented: ORS 498.002, 496.171 - 182

Hist.: DFW 152-2009(Temp), f. 12-23-09, cert. ef. 1-1-10 thru 6-29-10

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**Rule Caption:** Set the 2010 Harvest Quota for the Commercial Roe Herring Fishery in Yaquina Bay.

**Adm. Order No.:** DFW 153-2009(Temp)

**Filed with Sec. of State:** 12-23-2009

**Certified to be Effective:** 1-1-10 thru 4-15-10

**Notice Publication Date:**

**Rules Amended:** 635-004-0027

**Subject:** Amended rule sets the 2010 harvest quota for the Yaquina Bay commercial roe herring fishery. Under OAR 635-004-0027, this harvest quota shall not exceed 20% of the available spawning biomass, as established in the Yaquina Bay Basin Fish Management Operating Principles and Objectives found in OAR 635-500-0665(2). The available spawning biomass shall be determined by ODFW Fish Division's Marine Resources Program (MRP). The MRP has determined that 20% of the available spawning biomass yields a harvest quota of 117 tons for the 2010 Yaquina Bay commercial roe herring fishery.

**Rules Coordinator:** Therese Kucera—(503) 947-6033

## 635-004-0027

### Inland Waters Herring Season

There is no closed season for the commercial taking of herring in inland waters except:

(1) In all inland waters except Yaquina Bay, herring taken during the period January 1 through April 15 may only be sold for use as bait.

(2) In Yaquina Bay:

(a) The open season for the taking of herring is January 1 through December 31.

(b) The yearly harvest quota for the Yaquina Bay commercial roe herring fishery during the period of January 1 through April 15 shall not exceed 20% of the available spawning biomass as established in the Yaquina River Basin Fish Management Operating Principles and Objectives 635-500-0665(2). The available spawning biomass shall be determined by the ODFW Fish Division's Marine Resources Program.

(A) The harvest quota for the Yaquina Bay commercial roe herring fishery during the period January 1 through April 15, 2010 is 117 tons.

(B) Only fishers with a limited entry permit issued pursuant to ORS 508.765 may participate in this fishery.

(c) The factor used to convert an equivalent amount of "whole fish" resource in the Yaquina Bay commercial roe herring fishery during the period of January 1 through April 15 to the equivalent amount of herring eggs on kelp fishery is 0.2237.

(d) During the period January 1 through April 15 it is unlawful to:

(A) Fish commercially from midnight Friday through midnight Sunday with nets;

(B) Use any fishing gear or method of harvest for the taking of herring other than: a purse seine with a maximum length of 50 fathoms (300 feet), defined as the maximum distance from the first to last pursuing rings on the purse line; lampara net; hook and line "jiggging;" or eggs-on-kelp method.

Stat. Auth.: ORS 506.109, 506.119

Stats. Implemented: ORS 506.129

Hist.: FWC 50-1979, f. & ef. 11-1-79; FWC 67-1980, f. & ef. 12-3-80; FWC 4-1983, f. 1-28-83, ef. 2-1-83; FWC 8-1983(Temp), f. & ef. 2-15-83; FWC 8-1984(Temp), f. & ef. 3-5-84; FWC 29-1984, f. & ef. 7-3-84; FWC 9-1985(Temp), f. & ef. 2-20-85; FWC 5-1986(Temp), f. & ef. 2-11-86; FWC 6-1989(Temp), f. 2-15-89, cert. ef. 2-16-89; FWC 18-1990(Temp), f. 2-23-90, cert. ef. 2-24-90; FWC 13-1991(Temp), f. & cert. ef. 2-22-91; FWC 21-1995(Temp), f. 3-7-95, cert. ef. 3-8-95; FWC 10-1996(Temp), f. & cert. ef. 3-5-96; FWC 14-1997(Temp), f. & cert. ef. 3-10-97; DFW 11-2003, f. & cert. ef. 2-10-03; DFW 112-2003, f. & cert. ef. 11-14-03; DFW 124-2004(Temp), f. 12-10-03, cert. ef. 1-1-04 thru 4-15-04; Administrative correction 8-2-04; DFW 119-2004(Temp), f. 12-13-04, cert. ef. 1-1-05 thru 4-15-05; Administrative correction 4-20-05; DFW 143-2005(Temp), f. 12-16-05, cert. ef. 1-1-06 thru 4-15-06; Administrative correction 4-19-06; DFW 132-2006(Temp), f. 12-20-06, cert. ef. 1-1-07 thru 4-15-07; DFW 133-2007(Temp), f. 12-26-07, cert. ef. 1-1-08 thru 4-15-08; Administrative correction 4-23-08; DFW 153-2008(Temp), f. 12-29-08, cert. ef. 1-1-09 thru 4-15-09; Administrative correction 5-20-09; DFW 153-2009(Temp), f. 12-23-09, cert. ef. 1-1-10 thru 4-15-10

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**Rule Caption:** Adopt Management Measures for the 2010 Sardine Fishery.

# ADMINISTRATIVE RULES

**Adm. Order No.:** DFW 154-2009(Temp)

**Filed with Sec. of State:** 12-28-2009

**Certified to be Effective:** 1-1-10 thru 6-29-10

**Notice Publication Date:**

**Rules Amended:** 635-004-0016

**Subject:** Amended rule adopts management measures for the 2010 commercial sardine fishery, as approved by the Pacific Fishery Management Council in November 2009.

**Rules Coordinator:** Therese Kucera—(503) 947-6033

## 635-004-0016

### Harvest Guideline

(1) This rule incorporates, by reference, the sardine management measures for 2010 included in the Pacific Council list of decisions for the November 2009 Pacific Fishery Management Council meeting, and in addition to the extent they are consistent with these rules, Code of Federal Regulations, Title 50 Part 660, as amended to incorporate the standards recommendations of the Pacific Council. Therefore, persons must consult the Federal Regulations in addition to this rule to determine all applicable sardine fishing requirements. Where regulations refer to the fishery management area, that area is extended from shore to three nautical miles from shore coterminous with the Exclusive Economic Zone.

(2) For the purposes of permit renewal in OAR 635-006-1075 the federal coastwide maximum harvest guideline referenced in section (1) above is 72,039 metric tons.

[Publications: Publications references are available from the agency.]

Stat. Auth.: ORS 506.119

Stats. Implemented: ORS 506.109 & 506.129

Hist.: DFW 139-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 69-2008(Temp), f. & cert. ef. 6-24-08 thru 12-20-08; DFW 89-2008(Temp), f. & cert. ef. 8-6-08 thru 12-31-08; DFW 116-2008(Temp), f. & cert. ef. 9-22-08 thru 12-31-08; DFW 155-2008(Temp), f. 12-30-08, cert. ef. 1-1-09 thru 6-29-09; DFW 14-2009(Temp), f. & cert. ef. 2-23-08 thru 6-30-09; DFW 38-2009, f. & cert. ef. 4-22-09; DFW 154-2009(Temp), f. 12-28-09, cert. ef. 1-1-10 thru 6-29-10

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**Rule Caption:** Amendments to Rules for Commercial Groundfish Fisheries.

**Adm. Order No.:** DFW 155-2009

**Filed with Sec. of State:** 12-28-2009

**Certified to be Effective:** 1-1-10

**Notice Publication Date:** 11-1-2009

**Rules Amended:** 635-001-0035, 635-004-0033, 635-004-0036, 635-004-0080

**Subject:** Amended rules modify commercial groundfish fisheries and establish annual management measures for 2010. Housekeeping and technical corrections were made wherever necessary to ensure rule consistency.

**Rules Coordinator:** Therese Kucera—(503) 947-6033

## 635-001-0035

### Sampling Data and Tag Recovery

It is *unlawful* for any person licensed by the Department of Fish and Wildlife to fail to comply with the directions of authorized Department personnel related to the collection of sampling data or material (e.g., tissue and blood samples, otoliths and other bones, fins, shells, parasites, tags, etc.) from fish, shellfish, or marine invertebrates. It is also unlawful for any such person to fail to relinquish to the Department any part of a salmon or other food fish containing coded-wire tags, including but not limited to, the snouts of those salmon that are marked by having clipped adipose fins.

Stat. Auth.: ORS 496 & 506

Stats. Implemented: ORS 496 & 506

Hist.: FWC 26-1983(Temp), f. 6-30-83, ef. 7-1-83; FWC 20-1984, f. & ef. 5-11-84; DFW 155-2009, f. 12-28-09, cert. ef. 1-1-10

## 635-004-0033

### Groundfish Restrictions

(1) The season for most species of ocean food fish is open year-round, until catch quotas are met (where applicable). Regulations for the following species or species groups of ocean food fish change throughout the season and the Oregon Administrative Rules and federal regulations should be consulted before fishing:

- (a) Minor Shelf Rockfish
- (b) Minor Slope Rockfish
- (c) Black and Yellow Rockfish
- (d) Brown Rockfish
- (e) Calico Rockfish
- (f) China Rockfish
- (g) Copper Rockfish
- (h) Gopher Rockfish
- (i) Grass Rockfish
- (j) Kelp Rockfish

- (k) Olive Rockfish
- (l) Quillback Rockfish
- (m) Treefish
- (n) Black Rockfish
- (o) Blue Rockfish
- (p) Cabezon
- (q) Canary Rockfish
- (r) Greenling
- (s) Tiger Rockfish
- (t) Vermilion Rockfish
- (u) Widow Rockfish
- (v) Yelloweye Rockfish
- (w) Yellowtail Rockfish
- (x) Darkblotched Rockfish
- (y) Pacific Ocean Perch
- (z) Longspine Thornyhead
- (aa) Shortspine Thornyhead
- (bb) Arrowtooth Flounder
- (cc) Dover Sole
- (dd) Petrale Sole
- (ee) Rex Sole
- (ff) Other Flatfish
- (gg) Lingcod
- (hh) Sablefish
- (ii) Pacific Whiting

(2) For the purpose of this rule, "Other nearshore rockfish" means: black and yellow (*Sebastes chrysomelas*); brown (*S. auriculatus*); calico (*S. dalli*); China (*S. nebulosus*); copper (*S. caurinus*); gopher (*S. carnatus*); grass (*S. rastelliger*); kelp (*S. atrovirens*); olive (*S. serranoides*); quillback (*S. maliger*); and treefish (*S. serriceps*).

(3) For the purpose of this rule a "commercial harvest cap" is defined as the total fishery-related mortality for a given species, or species group, that may occur in a single calendar year in Oregon commercial fisheries. For 2010, the commercial harvest cap for black rockfish is 139.2 metric tons.

(4) For the purpose of this rule a "commercial landing cap" is defined as the total landed catch of a given species, or species group, that may be taken in a single calendar year in Oregon commercial fisheries. For 2010, the commercial landing caps are:

- (a) Black rockfish, 137.9 metric tons.
- (b) Black rockfish and blue rockfish combined of 141.9 metric tons.
- (c) Other nearshore rockfish, 14.3 metric tons.
- (d) Cabezon, 31.3 metric tons.
- (e) Greenling, 23.4 metric tons.

(5) For the purpose of this rule, the periods to which cumulative trip limits apply are: January through February (period 1); March through April (period 2); May through June (period 3); July through August (period 4); September through October (period 5); and November through December (period 6).

(6) For black and blue rockfish combined, no vessel may land more than:

- (a) 800 pounds in period 1;
- (b) 1,000 pounds in period 2;
- (c) 1,400 pounds in each of periods 3 and 4;
- (d) 1,000 pounds in period 5; and
- (e) 800 pounds in period 6.

(7) In each period, no vessel may land more than:

- (a) 700 pounds of other nearshore rockfish, combined;
- (b) 1,500 pounds of cabezon; or
- (c) 250 pounds of greenling species in periods 1-6.

Stat. Auth.: ORS 506.109 & 506.119

Stats. Implemented: ORS 506.129

Hist.: FWC 73-1982(Temp), f. & ef. 10-27-82; FWC 1-1983 (Temp), f. & ef. 1-6-83; FWC 10-1983, f. & ef. 3-1-83; FWC 23-1983(Temp), f. & ef. 6-14-83; FWC 41-1983(Temp), f. & ef. 9-6-83; FWC 3-1984, f. & ef. 1-26-84; FWC 18-1984 (Temp), f. 5-4-84, ef. 5-6-84; FWC 36-1984(Temp), f. 7-31-84, ef. 8-1-84; FWC 1-1985(Temp), f. & ef. 1-4-85; FWC 5-1985, f. & ef. 2-19-85; FWC 18-1985(Temp), f. 4-26-85, ef. 4-27-85; FWC 52-1985(Temp), f. 8-30-85, ef. 9-1-85; FWC 65-1985 (Temp), f. & ef. 10-4-85; FWC 82-1985, f. 12-16-85, ef. 1-1-86; FWC 50-1986(Temp), f. & ef. 8-29-86; FWC 81-1986, f. 12-31-86, ef. 1-1-87; FWC 57-1987(Temp), f. & ef. 7-24-87; FWC 104-1987, f. 12-18-87, ef. 1-1-88; FWC 97-1988(Temp), f. & cert. ef. 1-6-88; FWC 103-1988, f. 12-29-88, cert. ef. 1-1-89; FWC 49-1989(Temp), f. & cert. ef. 7-26-89; FWC 69-1990 (Temp), f. 7-24-90, cert. ef. 7-25-90; FWC 122-1990, f. 11-26-90, cert. ef. 11-29-90; FWC 130-1990, f. 12-31-90, cert. ef. 1-1-91; FWC 48-1991(Temp), f. & cert. ef. 5-3-91; FWC 82-1991(Temp), f. 7-30-91, cert. ef. 7-31-91; FWC 83-1991, f. 8-1-91, cert. ef. 7-31-91; FWC 58-1992(Temp), f. & cert. ef. 7-29-92; FWC 141-1991, f. 12-31-91, cert. ef. 1-1-92; FWC 9-1992, f. 2-20-92, cert. ef. 2-21-92; FWC 58-1992(Temp), f. & cert. ef. 7-29-92; FWC 6-1993, f. 1-28-93, cert. ef. 2-1-93; FWC 10-1993, f. & cert. ef. 2-10-93; FWC 1-1994, f. & cert. ef. 1-14-94; FWC 32-1994, f. & cert. ef. 6-3-94; FWC 44-1994, f. 7-26-94, cert. ef. 8-1-94; FWC 95-1994, f. 12-28-94, cert. ef. 1-1-95; FWC 45-1995, f. & cert. ef. 6-1-95; FWC 94-1995(Temp), f. 12-29-95, cert. ef. 1-1-96; FWC 9-1996, f. 3-5-96, cert. ef. 3-8-96; DFW 118-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 119-2002(Temp), f. 10-24-02, cert. ef. 10-25-02 thru 12-31-02; DFW 135-2002, f. 12-23-02, cert. ef. 1-1-03; DFW 14-2003(Temp), f. 2-20-03, cert. ef. 2-21-03 thru 8-19-03; DFW 25-2003, f. & cert. ef. 3-26-03; DFW 60-2003(Temp), f. 7-15-03, cert. ef. 7-16-03 thru 12-31-03; DFW 79-2003(Temp), f. & cert. ef. 8-18-03 thru 12-31-03; DFW 102-2003(Temp), f. 9-30-03, cert. ef. 10-1-03 thru 12-31-03; DFW 128-2003, f. 12-15-03, cert. ef. 1-1-04; DFW 76-2004(Temp), f. 7-23-04, cert. ef. 7-28-04 thru 12-31-04; DFW 100-2004(Temp), f. & cert. ef. 9-28-04 thru 12-31-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 120-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 31-2005(Temp), f. 4-29-05, cert. ef. 5-1-05 thru 10-27-05; DFW 82-2005(Temp), f. 7-29-05, cert. ef. 8-1-05 thru 12-31-05; DFW 86-2005(Temp), f. & cert. ef. 8-3-05 thru 12-31-

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05; DFW 119-2005(Temp), f. 10-10-05, cert. ef. 10-11-05 thru 12-31-05; DFW 135-2005(Temp), f. 11-30-05, cert. ef. 12-1-05 thru 12-31-05; DFW 138-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 50-2006(Temp), f. 6-28-06, cert. ef. 7-1-06 thru 12-27-06; DFW 83-2006(Temp), f. 8-10-06, cert. ef. 8-11-06 thru 2-6-07; DFW 108-2006(Temp), f. 9-29-06, cert. ef. 10-1-06 thru 12-31-06; DFW 133-2006(Temp), f. 12-21-06, cert. ef. 1-1-07 thru 6-29-07; DFW 3-2007, f. & cert. ef. 1-12-07; DFW 83-2007(Temp), f. 8-31-07, cert. ef. 9-1-07 thru 12-31-07; DFW 120-2007(Temp), f. 10-30-07, cert. ef. 11-1-07 thru 12-31-07; DFW 123-2007(Temp), f. 11-26-07, cert. ef. 11-28-07 thru 12-31-07; DFW 128-2007, f. 12-13-07, cert. ef. 1-1-08; Administrative Correction 1-24-08; DFW 70-2008(Temp), f. 6-26-08, cert. ef. 7-1-08 thru 12-27-08; DFW 123-2008(Temp), f. 9-30-08, cert. ef. 10-2-08 thru 12-31-08; DFW 154-2008(Temp), f. 12-29-08, cert. ef. 1-1-09 thru 6-29-09; DFW 21-2009(Temp), f. 2-26-09, cert. ef. 3-1-09 thru 8-27-09; DFW 39-2009, f. & cert. ef. 4-27-09; DFW 75-2009(Temp), f. 6-26-09, cert. ef. 7-1-09 thru 12-28-09; DFW 127-2009(Temp), f. 10-8-09, cert. ef. 10-10-09 thru 12-31-09; DFW 155-2009, f. 12-28-09, cert. ef. 1-1-10

## 635-004-0036

### Black Rockfish Management Areas

In addition to catch restrictions set forth in the Code of Federal Regulations, Title 50 Parts 660 and 663, and OAR 635-004-0033, the following trip limit applies to black rockfish (*Sebastes melanops*) taken with all commercial gears except trawl:

(1) It is unlawful to take or retain more than 300 pounds of black rockfish per vessel from a single fishing trip within one of the following areas:

(a) Tillamook Head (45°56'45" N latitude) to Cape Lookout (45°20'15" N latitude);

(b) Cascade Head (45°03'50" N latitude) to Cape Perpetua (44°18' N latitude);

(c) From a point (43°30' N latitude), approximately 8 1/2 nautical miles north of the Coos Bay north jetty, to a point (43°03' N latitude) adjacent to the mouth of Four-mile Cr.;

(d) Mack Arch (42°13'40" N latitude) to the Oregon-California border (42°00' N latitude).

(2) No vessel shall take, retain, possess, or land more than the allowed trip limit when fishing occurs for any species of fish within one of these restricted areas.

Stat. Auth.: ORS 506.119

Stats Implemented: ORS 506.129

Hist.: DFW 117-2002, f. & cert. ef. 10-21-02; DFW 128-2003, f. 12-15-03, cert. ef. 1-1-04;

DFW 155-2009, f. 12-28-09, cert. ef. 1-1-10

## 635-004-0080

### Closures

(1) It is *unlawful* to take white sturgeon (*Acipenser transmontanus*) for commercial purposes except in the:

(a) Columbia River, in the areas and during the times open to the taking of sturgeon for commercial purposes.

(b) Coos, Coquille, and Siuslaw, in the areas and during the times open to the taking of shad for commercial purposes.

(c) Pacific Ocean at all times.

(2) It is unlawful to take green sturgeon (*Acipenser medirostris*) for commercial purposes.

Stat. Auth.: ORS 506.119 & 506.129

Stats. Implemented: ORS 506.119 & 506.129

Hist.: FC 241, f. 4-5-72, ef. 4-15-72, Renumbered from 625-010-0120, Renumbered from

635-036-0110; FWC 1-1981, f. & ef. 1-19-81; FWC 23-1995, f. 3-29-95, cert. ef. 4-1-95; DFW 155-2009, f. 12-28-09, cert. ef. 1-1-10

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**Rule Caption:** Amendment of Rules for the Temporary Suspension of the Developmental Fisheries Program.

**Adm. Order No.:** DFW 156-2009

**Filed with Sec. of State:** 12-29-2009

**Certified to be Effective:** 1-1-10

**Notice Publication Date:** 11-1-2009

**Rules Adopted:** 635-004-0066, 635-004-0068

**Rules Amended:** 635-004-0020, 635-004-0070, 635-005-0005, 635-006-0850, 635-006-0890

**Subject:** Amended rules relating to the Developmental Fisheries (Devo) Program. Due to funding shortfalls, the Devo program will be suspended until further notice. This means all programmatic activities including: permitting, Devo Board meetings, fishery sampling and assessments, logbook analysis and fishery independent research projects will be suspended until funds are restored. Fisheries effected by these modifications are: swordfish, box crab, anchovy/herring, sport prawn and hagfish.

**Rules Coordinator:** Therese Kucera—(503) 947-6033

## 635-004-0020

### Definitions

As used in Division 004 regulations, unless the context requires otherwise:

(1) "At-sea processing" means processing that takes place on a vessel or other platform that floats and is capable of being moved from one location to another whether shoreside or on the water.

(2) "Commission" means the Oregon Fish and Wildlife Commission.

(3) "Department" means the Oregon Department of Fish and Wildlife.

(4) "Director" means the Director of the Oregon Department of Fish and Wildlife.

(5) "DTS complex" includes Dover sole (*Microstomus pacificus*), thornyhead (*Sebastes spp.*), and trawl-caught sablefish (blackcod, *Anoplopoma fimbria*).

(6) "Exclusive economic zone" means the zone between 3-200 nautical miles offshore of the United States.

(7) "Fishing gear" includes:

(a) "Beam trawl" means a trawl which is held open by a fixed beam frame;

(b) "Bobbin trawl" means the same as roller trawl, and is a type of bottom trawl;

(c) "Bottom trawl" means a trawl in which the otter boards or the footrope of the net contact the seabed, and includes Danish and Scottish seine gear. It also includes pair trawls fished on the bottom. Any trawl not meeting the requirements for pelagic trawls described in OAR 635-004-0040(5) is a bottom trawl;

(d) "Chafing gear" means webbing or other material attached to the codend of a trawl net to protect the codend from wear;

(e) "Codend" shall be defined as the last 50 mesh length constituting the terminal, closed end of a trawl. The meshes shall be counted forward of the pursuing tackle which terminates the codend;

(f) "Double-ply mesh" or "Double-bar mesh" means two lengths of twine tied into a single knot;

(g) "Double-walled codend" means a codend constructed of two walls of webbing;

(h) "Fixed gear" means longline, trap or pot, setnet, and stationary hook-and-line gears;

(i) "Gillnet" has the meaning as set forth in OAR 635-042-0010;

(j) "Hook-and-line" means one or more hooks attached to one or more lines;

(k) "Large footrope trawl gear" is a bottom trawl net with a footrope diameter larger than 8 inches (20 cm) (including rollers, bobbins or other material encircling or tied along the length of the footrope).

(l) "Longline" means a stationary buoyed, and anchored groundline with hooks attached;

(m) "Mesh size" means the opening between opposing knots. Minimum mesh size means the smallest distance allowed between the inside of one knot to the inside of the opposing knot regardless of twine size;

(n) "Nontrawl gear" means all legal commercial groundfish gear other than trawl gear;

(o) "Pelagic trawl" (midwater or off-bottom) means a trawl in which the otter boards may be in contact with the seabed but the footrope of the net remains above the seabed. It includes pair trawls if fished in midwater. A pelagic trawl has no rollers or bobbins on the net;

(p) "Pot or trap" means a portable, enclosed device with one or more gates or entrances and one or more lines attached to surface floats;

(q) "Roller trawl" or "bobbin trawl" are identical, and mean a trawl net with footropes equipped with rollers or bobbins made of wood, steel, rubber, plastic, or other hard material which protects the net and footrope during fishing on the seabed. A roller trawl is a type of bottom trawl;

(r) "Seine" means any nonfixed net other than a trawl net or gillnet;

(s) "Selective flatfish trawl gear" is a type of small footrope trawl gear. The selective flatfish trawl net must be a two-seamed net with no more than two riblines, excluding the codend. The breastline may not be longer than 3 ft (0.92 meters) in length. There may be no floats along the center third of the headrope or attached to the top panel except on the riblines. The footrope must be shorter than 105 ft (32.26 meters) in length. The headrope must be at least 30% longer in length than the footrope. An explanatory diagram of a selective flatfish trawl net is provided as Figure 1 of **Part 660, Subpart G in Title 50 Code of Federal Regulations**.

(t) "Set net" means a stationary, buoyed and anchored gillnet or trammel net;

(u) "Single-walled codend" means a codend constructed of a single wall of webbing knitted with single or double-ply mesh;

(v) "Small footrope trawl gear" is a bottom trawl net with a footrope diameter of 8 inches (20 cm) or smaller (including rollers, bobbins or other material encircling or tied along the length of the footrope). Other lines or ropes that run parallel to the footrope must not be augmented with material encircling or tied along their length such that they have a diameter larger than 8 inches (20 cm). For enforcement purposes, the footrope will be measured in a straight line from the outside edge to the opposite outside edge at the widest part on any individual part, including any individual disk, roller, bobbin, or any other device.

(w) "Trammel net" means a gillnet made with two or more walls joined to a common float line;

(x) "Trawl net" means a cone or funnel-shaped net which is towed or drawn through the water by one or two vessels. Trawl nets are used both on bottom and off bottom. They may be fished with or without trawl doors. They may employ warps or cables to herd fish. Trawl nets are restricted to beam trawl, bobbin or roller trawl, bottom trawl and pelagic trawl;

# ADMINISTRATIVE RULES

(y) "Trawl riblines" means heavy rope or lines that run down the sides, top, or underside of a trawl net from the mouth of the net to the terminal end of the codend to strengthen the net during fishing;

(z) "Troll" means fishing gear that consists of 1 or more lines that drag hooks with bait or lures behind a moving fishing vessel. Additional troll fishing gear defined in the Code of Federal Regulations, Title 50, Part 660 H;

(aa) "Vertical hook and line (Portuguese longline)" means a line attached to the vessel or to a surface buoy vertically suspended to the bottom by a weight or anchor, with hooks attached between its surface and bottom end.

(8) "Groundfish" means all species of ocean food fish defined as groundfish in the Pacific Coast Groundfish Fishery Management Plan and in the Federal Groundfish Regulations, Title 50, Parts 660 and 663.

(9) "Inland waters" means all waters of the state except the Pacific Ocean.

(10) "Land, landed, or landing" means to begin transfer of fish from a fishing vessel. Once transfer begins, all fish aboard the vessel are counted as part of the landing.

(11) "Length, total" is measured from the tip of the snout (mouth closed) to the tip of the tail (pinched together) without mutilation of the fish or the use of additional force to extend the length.

(12) Management lines include:

(a) "Cape Arago" means a line extending due west at 43 degrees 20 minutes 50 seconds north latitude;

(b) "Cape Blanco" means a line extending due west at 42 degrees 50 minutes 00 seconds north latitude;

(c) "Cape Falcon" means a line extending due west at 45 degrees 46 minutes 00 seconds north latitude;

(d) "Cape Lookout" means a line extending due west at 45 degrees 20 minutes 15 seconds north latitude;

(e) "Cascade Head" means a line extending due west at 45 degrees 03 minutes 50 seconds north latitude;

(f) "Heceta Head" means a line extending due west at 44 degrees 08 minutes 18 seconds north latitude;

(g) "Humbug Mountain" means a line extending due west at 42 degrees 40 minutes 30 seconds north latitude;

(h) "Mack Arch" means a line extending due west at 42 degrees 13 minutes 40 seconds north latitude.

(13) "Ocean food fish" includes all saltwater species of food fish except salmon, halibut, and shellfish whether found in fresh or salt water.

(14) "Pacific Ocean" means all water seaward of the end of the jetty or jetties of any river, bay, or tidal area, except in the Columbia River the Pacific Ocean has the definition prescribed in OAR 635-003-0005, or all water seaward of the extension of the shoreline high watermark across the river, bay, or tidal area where no jetties exist.

(15) "Rockfish" includes:

(a) aurora rockfish, *Sebastes aurora*;

(b) bank rockfish, *S. rufus*;

(c) black rockfish, *S. melanops*;

(d) black and yellow rockfish, *S. chrysomelas*;

(e) blackgill rockfish, *S. melanostomus*;

(f) Blue rockfish, *S. mystinus*;

(g) bocaccio, *S. paucispinis*;

(h) bronzedspotted rockfish, *S. gilli*;

(i) brown rockfish, *S. auriculatus*;

(j) calico rockfish, *S. dalli*;

(k) California scorpionfish, *Scorpaena guttata*;

(l) canary rockfish, *Sebastes pinniger*;

(m) chilipepper, *S. goodei*;

(n) China rockfish, *S. nebulosus*;

(o) copper rockfish, *S. caurinus*;

(p) cowcod, *S. levis*;

(q) darkblotched rockfish, *S. crameri*;

(r) dusty rockfish,

(s) flag rockfish, *S. rubrivinctus*;

(t) gopher rockfish, *S. carnatus*;

(u) grass rockfish, *S. rastrelliger*;

(v) greenblotched rockfish, *S. rosenblatti*;

(w) greenspotted rockfish, *S. chlorostictus*;

(x) greenstriped rockfish, *S. elongatus*;

(y) harlequin rockfish, *S. variegatus*;

(z) honeycomb rockfish, *S. umbrosus*;

(aa) kelp rockfish, *S. atrovirens*;

(bb) longspine thornyhead, *Sebastes altivelis*;

(cc) Mexican rockfish, *Sebastes macdonaldi*;

(dd) olive rockfish, *S. serranoides*;

(ee) Pacific ocean perch, *S. alutus*;

(ff) pink rockfish, *S. eos*;

(gg) quillback rockfish, *S. maliger*;

(hh) redbanded rockfish, *S. babcocki*;

(ii) redstripe rockfish, *S. proriger*;

(jj) rosethorn rockfish, *S. helvomaculatus*;

(kk) rosy rockfish, *S. rosaceus*;

(ll) rougheye rockfish, *S. aleutianus*;

(mm) sharpchin rockfish, *S. zacentrus*;

(nn) shortbelly rockfish, *S. jordani*;

(oo) shortraker rockfish, *S. borealis*;

(pp) shortspine thornyhead, *Sebastes alascanus*;

(qq) silvergray rockfish, *Sebastes brevispinis*;

(rr) speckled rockfish, *S. ovalis*;

(ss) splitnose rockfish, *S. diploproa*;

(tt) squarespot rockfish, *S. hopkinsi*;

(uu) starry rockfish, *S. constellatus*;

(vv) stripetail rockfish, *S. saxicola*;

(ww) tiger rockfish, *S. nigrocinctus*;

(xx) treefish, *S. serriceps*;

(yy) vermilion rockfish, *S. miniatus*;

(zz) widow rockfish, *S. entomelas*;

(aaa) yelloweye rockfish, *S. ruberrimus*;

(bbb) yellowmouth rockfish, *S. reedi*.

(16) "Sebastes complex" means all rockfish managed by the Pacific Coast Groundfish Fishery Management Plan except Pacific ocean perch (*Sebastes alutus*), widow rockfish (*S. entomelas*), shortbelly rockfish (*S. jordani*), and thornyhead (*Sebastes spp.*). The Sebastes complex includes yellowtail rockfish (*Sebastes flavidus*).

(17) "Shore-based (shoreside) processors" means any facility where fish will be processed which is fixed permanently to land.

(18) "Smelt" means all species in the family Osmeridae.

(19) "Tender" means any vessel that buys or obtains fish directly from a catching vessel and transports it to a port of landing or fish dealer.

(20) "Trip limit" means the total allowable amount of a groundfish species or species complex, by weight, or by percentage of fish on board, that may be taken and retained, possessed, or landed per vessel from a single fishing trip. A vessel which has landed its cumulative or daily limit may continue to fish on the limit for the next legal period as long as the fish are not landed until the next period:

(a) "Daily trip limit" means the maximum amount that may be taken and retained, possessed, or landed per vessel in 24 consecutive hours, starting at 0001 hours local time. Only one landing of groundfish may be made in that 24-hour period;

(b) "Cumulative trip limit" means the maximum amount that may be taken and retained, possessed, or landed per vessel in a specified period of time, without a limit on the number of landings or trips. Cumulative trip limits apply to calendar months.

Stat. Auth.: ORS 496.138 & 506.119

Stats. Implemented: ORS 496.162 & 506.129

Hist.: FC 246, f. 5-5-72, ef. 5-15-72; FWC 37, f. & ef. 1-23-76, Renumbered from 625-010-0545; FWC 49-1979, f. & ef. 11-1-79, Renumbered from 635-036-0270; FWC 10-1983, f. & ef. 3-1-83; FWC 1-1985(Temp), f. & ef. 1-4-85; FWC 5-1985, f. & ef. 2-19-85; FWC 17-1987(Temp), f. & ef. 5-7-87; FWC 103-1988, f. 12-29-88, cert. ef. 1-1-89; FWC 28-1989(Temp), f. 4-25-89, cert. ef. 4-26-89; FWC 130-1990, f. 12-31-90, cert. ef. 1-1-91; FWC 67-1991, f. 6-25-91, cert. ef. 7-1-91; FWC 21-1992(Temp), f. 4-7-92, cert. ef. 5-1-92; FWC 141-1991, f. 12-31-91, cert. ef. 1-1-92; FWC 21-1992(Temp), f. 4-7-92, cert. ef. 5-1-92; FWC 36-1992, f. 5-26-92, cert. ef. 5-27-92; FWC 6-1993, f. 1-28-93, cert. ef. 2-1-93; FWC 95-1994, f. 12-28-94, cert. ef. 1-1-95; FWC 45-1995, f. & cert. ef. 6-1-95; FWC 71-1996, f. 12-31-96, cert. ef. 1-1-97; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 32-2005(Temp), f. 4-29-05, cert. ef. 5-1-05 thru 10-27-05; DFW 70-2005, f. & cert. ef. 7-8-05; DFW 142-2008, f. & cert. ef. 11-21-08; DFW 156-2009, f. 12-29-09, cert. ef. 1-1-10

## 635-004-0066

### Pacific Hagfish Harvest Guideline

When landed annual catch approaches 1.6 million pounds of Pacific Hagfish, the ODFW Marine Resources Program will hold a public meeting to evaluate the fishery.

Stat. Auth.: ORS 496.138, 506.119

Stats. Implemented: ORS 496.162, 506.129

Hist.: DFW 156-2009, f. 12-29-09, cert. ef. 1-1-10

## 635-004-0068

### Fishing Gear

It is *unlawful* for a single commercial fishing vessel to possess, use, control or operate more than 200 hagfish pots. Pots may be fished individually or on common ground line.

Stat. Auth.: ORS 496.138, 506.119

Stats. Implemented: ORS 496.162, 506.129

Hist.: DFW 156-2009, f. 12-29-09, cert. ef. 1-1-10

## 635-004-0070

### Seasons

(1) Smelt may be taken for commercial purposes from the:

(a) Columbia River at all times in those areas not closed to commercial fishing for shad;

(b) Sandy River at all times in the area below and west of the highway bridge at Troutdale, Oregon (U.S. 30 Alternate);

(c) Columbia River as described in OAR 635-042-0130.

(2) The targeted take of smelt for commercial purposes in areas and at times not specified in this rule is prohibited including take in the Pacific ocean at all times.

(3) Incidentally caught smelt may be landed by vessels targeting other commercial species not to exceed 1% of landing by weight.

# ADMINISTRATIVE RULES

Stat. Auth.: ORS 506.119, 506.129  
Stats. Implemented: ORS 506  
Hist.: FC 241, f. 4-5-72, ef. 4-15-72; FC 290(75-3), f. 2-20-75, ef. 3-11-75, Renumbered from 625-0100-210; FWC 16-1979, f. & ef. 4-27-79, Renumbered from 635-036-0140; FWC 83-1985, f. 12-17-85, ef. 12-18-85; DFW 156-2009, f. 12-29-09, cert. ef. 1-1-10

## 635-005-0005

### Marine Snail Fishery Prohibited

It is unlawful to take any marine snail species of the class gastropoda, including all abalone species, for commercial purposes except that a commercial aquaculture facility may take abalone for use as broodstock under the terms and conditions specified in a permit issued by the Department. Application for such a permit shall be in writing and shall include a description of the commercial aquaculture facility, the methods for collecting and returning broodstock abalone to and from the wild, the methods for checking abalone and imported kelp food for pathogens or exotic fauna, the procedures for isolating and culturing abalone to prevent contamination of wild abalone stock and such other information as the Department may require. Permit applications shall be mailed to: Marine Resources Program Office, Department of Fish and Wildlife, 2040 SE Marine Science Drive, Newport, OR, 97365.

Stat. Auth.: ORS 506.119 & 506.129  
Stats. Implemented: ORS 506.129  
Hist.: FC 241, f. 4-5-72, ef. 4-15-72; Renumbered from 625-010-0320, 1975; Renumbered from 635-036-0190, 1979; FWC 24-1995, f. 3-29-95, cert. ef. 4-1-95; DFW 4-2008, f. & cert. ef. 1-23-08; DFW 142-2008, f. & cert. ef. 11-21-08; DFW 149-2008, f. & cert. ef. 12-17-08; DFW 156-2009, f. 12-29-09, cert. ef. 1-1-10

## 635-006-0850

### Developmental Fisheries Species List

(1) The Developmental Fisheries Species List, Category "B," is as follows:

- (a) FISH.
  - (A) Salmon shark (*Lamna ditropis*);
  - (B) Carp (*Cyprinus carpio*);
  - (C) Black hagfish (*Eptatretus deani*);
  - (D) Yellow perch (*Perca flavescens*);
  - (E) Eelpouts (family Zoarcidae);
  - (F) Brown bullhead (*Ameiurus nebulosus*);
  - (G) Skilfish (*Erilepis zonifer*);
  - (H) Northern squawfish (*Ptychocheilus oregonensis*);
  - (I) Pacific saury (*Cololabis saira*);
  - (J) Pacific sandfish (*Trichodon trichodon*);
  - (K) Pacific pomfret (*Brama japonica*);
  - (L) Slender sole (*Eopsetta exilis*);
  - (M) Pacific hagfish (*Eptatretus stouti*);
  - (N) Pacific herring (*Clupea pallasii*).
- (b) INVERTEBRATES.
  - (A) Pacific sand crab (*Emerita analoga*);
  - (B) Freshwater mussels (families *Margaritifera*, *Anodonta*, *Gonidea*, and *Corbicula*);
    - (C) Ocean cockle clams (*Clinocardium nuttallii*);
    - (D) California market squid (*Loligo opalescens*) and other squid (several species);
    - (E) Fragile urchin (*Alloccentrotus fragilis*);
    - (F) Sea cucumber (*Parastichopus spp.*);
    - (G) Giant octopus (*Octopus dofleini*);
    - (H) Spot prawn (*Pandalus platyceros*);
    - (I) Coonstripe shrimp (*Pandalus danae*);
    - (J) Sidestripe shrimp (*Pandalopsis dispar*);
    - (K) Grooved tanner crab (*Chionoecetes tanneri*);
    - (L) Oregon hair crab (*Paralomis multispina*);
    - (M) Scarlet king crab (*Lithodes couesi*);
    - (N) Box crab (*Lopholithodes foraminatus*).

(2) The Developmental Fisheries Species List, Category "C," is as follows:

- (a) FISH.
  - (A) Spiny dogfish (*Squalus acanthias*);
  - (B) Soupfin shark (*Galeorhinus zyopterus*);
  - (C) Skate (family Rajidae);
  - (D) American shad (*Alosa sapidissima*);
  - (E) Pacific cod (*Gadus macrocephalus*);
  - (F) Pacific flatnose (*Antimora microlepis*);
  - (G) Pacific grenadier (*Coryphaenoides acrolepis*);
  - (H) Jack mackerel (*Trachurus symmetricus*);
  - (I) Chub (Pacific) mackerel (*Scomber japonicus*);
  - (J) Greenstriped rockfish (*Sebastes elongatus*);
  - (K) Redstripe rockfish (*Sebastes proriger*);
  - (L) Shortbelly rockfish (*Sebastes jordani*);
  - (M) Sharpchin rockfish (*Sebastes zacentrus*);
  - (N) Splitnose rockfish (*Sebastes diploproa*);
  - (O) Pacific sanddab (*Citharichthys sordidus*);
  - (P) Butter sole (*Pleuronectes isolepis*);
  - (Q) English sole (*Pleuronectes vetulus*);
  - (R) Rex sole (*Errex zechirus*);

- (S) Rock sole (*Pleuronectes bilineatus*);
- (T) Sand sole (*Psettichthys melanostictus*);
- (U) Curlfin (lemon) sole (*Pleuronichthys decurrens*);
- (V) Spotted ratfish (*Hydrolagus collii*);
- (W) Wolf-eel (*Anarrhichthys ocellatus*);
- (X) Walleye pollock (*Theragra chalcogramma*);
- (Y) Blue shark (*Prionace glauca*);
- (Z) Northern Anchovy (*Engraulis mordax*);
- (b) INVERTEBRATES.
  - (A) Red rock crab (*Cancer productus*);
  - (B) Purple sea urchins (*Strongylocentrotus purpuratus*);
  - (C) Crayfish (*Pacifastacus leniusculus*);

Stat. Auth.: ORS 506.109 & 506.119  
Stats. Implemented: ORS 506.129, 506.450, 506.455, 506.460 & 506.465  
Hist.: FWC 85-1994, f. 10-31-94, cert. ef. 11-1-94; FWC 87-1995, f. 11-17-95, cert. ef. 11-20-95; FWC 1-1997, f. & cert. ef. 1-16-97; FWC 18-1997(Temp), f. & cert. ef. 3-18-97; FWC 34-1997, f. 6-11-97, cert. ef. 6-15-97; DFW 3-1998, f. & cert. ef. 1-12-98; DFW 17-1998(Temp), f. & cert. ef. 3-6-98 thru 7-31-98; DFW 93-1998, f. & cert. ef. 11-25-98; DFW 85-1999, f. & cert. ef. 11-1-99, DFW 89-1999, f. & cert. ef. 11-15-99; DFW 76-2000, f. 11-21-00, cert. ef. 1-1-01; DFW 30-2001, f. & cert. ef. 5-4-01; DFW 119-2001, f. & cert. ef. 12-24-01; DFW 116-2002, f. & cert. ef. 10-21-02; DFW 117-2002, f. & cert. ef. 10-21-02; DFW 135-2002, f. & cert. ef. 1-1-03; DFW 25-2003, f. & cert. ef. 3-26-03; DFW 41-2003(Temp), f. & cert. ef. 5-12-03 thru 6-21-03; DFW 112-2003, f. & cert. ef. 11-14-03; DFW 128-2003, f. 12-15-03, cert. ef. 1-1-04; DFW 24-2004, f. & cert. ef. 3-23-04; DFW 121-2004, f. 12-13-04, cert. ef. 12-15-04; DFW 67-2005(Temp), f. 7-5-05, cert. ef. 7-6-05 thru 12-31-05; DFW 122-2005(Temp), f. & cert. ef. 10-18-05 thru 11-30-05; DFW 137-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 139-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 132-2007(Temp), f. 12-20-07, cert. ef. 1-1-08 thru 1-31-08; DFW 4-2008, f. & cert. ef. 1-23-08; DFW 149-2008, f. & cert. ef. 12-17-08; DFW 156-2009, f. 12-29-09, cert. ef. 1-1-10

## 635-006-0890

### Logbooks

The Department shall provide a logbook to each individual or vessel to harvest Category A, B or C developmental fishery species. Each individual or vessel skipper is responsible for maintaining the logbook in accordance with the instructions contained therein and shall, upon request of an authorized representative of the Department, permit examination and transcription of information from such logbook. Information so received by the Department shall be treated as confidential to the extent allowable under Oregon law.

Stat. Auth.: ORS 506.109, 506.119 & 506.450 - 506.465  
Stats. Implemented: ORS 506.109, 506.119 & 506.450 - 506.465  
Hist.: FWC 85-1994, f. 10-31-94, cert. ef. 11-1-94; DFW 156-2009, f. 12-29-09, cert. ef. 1-1-10

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**Rule Caption:** Adoption of Regulations Governing Marine Reserves and Protected Areas in Oregon's Territorial Sea.

**Adm. Order No.:** DFW 157-2009

**Filed with Sec. of State:** 12-30-2009

**Certified to be Effective:** 6-30-11

**Notice Publication Date:** 11-1-2009

**Rules Adopted:** 635-012-0020, 635-012-0030, 635-012-0040, 635-012-0050, 635-012-0060

**Subject:** These adopted rules will regulate hunting and fishing activities in the Otter Rock and Redfish Rocks Marine Reserves and the Redfish Rocks Marine Protected Area. The proposed rules prohibit fishing for, hunting for, or take of any fish or wildlife species in the marine reserves; and allow for removing crab pots and other fishing gear; scientific research; transiting, drifting, or anchoring; and non-extractive activities. In the marine protected area, the proposed rules prohibit and allow the same activities as in marine reserves, with the addition of allowing commercial and recreational salmon trolling and crabbing for Dungeness and red rock crab.

**Rules Coordinator:** Therese Kucera—(503) 947-6033

## 635-012-0020

### Purpose

(1) The purpose of the regulations in this section are to implement HB 3013 (2009) by regulating activities in areas of Oregon's territorial sea designated as marine reserves or marine protected areas.

(2) The prohibitions specified in this division shall go into effect on June 30, 2011, to allow time for collection of baseline data.

Stat. Auth.: ORS 506.119, 506.129  
Stats. Implemented: HB 3013 (2009)  
Hist.: DFW 157-2009, f. 12-30-09, cert. ef. 6-30-11

## 635-012-0030

### Definitions

For the purposes of OAR 635, Division 012 the following definitions apply:

- (1) "Commission" means the Oregon Fish and Wildlife Commission.
- (2) "Department" means the Oregon Department of Fish and Wildlife.
- (3) "Fish and wildlife" means all fish, shellfish, inter-tidal animals, wild birds, amphibians, reptiles and wild mammals.

# ADMINISTRATIVE RULES

- (4) "Fishing gear" has the meaning given in OAR 635-004-0020.
  - (5) "Take" means to kill, reduce to possession or control.
- Stat. Auth.: ORS 506.119, 506.129  
Stats. Implemented: HB 3013 (2009)  
Hist.: DFW 157-2009, f. 12-30-09, cert. ef. 6-30-11

## 635-012-0040

### Marine Reserve and Marine Protected Area Boundaries

- (1) The Otter Rock Marine Reserve encompasses the area bounded by the points described in OAR 141-142-0030.
  - (2) The Redfish Rocks Marine Reserve encompasses the area bounded by the points described in OAR 141-142-0035.
  - (3) The Redfish Rocks Marine Protected Area encompasses the area bounded by the points described in OAR 141-142-0040.
- Stat. Auth.: ORS 506.119, 506.129  
Stats. Implemented: HB 3013 (2009)  
Hist.: DFW 157-2009, f. 12-30-09, cert. ef. 6-30-11

## 635-012-0050

### Marine Reserve Prohibitions and Allowances

- (1) Except as specified in section (2) below, the following activities are prohibited within the Otter Rock and Redfish Rocks marine reserve areas:
    - (a) Fishing or hunting for any fish or wildlife species.
    - (b) Take of any fish or wildlife species.
  - (2) Notwithstanding the prohibitions in section (1) above, a person may:
    - (a) Remove fishing gear from within the marine reserve boundary, provided that the retrieving vessel operator must notify the Oregon State Police before retrieving the gear and no fish or wildlife species from the retrieved gear shall be retained. Specific to commercial crab pots:
      - (A) If the retrieving vessel operator does not own the pot(s), the operator must follow the retrieval requirements set forth in OAR 635-005-0055(9)(b).
      - (B) If the vessel operator does own the pot(s), the operator may re-set the pot(s) outside of the reserve area.
      - (b) Take fish and wildlife species if authorized by a valid scientific taking permit as required by OAR divisions 635-007 and 635-043.
      - (c) Have catch onboard while transiting, drifting through, or anchoring in the marine reserve area. Except as allowed by subsection (2)(a) and subsection (2)(b) above, gear shall not be deployed at any time within the marine reserve.
    - (3) Nothing in these regulations shall limit the right to engage in otherwise lawful activities within the marine reserves, including but not limited to the following:
      - (a) Non-extractive activities, including but not limited to swimming, diving, surfing, boating, and tide pool exploration.
      - (b) Transiting or drifting through the reserve.
      - (c) Anchoring a vessel in the reserve.
- Stat. Auth.: ORS 506.119, 506.129  
Stats. Implemented: HB 3013 (2009)  
Hist.: DFW 157-2009, f. 12-30-09, cert. ef. 6-30-11

## 635-012-0060

### Marine Protected Area Prohibitions and Allowances

- (1) Except as specified in section (2) below, the following activities are prohibited within the Redfish Rocks marine protected areas:
    - (a) Fishing or hunting for any fish or wildlife species.
    - (b) Take of any fish or wildlife species.
  - (2) Notwithstanding the prohibitions in section (1) above, person(s) may:
    - (a) Commercially or recreationally troll for and harvest salmon.
    - (b) Commercially or recreationally fish for and harvest Dungeness or red rock crab.
    - (c) Take fish and wildlife species if authorized by a valid scientific taking permit as required by OAR divisions 635-007 and 635-043.
    - (d) Have catch onboard while transiting, drifting through, or anchoring in the marine protected area. Except as allowed by subsections (2)(a), (2)(b), and (2)(c) above, gear shall not be deployed at any time within the marine protected area.
  - (3) Nothing in these regulations shall limit the right to engage in otherwise lawful activities in the marine protected area, including but not limited to the following:
    - (a) Non-extractive activities, including but not limited to swimming, diving, surfing, boating, and tide pool exploration.
    - (b) Transiting or drifting through the reserve.
    - (c) Anchoring a vessel in the reserve.
- Stat. Auth.: ORS 506.119, 506.129  
Stats. Implemented: HB 3013 (2009)  
Hist.: DFW 157-2009, f. 12-30-09, cert. ef. 6-30-11

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**Rule Caption:** Amended rules related to the harassment of game birds.

**Adm. Order No.:** DFW 1-2010

**Filed with Sec. of State:** 1-12-2010

**Certified to be Effective:** 1-12-10

**Notice Publication Date:** 12-1-2009

**Rules Amended:** 635-043-0105

**Subject:** Amended rules related to running dogs at large in game bird habitat; and rules relating to harassment of non-threatened or non-endangered migratory birds.

**Rules Coordinator:** Therese Kucera—(503) 947-6033

## 635-043-0105

### Permit Required to Harass Wildlife

Any landowner suffering damage from wildlife (except for bobcat, red fox, cougar, bear, and non-threatened or non-endangered migratory birds) to property that they own or lawfully occupy, and desiring to control the damage by means of harassment shall first secure a Wildlife Harassing Permit by applying to the Department. No Wildlife Harassing Permit is required for harassment of non-threatened or non-endangered migratory bird species. However, if dogs are used to harass non-threatened or non-endangered migratory birds during the period April 1–July 31, a permit from the Department is required. Dogs may be used during the remainder of the year without a permit. Any harassment of non-threatened or non-endangered migratory birds must not result in the take of migratory birds, their eggs or their nests.

Stat. Auth.: ORS 183 & 496  
Stats. Implemented: ORS 183 & 496  
Hist.: 3WC 2, f. 12-19-73, ef. 1-11-74, Renumbered from 630-025-0225, Renumbered from 635-007-0345; FWC 52-1987, f. & ef. 7-23-87; FWC 49-1991, f. & cert. ef. 5-13-91; FWC 58-1994, f. & cert. ef. 9-1-94; DFW 12-2002, f. & cert. ef. 2-12-02; DFW 37-2009(Temp), f. & cert. ef. 4-13-09 thru 8-31-09; DFW 92-2009(Temp), f. & cert. ef. 8-11-09 thru 2-5-10; DFW 1-2010, f. & cert. ef. 1-12-10

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**Rule Caption:** Adopted Rules Related to Removal of Feral Swine.

**Adm. Order No.:** DFW 2-2010

**Filed with Sec. of State:** 1-12-2010

**Certified to be Effective:** 1-12-10

**Notice Publication Date:** 12-1-2009

**Rules Adopted:** 635-058-0000, 635-058-0010, 635-058-0020

**Subject:** Adopted rules to implement portions of HB 2221, enacted by the 2009 Legislative Assembly. These rules specify how a person who owns or controls land must remove feral swine that they know is roaming on that land. The rules also authorize the Department of Fish and Wildlife and Oregon State Police to inspect land to ensure compliance with feral swine removal plans.

**Rules Coordinator:** Therese Kucera—(503) 947-6033

## 635-058-0000

### Purpose and General Information

- (1) The purpose of this rule is to protect Oregon's native wildlife from disease, predation and the destruction of habitat caused by feral swine within the state. These rules remove various incentives for allowing feral swine to knowingly roam on private and public property.
  - (2) Feral Swine are defined by the State Department of Agriculture in OAR 603-010-0055.
  - (3) "Department" means the Oregon Department of Fish and Wildlife.
- Stat. Auth.: ORS 496.012, 496.138, 496.146, 498.022, 498.029, 498.052, 498.222 & HB 2221 (2009 OL Ch. 605)  
Stats. Implemented: ORS 496.012, 496.138, 496.146, 498.022, 498.029, 498.052, 498.222 & HB 2221 (2009 OL Ch. 605)  
Hist.: DFW 2-2010, f. & cert. ef. 1-12-10

## 635-058-0010

### Removal of Feral Swine

- (1) HB 2221 (Oregon Laws 2009, Chapter 605) requires that a person who owns or controls land (or an employee of that person who acts as land manager) must notify the Department within 10 days of discovering feral swine on the land. Within 60 days after notification, the person or their land manager must submit a feral swine removal plan to the Department for approval. At minimum, the plan must include:
    - (a) Actions to be taken to remove all feral swine from the land (which may include, but are not limited to, hunting and trapping); and
    - (b) An expiration date for the proposed actions.
  - (2) Upon approval of the plan by the Department, the person or land manager must implement the plan.
  - (3) The Department may grant an extension of the expiration date of the feral swine removal plan.
    - (a) The request for an extension must be submitted to the Department by the person or land manager at least seven (7) days prior to the expiration date.
    - (b) The Department will determine the length of the extension on a case-by-case basis.
- Stat. Auth.: ORS 496.012, 496.138, 496.146, 498.022, 498.029, 498.052, 498.222 & HB 2221 (2009 OL Ch. 605)  
Stats. Implemented: ORS 496.012, 496.138, 496.146, 498.022, 498.029, 498.052, 498.222 & HB 2221 (2009 OL Ch. 605)  
Hist.: DFW 2-2010, f. & cert. ef. 1-12-10

# ADMINISTRATIVE RULES

## 635-058-0020

### Land Subject to Inspection

After the expiration date of a Department-approved feral swine removal plan, the Oregon State Police or Department may (upon 10 days' prior notice) enter the land to determine whether implementation of the plan removed all feral swine. Entry will be limited to regular and usual business hours, including weekends. Nothing in these rules is intended to authorize or allow the warrantless search or inspection of a residence.

Stat. Auth.: ORS 496.012, 496.138, 496.146, 498.022, 498.029, 498.052, 498.222 & HB 2221 (2009 OL Ch. 605)  
Stats. Implemented: ORS 496.012, 496.138, 496.146, 498.022, 498.029, 498.052, 498.222 & HB 2221 (2009 OL Ch. 605)  
Hist.: DFW 2-2010, f. & cert. ef. 1-12-10

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**Rule Caption:** Adopted Rules Related to Aquatic Invasive Species Prevention Program.

**Adm. Order No.:** DFW 3-2010

**Filed with Sec. of State:** 1-12-2010

**Certified to be Effective:** 1-12-10

**Notice Publication Date:** 12-1-2009

**Rules Adopted:** 635-059-0000, 635-059-0010, 635-059-0050

**Subject:** Adopt rules to implement portions of HB 2220 and HB 2583, enacted by the 2009 Legislative Assembly. These amendments: define "aquatic invasive species", relate to inspection of recreational and commercial watercraft for the purposes of identifying or reporting of aquatic invasive species and; address presence of certain aquatic species on or within a boat.

**Rules Coordinator:** Therese Kucera—(503) 947-6033

## 635-059-0000

### Purpose and General Information

(1) The purpose of this rule is to protect Oregon's water resources, fish, wildlife and their habitat from harm due to the introduction and/or spread of aquatic invasive species.

(2) "Aquatic Invasive Species" is any species of wildlife, fish (excluding game fish) or freshwater or marine invertebrates that are listed in the "United States Geological Service list of Aquatic Nonindigenous species in Oregon" dated June 4, 2009 or that is listed as a mollusk or crustacean in OAR 635-056-0050 as a Prohibited Species.

Stat. Auth.: ORS 496.012, 496.138, 498.002, HB 2220 (2009 OL Ch. 764) and HB 2583 (2009 OL Ch. 303)  
Stats. Implemented: ORS 496.012, 496.138, 498.002, HB 2220 (2009 OL Ch. 764) and HB 2583 (2009 OL Ch. 303)  
Hist.: DFW 3-2010, f. & cert. ef. 1-12-10

## 635-059-0010

### Aquatic Invasive Species Reporting Information

If aquatic invasive species are found on or inside a watercraft, the owner or operator must provide the department with an accurate history as to where the watercraft has been during the last six months. Information shall include:

- (1) All waterbody(s) in which the watercraft has been moored or operated;
- (2) The length of time that the watercraft has been out of water;
- (3) All locations where the watercraft has been stored; and
- (4) If previously inspected, the agency and individual which conducted the inspection.

Stat. Auth.: ORS 496.012, 496.138, 498.002, HB 2220 (2009 OL Ch. 764) and HB 2583 (2009 OL Ch. 303)  
Stats. Implemented: ORS 496.012, 496.138, 498.002, HB 2220 (2009 OL Ch. 764) and HB 2583 (2009 OL Ch. 303)  
Hist.: DFW 3-2010, f. & cert. ef. 1-12-10

## 635-059-0050

### Allowable Blind Material for Coats

(1) Oregon Laws 2009, chapter 303, section 2(2) generally prohibits the launching of boats with aquatic species on or in the boat. However, that law also authorizes the Fish and Wildlife Commission to by rule allow the presence of certain aquatic species on or in a boat for activities including but not limited to hunting and photography. This rule implements that authority.

(2) Aquatic plant species which are not listed in the "Oregon State Noxious Weed List" adopted by the Oregon Department of Agriculture in OAR 603-052-1200 may be used on or within a boat as blind material for the purpose of hunting or wildlife photography.

Stat. Auth.: ORS 496.012, 496.138, 498.002, HB 2220 (2009 OL Ch. 764) and HB 2583 (2009 OL Ch. 303)  
Stats. Implemented: ORS 496.012, 496.138, 498.002, HB 2220 (2009 OL Ch. 764) and HB 2583 (2009 OL Ch. 303)  
Hist.: DFW 3-2010, f. & cert. ef. 1-12-10

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**Rule Caption:** Establish 2010 Seasons and regulations for Game Mammals.

**Adm. Order No.:** DFW 4-2010

**Filed with Sec. of State:** 1-12-2010

**Certified to be Effective:** 2-1-10

**Notice Publication Date:** 8-1-2009

**Rules Amended:** 635-069-0000, 635-073-0000, 635-073-0065, 635-073-0070

**Subject:** Establish 2010 hunting regulations for game mammals, including season dates, open areas, location of cooperative travel management areas, and other rules including general hunting and controlled hunt regulations.

**Rules Coordinator:** Therese Kucera—(503) 947-6033

## 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 2009 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 "2010 Oregon Big Game Regulations," into Oregon Administrative Rules. Therefore, persons must consult the "2010 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 of the Oregon Department of Fish and Wildlife.

[ED. 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 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. 12-8-99, cert. ef. 1-1-00; DFW 20-2000(Temp), f. 4-12-00, 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. 12-24-01, cert. ef. 1-1-02; DFW 59-2002, f. & cert. ef. 6-11-02; DFW 7-2003, f. 1-17-03, cert. ef. 2-1-03; DFW 50-2003, f. & cert. ef. 6-13-03; DFW 122-2003, f. 12-4-03, cert. ef. 2-2-04; DFW 53-2004, f. & cert. ef. 6-16-04; DFW 123-2004, f. 12-21-04, cert. ef. 2-1-05; DFW 53-2005, f. & cert. ef. 6-14-05; DFW 130-2005, f. 12-1-05, cert. ef. 2-1-06; DFW 41-2006, f. & cert. ef. 6-14-06; DFW 124-2006, f. 12-7-06, cert. ef. 2-1-07; DFW 42-2007, f. & cert. ef. 6-14-07; DFW 117-2007, f. 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. 1-12-10, cert. ef. 2-1-10

## 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 and controlled deer and elk youth hunts; pursuant to ORS Chapter 496.

(2) Controlled hunt tag numbers for 2009 for deer and elk bow and muzzleloader hunting and deer and elk youth hunts are listed in Tables 1 and 2 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 and controlled deer and elk youth hunts set out in the document entitled "2010 Oregon Big Game Regulations," into Oregon Administrative Rules. Therefore, persons must consult the "2010 Oregon Big Game Regulations," in addition to OAR chapter 635, to determine all applicable requirements for bow and muzzleloader hunting 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 of the Oregon Department of Fish and Wildlife.

[ED. 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 44-1988, f. & cert. ef. 6-13-88; FWC 18-1994, f. 3-30-94, cert. ef. 5-1-94; FWC 17-1996, f. 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. 12-8-99, cert. ef. 1-1-00; DFW 21-2000(Temp), f. 4-12-00, 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. 12-24-01, cert. ef. 1-1-02; DFW 59-2002, f. & cert. ef. 6-11-02; DFW 3-2003, f. 1-17-03, cert. ef. 1-20-03; DFW 50-2003, f. & cert. ef. 6-13-03; DFW 122-2003, f. 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. 12-21-04, cert. ef. 2-1-05; DFW 53-2005, f. & cert. ef. 6-14-05; DFW 130-2005, f. 12-1-05, 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. 12-7-06, cert. ef. 2-1-07; DFW 42-2007, f. & cert. ef. 6-14-07; DFW 117-2007, f. 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. 1-12-10, cert. ef. 2-1-10

# ADMINISTRATIVE RULES

## 635-073-0065

### Early Western Oregon Bowhunting Seasons

- (1) General Deer Bowhunting Seasons — Western Oregon.
- (a) Open Season: August 28 — September 26, 2010;
- (b) Bag Limit and Hunt Area: The bag limit is one buck deer having not less than a forked antler in the Tioga, Dixon, Sixes, Powers, Evans Creek, Rogue, Chetco, and Applegate units; the bag limit is one deer in the Alsea, Indigo, McKenzie, Melrose, Saddle Mountain, Santiam, Scappoose, Siuslaw, Stott Mountain, Trask, Willamette, and Wilson units.
- (2) General Elk Bowhunting Seasons — Western Oregon.
- (a) Open Season: August 28 — September 26, 2010;
- (b) Bag Limit and Hunt Area: The bag limit is one legal bull elk in the Sixes, Powers, Chetco and Santiam (within the exterior boundary of Mt. Hood National Forest) units; the bag limit is one legal bull or antlerless elk in the Alsea, Applegate, Dixon, Evans Creek, Indigo, McKenzie, Melrose, Rogue, Saddle Mountain, Santiam (within the exterior boundary of Mt. Hood National Forest, antlerless elk cannot be harvested), Scappoose, Siuslaw, Stott Mountain, Tioga, Trask, Willamette, and Wilson units.
- Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162  
Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162  
Hist.: DFW 53-2004, f. & cert. ef. 6-16-04; DFW 53-2005, f. & cert. ef. 6-14-05; DFW 41-2006, f. & cert. ef. 6-14-06; DFW 42-2007, f. & cert. ef. 6-14-07; DFW 117-2007, f. 10-31-07, cert. ef. 2-1-08; DFW 8-2009, f. & cert. ef. 2-3-09; DFW 4-2010, f. 1-12-10, cert. ef. 2-1-10

## 635-073-0070

### Early Eastern Oregon Bowhunting Seasons

- (1) General Deer Bowhunting Seasons — Eastern Oregon.
- (a) Open Season: August 28 — September 26, 2010;
- (b) Bag Limit and Hunt Area: The bag limit is one buck deer having a visible antler in the Grizzly, Metolius, Upper Deschutes, Paulina, Sprague, Fort Rock, Heppner, Keno, Klamath Falls, Interstate, Warner, Wagontire, Juniper, Beatys Butte, [Steens Mountain], Owyhee, Malheur River, Silvies, Maury, Ochoco, Murderers Creek, Beulah, Fossil, Northside, Desolation, Ukiah, Starkey, Mt. Emily, Walla Walla, Wenaha, Sled Springs, Chesnimnus, Minam, Catherine Creek, Sumpter, Lookout Mountain, Keating, Pine Creek, Imnaha, Snake River, Silver Lake, and Whitehorse units and that part of the White River Unit within the Mt. Hood National Forest except that: That part of the Whitehorse Unit south of Whitehorse Ranch Rd. and west of US Hwy 95 (Trout Creek Mts.), is closed to deer bowhunting during the general bowhunting season unless the hunter has a Trout Creek Mts. controlled bow deer tag. The Steens Mountain Unit shall be closed to all deer bowhunting unless the hunter has a valid, controlled Steens Mountain deer bow tag. The Maury Unit shall be closed to all deer bowhunting unless the hunter has a valid, controlled Maury deer bow tag. The Warner Unit shall be closed to all deer bowhunting unless the hunter has a valid, controlled North Warner or South Warner deer bow tag. Approximately 40 square miles of the Starkey Experimental Forest within the Starkey Unit shall be closed to all bowhunting. The Chesnimnus Unit shall be closed to deer bowhunting during the general bowhunting season unless the hunter also has a Chesnimnus controlled bow elk tag (used or unused). The Sled Springs Unit shall be closed to deer bowhunting during the general bowhunting season unless the hunter also has a Sled Springs controlled bow elk tag (used or unused). The Ochoco Unit shall be closed to deer bowhunting during the general bowhunting season unless the hunter also has a Ochoco controlled bow elk tag (used or unused). The bag limit is one deer in the Biggs, Columbia Basin (except: That portion of the Columbia Basin Unit described as follows shall be closed to all bowhunting: Beginning at Heppner; north and west State Highway 74 to Lexington; north and east on State Highway 207 to Butter Creek Junction; south on Butter Creek Road to Highway 74 at Vinson; west on Highway 74 to Heppner; point of beginning.), Hood, and Maupin units.
- (2) General Elk Bowhunting Seasons — Eastern Oregon.
- (a) Open Season: August 28 — September 26, 2010;
- (b) Bag Limit and Hunt Area: The bag limit is one legal bull elk in the Metolius, Upper Deschutes, Fort Rock Unit West of Hwy 97, North Sumpter (see hunt 251A area description), Heppner, Keno, Klamath Falls, Interstate, Warner, Maury, Ukiah, Silver Lake, Sprague, Starkey, Mt. Emily, Walla Walla, Wenaha, Catherine Creek, Chesnimnus, Minam, Keating, Snake River, Approximately 40 square miles of the Starkey Experimental Forest within the Starkey Unit shall be closed to all bowhunting. The Chesnimnus Unit shall be closed to all elk bowhunting unless the hunter has a valid, controlled Chesnimnus elk bow tag. The Sled Springs Unit shall be closed to all elk bowhunting unless the hunter has a valid, controlled Sled Springs elk bow tag. The Ochoco Unit shall be closed to all elk bowhunting unless the hunter has a valid, controlled Ochoco elk bow tag. The Steens Mountain Unit shall be closed to elk bowhunting during the general bowhunting season unless the hunter also has a Steens Mountain controlled bow deer tag (used or unused). The Maury Unit shall be closed to elk bowhunting during the general bowhunting season unless the hunter also has a Maury controlled bow deer tag (used or unused). The Warner Unit shall be closed to elk bowhunting during the general bowhunting season unless the hunter also has a North Warner or South Warner controlled bow deer tag (used or unused). The bag limit is one legal bull or antlerless elk in the Beatys Butte, Beulah, Biggs, Columbia Basin (except: That portion of the Columbia Basin Unit described as follows

shall be closed to all bowhunting: Beginning at Heppner; north and west State Highway 74 to Lexington; north and east on State Highway 207 to Butter Creek Junction; south on Butter Creek Road to Highway 74 at Vinson; west on Highway 74 to Heppner; point of beginning.), Desolation, Fort Rock East of Hwy 97, Fossil, Grizzly, Hood, Imnaha, Juniper, Lookout Mountain, Malheur River, Maupin, Murderers Creek, Northside, Ochoco, Owyhee, Paulina, Pine Creek, Silvies, Sled Springs, Steens Mountain, South Sumpter (see hunt 251B1 area description), Wagontire, White River, and Whitehorse units.

Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162  
Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162  
Hist.: 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 47-1999, f. & cert. ef. 6-16-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 57-2001, f. & cert. ef. 7-6-01; 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 53-2005, f. & cert. ef. 6-14-05; DFW 41-2006, f. & cert. ef. 6-14-06; DFW 42-2007, f. & cert. ef. 6-14-07; DFW 117-2007, f. 10-31-07, cert. ef. 2-1-08; DFW 8-2009, f. & cert. ef. 2-3-09; DFW 4-2010, f. 1-12-10, cert. ef. 2-1-10

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**Rule Caption:** Establish Average Market Value of Food Fish for Determining Damages Related to Commercial Fishing Violations.

**Adm. Order No.:** DFW 5-2010

**Filed with Sec. of State:** 1-13-2010

**Certified to be Effective:** 1-13-10

**Notice Publication Date:** 12-1-2009

**Rules Amended:** 635-006-0232

**Subject:** Amended rule to establish the average market value of food fish species used to determine damages for commercial fishing violations.

**Rules Coordinator:** Therese Kucera—(503) 947-6033

## 635-006-0232

### Damages for Commercial Fishing Violations

(1) For purposes of ORS 506.720 the following shall be the 2009 average market value of food fish species. For species not listed, the average market value shall be the price per pound paid to law enforcement officials for any fish or shellfish confiscated from the person being assessed damages, or the average price per pound paid for that species during the month in which the violation occurred, whichever is greater. Unless otherwise noted, the amount given is the price per pound and is based on round weight.

(a) FISH:

- (A) Anchovy, Northern \$0.10.  
(B) Cabezon \$3.52.  
(C) Carp \$0.50 (2006 price).  
(D) Cod, Pacific \$0.46.  
(E) Flounder, arrowtooth \$0.10.  
(F) Flounder, starry \$0.39.  
(G) Greenling \$4.52.  
(H) Grenadier \$0.10.  
(I) Hagfish \$0.56.  
(J) Hake, Pacific (Whiting) \$0.07.  
(K) Halibut, Pacific, dressed weight with head on \$3.31.  
(L) Herring, Pacific \$0.22.  
(M) Lingcod \$1.28.  
(N) Mackerel, jack \$0.01 (2008 price), Pacific \$0.06.  
(O) Opah \$2.98 (2008 price).  
(P) Pacific ocean perch, \$0.48.  
(Q) Pollock, Walleye \$0.67 (2001 price).  
(R) Rockfish:  
(i) Black, \$1.96.  
(ii) Blue, \$1.95.  
(iii) Canary, \$0.53.  
(iv) Darkblotched, \$2.00.  
(v) Black and yellow, \$4.64.  
(vi) Brown, \$4.00.  
(vii) China, \$6.73.  
(viii) Copper, \$3.49.  
(ix) Gopher, \$4.28.  
(x) Grass, \$7.01.  
(xi) Quillback, \$4.28.  
(xii) Shelf, \$0.51.  
(xiii) Shortbelly, using trawl gear \$0.29 (2003 price), using line and pot gear \$1.96 (2008 price).  
(xiv) Slope, using trawl gear, \$0.48 using line and pot gear \$0.66.  
(xv) Tiger, \$4.13.  
(xvi) Vermilion, \$2.68.  
(xvii) Widow, \$0.44.  
(xviii) Yelloweye, using trawl gear \$0.52, using line and pot gear \$0.99.  
(xix) Yellowtail, \$2.46.  
(S) Sablefish:



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(i) Dressed weight, ungraded \$4.15, extra small \$3.11, small \$4.14, medium \$4.83 and large \$5.06.

(ii) Round weight, ungraded \$2.29, extra small \$1.32, small \$1.83, medium \$2.23 and large \$2.71.

(T) Salmon, Chinook, ocean dressed weight: large \$5.20, medium \$4.80, small \$4.48 and mixed size \$5.39.

(U) Salmon, coho, ocean dressed weight: mixed size \$1.63.

(V) Salmon, pink, ocean dressed weight: ungraded, \$0.33.

(W) Sanddab, Pacific \$0.44.

(X) Sardine, Pacific \$0.11.

(Y) Shad, American:

(i) Coast, ungraded, gill net and set net, \$0.30 (2003 price).

(ii) Columbia, ungraded \$0.24.

(Z) Shark, blue \$1.00, Pacific sleeper \$0.62 (2000 price), shortfin mako \$1.50, sixgill \$0.05 (2007 price), soupfin \$0.27, spiny dogfish \$0.38, scalloped hammerhead \$0.12 (2001 price), silky \$0.18 (2001 price), thresher dressed weight \$1.50 (1995 price) and round weight \$0.34 (2008 price), and other species \$0.22.

(AA) Skates and Rays \$0.19.

(BB) Smelt, Eulachon (Columbia River), \$4.00 and other species \$0.20.

(CC) Sole, butter \$0.31, curlfin (turbot) \$0.30, Dover \$0.38, English \$0.29, flathead \$0.31, petrale \$0.86, rex \$0.32, rock \$0.34 and sand \$0.76.

(DD) Steelhead \$0.40.

(EE) Sturgeon, green \$0.98 and white \$1.95.

(FF) Surfperch \$1.00.

(GG) Swordfish \$4.00 (2008 price).

(HH) Thornyhead (Sebastes), longspine \$0.31 and shortspine \$2.27.

(II) Tuna, albacore \$1.01, bluefin \$0.93, bigeye \$4.00 (2008 price), and yellowfin \$3.49 (2006 price).

(JJ) Walleye \$2.90.

(KK) Wolf-eel \$2.25.

(LL) Wrymouth \$0.64.

(b) CRUSTACEANS:

(A) Crab: box \$2.00 (2007 price), Dungeness bay \$3.45 and ocean \$1.96, rock \$0.99 and Tanner \$0.69 (2003 price).

(B) Crayfish \$1.88.

(C) Shrimp: brine \$1.00, coonstripe \$1.57 (2007 price), ghost (sand) \$2.23, mud \$1.20, pink \$0.31 (applied to the gross round weight of the confiscated pink shrimp reported on the fish receiving ticket) and spot \$11.19.

(D) Water flea (Daphnia) \$0.65 (2002 price).

(c) MOLLUSKS:

(A) Abalone, flat \$21.09 (2008 price).

(B) Clams: butter \$0.45, cockle \$0.54, gaper \$0.47, Manila littleneck \$2.00 (2008 price), Nat. littleneck \$2.00 (2008 price), razor \$1.98 and soft-shell \$0.99 (2008 price).

(C) Mussels, ocean \$0.85.

(D) Octopus \$0.79.

(E) Scallop, rock \$0.70 (2005 price).

(F) Scallop, weathervane dressed weight (shucked) \$5.73 (2002 price) and round weight \$0.55 (2002 price).

(G) Squid, market \$0.25 (2007 price).

(H) Squid, other species \$0.20.

(d) OTHER INVERTEBRATES:

(A) Jellyfish \$10.00 (2004 price).

(B) Sea cucumber \$0.30 (2005 price).

(C) Sea urchin, red \$0.44 and purple \$0.30 (2004 price).

(D) Sea stars \$2.36.

(2) The Department may initiate civil proceedings to recover damages as authorized by ORS 506.720 where the value of any food fish unlawfully taken exceeds \$300, except for food fish taken by trawl in the groundfish fishery where the trip limit has not been exceeded by more than 15%.

Stat. Auth.: ORS 506.119

Stats. Implemented: ORS 506.109 & 506.720

Hist.: FWC 160, f. & ef. 11-25-77; FWC 18-1978, f. & ef. 4-7-78, Renumbered from 635-036-0605; FWC 33-1982, f. & ef. 6-2-82; FWC 9-1988, f. & cert. ef. 3-3-88; DFW 6-2003, f. 1-21-03, cert. ef. 2-1-03; DFW 3-2004, f. 1-14-04, cert. ef. 2-1-04; DFW 1-2005, f. & cert. ef. 1-7-05; DFW 1-2005, f. & cert. ef. 1-7-05; DFW 1-2006, f. & cert. ef. 1-9-06; DFW 1-2007, f. & cert. ef. 1-12-07; DFW 2-2008, f. & cert. ef. 1-15-08; DFW 3-2009, f. & cert. ef. 1-13-09; DFW 5-2010, f. & cert. ef. 1-13-10

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

**Rule Caption:** A Committed Person's Right to Fresh Air and the Outdoors.

**Adm. Order No.:** MHS 5-2009

**Filed with Sec. of State:** 12-17-2009

**Certified to be Effective:** 12-17-09

**Notice Publication Date:** 12-1-2009

**Rules Amended:** 309-033-0270, 309-035-0155, 309-035-0380

**Subject:** HB 2312 Enrolled (2007 Session) established that, under most circumstances, a committed person has the right to fresh air and the outdoors. The Addictions and Mental Health Division is amending rules in OAR 309-033 & 309-035 to define terms, and to establish that these rights may be limited under certain circumstances.

**Rules Coordinator:** Richard Luthe—(503) 947-1186

### 309-033-0270

#### Provision of Care, Custody and Treatment of Persons Committed to the Division

(1) Provision of rights. In addition to the rights provided under ORS 426.385, committed persons also have the rights provided under ORS 430.205 through 430.210 and this rule, including:

(a) A Committed Person's Right to Fresh Air. For the purpose of this rule, these terms have the following meanings:

(A) "Fresh air" means the inflow of air from outside the facility where the committed person 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.

(b) If a committed person requests access to fresh air and the outdoors or the committed person's treating health care provider determines that fresh air or the outdoors would be beneficial to the committed person, the facility in which the committed person 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 committed person or others.

(c) The determination whether a significant risk of harm to the committed person or others exists shall be made by the committed person's treating health care provider. The treating health care provider may find that a significant risk of harm to the committed person or others exists if:

(A) The committed person's individual circumstances and condition indicate an unreasonable risk of harm to the committed person or others which cannot be reasonably accommodated within existing programming should the committed person be allowed access to fresh air and the outdoors; or

(B) The facility's existing physical plant or existing staffing prevent the provision of access to fresh air and the outdoors in a manner that maintains the safety of the committed person or others.

(d) If a facility determines that its existing physical plant prevents the provision of access to fresh air and the outdoors in a safe manner, the facility shall make a good faith effort at the time of any significant renovation to the physical plant that involves renovation of the unit or relocation of where committed persons are treated to include changes to the physical plan or location that allow access to fresh air and the outdoors, so long as such changes do not add an unreasonable amount to the cost of the renovation.

(2) Provision of care at a state hospital. The superintendent of the state hospital serving the county of commitment shall be responsible for all admissions to the state hospital:

(a) The superintendent, in consultation with the director, shall determine whether the best interests of a committed person are served by an admission to the state hospital;

(b) The superintendent shall implement policies and procedures which afford a committed person placed in a state hospital the rights provided by ORS 426.385, 430.205 through 430.210 and this rule.

(3) Provision of care at a community hospital. The director shall assign and place a committed person only at a community hospital approved under OAR 309-033-0530:

(a) The admitting physician, in consultation with the director, shall determine whether the best interests of a committed person are served by an admission to a community hospital;

(b) The administrator shall implement policies and procedures which afford a committed person placed in a community hospital the rights provided by ORS 426.385, 430.205 through 430.210 and this rule.

(4) Provision of care at a nonhospital facility or an outpatient program. The director shall only assign and place a committed person in a nonhospital facility that is licensed or certified by the Division:

(a) The administrator, in consultation with the director, shall determine whether the best interests of a committed person are served by an admission to a nonhospital facility or an outpatient program;

(b) The administrator shall implement policies and procedures which afford a committed person placed in a nonhospital facility or an outpatient program the rights provided by ORS 426.385, 430.205 through 430.210 and this rule;

(c) The director shall place on a trial visit a committed person who is discharged from a state hospital or a community hospital when the director assigns and places the person in a nonhospital facility;

(d) The director shall place a committed person, who the court has ordered on outpatient commitment at the commitment hearing, on outpatient

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commitment when the director assigns and places the person in a nonhospital facility.

(5) Provision of medical services for a committed person. The superintendent of a state hospital, the treating physician at a community hospital or the director may transfer a committed person to a general hospital, or transfer a committed person from a psychiatric ward to a medical ward for medical care:

(a) The treating physician shall only provide medical care with the consent of the committed person in accordance with OAR 309-033-0600 through 309-033-0650;

(b) The superintendent or treating physician shall transfer a committed person to a general hospital for medical services on a pass or discharge the person from the state hospital when it is determined that the person will not return to the state hospital within a reasonable length of time, or that discharge is clinically appropriate and is required for the person to have access to third-party insurance benefits;

(c) The treating physician shall immediately notify the director that a person was transferred to another hospital for medical care under this subsection.

Stat. Auth.: ORS 426.060, 426.385 & 430.205 - 430.210

Stats. Implemented: ORS 426.005 - 426.309

Hist.: MHD 6-1998, f. 6-26-98, cert. ef. 7-1-98, Renumbered from 309-200-0080; MHS 5-2009, f. & cert. ef. 12-17-09

## 309-035-0155

### Resident Rights

(1) Statutory and Constitutional Rights. Each resident will be assured the same civil and human rights accorded to other citizens. These rights will be assured unless expressly limited by a court in the case of a resident 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 which 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) Rights of Service Recipients. In accordance with ORS 430.210, residents will have the right to:

(a) Choose from available services those which are appropriate, consistent with the plan developed in accordance with paragraphs (b) and (c) of this subsection, and provided in a setting and under conditions that are least restrictive to the person's liberty, that are least intrusive to the person and that provide for the greatest degree of independence;

(b) An individualized written service plan, services based upon that plan and periodic review and reassessment of service needs;

(c) Ongoing participation in planning services in a manner appropriate to the person's capabilities, including the right to participate in the development and periodic revision of the plan described in paragraph (b) of this subsection, and the right to be provided with a reasonable explanation of all service considerations;

(d) Not receive services without informed consent except in a medical emergency or as otherwise permitted by law;

(e) Not participate in experimentation without informed voluntary written consent;

(f) Receive medication only for the person's individual clinical needs;

(g) Not be involuntarily terminated or transferred from services without prior notice, notification of available sources of necessary continued services and exercise of a grievance procedure;

(h) A humane service environment that affords reasonable protection from harm and affords reasonable privacy;

(i) Be free from abuse or neglect and to report any incident of abuse without being subject to retaliation;

(j) Religious freedom;

(k) Not be required to perform labor, except personal housekeeping duties, without reasonable and lawful compensation;

(l) Visit with family members, friends, advocates and legal and medical professionals;

(m) Exercise all rights set forth in ORS 426.385 and 427.031 if the individual is committed to the Department;

(n) Be informed at the start of services and periodically thereafter of the rights guaranteed by this section and the procedure for reporting abuse, and to have these rights and procedures prominently posted in a location readily accessible to the person and made available to the person's guardian and any representative designated by the person;

(o) Assert grievances with respect to infringement of the rights described in this section, including the right to have such grievances considered in a fair, timely and impartial grievance procedure;

(p) Have access to and communicate privately with any public or private rights protection program or rights advocate; and

(q) Exercise all rights described in this section without any form of reprisal or punishment.

(3) Additional Rights in Residential Treatment Facilities. Residents will also have a right to:

(a) Adequate food, shelter and clothing, consistent with OAR 309-035-0159;

(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 309-035-0167.

(g) To review the Residential Treatment Facility's policies and procedures; and

(h) Not participate in research without informed voluntary written consent.

(4) The Resident's Right to Fresh Air. For the purpose of this rule, these terms have the following meanings:

(a) "Fresh air" means the inflow of air from outside the facility where the resident 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 a resident requests access to fresh air and the outdoors or the resident's treating health care provider determines that fresh air or the outdoors would be beneficial to the resident, the facility in which the resident 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 resident or others.

(d) The determination whether a significant risk of harm to the resident or others exists shall be made by the resident's treating health care provider. The treating health care provider may find that a significant risk of harm to the resident or others exists if:

(A) The resident's individual circumstances and condition indicate an unreasonable risk of harm to the resident or others which cannot be reasonably accommodated within existing programming should the resident be allowed access to fresh air and the outdoors; or

(B) The facility's existing physical plant or existing staffing prevent the provision of access to fresh air and the outdoors in a manner that maintains the safety of the resident or others.

(e) If a facility determines that its existing physical plant prevents the provision of access to fresh air and the outdoors in a safe manner, the facility shall make a good faith effort at the time of any significant renovation to the physical plant that involves renovation of the unit or relocation of where residents are treated to include changes to the physical plan or location that allow access to fresh air and the outdoors, so long as such changes do not add an unreasonable amount to the cost of the renovation.

(5) Program Requirements. The program will have and implement written policies and procedures which protect residents' rights, and encourage and assist residents to understand and exercise their rights. The program will post a listing of resident rights under these rules in a place readily accessible to all residents and visitors.

Stat. Auth.: ORS 409.010 & 443.450

Stats. Implemented: ORS 443.400 - 443.455 & 443.991(2)

Hist.: MHD 9-1984(Temp), f. & ef. 12-10-84; MHD 9-1985, f. & ef. 6-7-85; MHD 4-1998, f. 5-21-98, cert. ef. 6-1-98; MHD 4-2005, f. & cert. ef. 4-1-05; MHS 5-2009, f. & cert. ef. 12-17-09

## 309-035-0380

### Resident Rights

(1) Statutory and Constitutional Rights. Each resident will be assured the same civil and human rights accorded to other citizens. These rights will be assured unless expressly limited by a court in the case of a resident 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 which 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) Rights of Service Recipients. In accordance with ORS 430.210, residents will have the right to:

(a) Choose from available services those which are appropriate, consistent with the plan developed in accordance with paragraphs (b) and (c) of this subsection, and provided in a setting and under conditions that are least restrictive to the person's liberty, that are least intrusive to the person and that provide for the greatest degree of independence;

(b) An individualized written service plan, services based upon that plan and periodic review and reassessment of service needs;

(c) Ongoing participation in planning services in a manner appropriate to the person's capabilities, including the right to participate in the development and periodic revision of the plan described in paragraph (b) of this subsection, and the right to be provided with a reasonable explanation of all service considerations;

(d) Not receive services without informed consent except in a medical emergency or as otherwise permitted by law;

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(e) Not participate in experimentation without informed voluntary written consent;

(f) Receive medication only for the person's individual clinical needs;

(g) Not be involuntarily terminated or transferred from services without prior notice, notification of available sources of necessary continued services and exercise of a grievance procedure;

(h) A humane service environment that affords reasonable protection from harm and affords reasonable privacy;

(i) Be free from abuse or neglect and to report any incident of abuse without being subject to retaliation;

(j) Religious freedom;

(k) Not be required to perform labor, except personal housekeeping duties, without reasonable and lawful compensation;

(l) Visit with family members, friends, advocates and legal and medical professionals;

(m) Exercise all rights set forth in ORS 426.385 and 427.031 if the individual is committed to the Department;

(n) Be informed at the start of services and periodically thereafter of the rights guaranteed by this section and the procedure for reporting abuse, and to have these rights and procedures prominently posted in a location readily accessible to the person and made available to the person's guardian and any representative designated by the person;

(o) Assert grievances with respect to infringement of the rights described in this section, including the right to have such grievances considered in a fair, timely and impartial grievance procedure;

(p) Have access to and communicate privately with any public or private rights protection program or rights advocate; and

(q) Exercise all rights described in this section without any form of reprisal or punishment.

(3) Additional Rights in RTHs. Residents will also have a right to:

(a) Adequate food, shelter and clothing, consistent with OAR 309-035-0410;

(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;

(g) To review the RTHs policies and procedures; and

(h) Not participate in research without informed voluntary written consent.

(4) The Resident's Right to Fresh Air. For the purpose of this rule, these terms have the following meanings:

(a) "Fresh air" means the inflow of air from outside the facility where the resident 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 a resident requests access to fresh air and the outdoors or the resident's treating health care provider determines that fresh air and the outdoors would be beneficial to the resident, the facility in which the resident is receiving services shall provide daily access to fresh air or the outdoors unless this access would create a significant risk of harm to the resident or others.

(d) The determination whether a significant risk of harm to the resident or others exists shall be made by the resident's treating health care provider. The treating health care provider may find that a significant risk of harm to the resident or others exists if:

(A) The resident's individual circumstances and condition indicate an unreasonable risk of harm to the resident or others which cannot be reasonably accommodated within existing programming should the resident be allowed access to fresh air and the outdoors; or

(B) The facility's existing physical plant or existing staffing prevent the provision of access to fresh air and the outdoors in a manner that maintains the safety of the resident or others.

(e) If a facility determines that its existing physical plant prevents the provision of access to fresh air or the outdoors in a safe manner, the facility shall make a good faith effort at the time of any significant renovation to the physical plant that involves renovation of the unit or relocation of where residents are treated to include changes to the physical plan or location that allow access to fresh air and the outdoors, so long as such changes do not add an unreasonable amount to the cost of the renovation.

(5) Program Requirements. The program will have and implement written policies and procedures which protect residents' rights, and encourage and assist residents to understand and exercise their rights. The program will post a listing of resident rights under these rules in a place readily accessible to all residents and visitors.

Stat. Auth.: ORS 409.010 & 443.450

Stats. Implemented: ORS 443.400 - 443.455 & 443.991(2)

Hist.: MHD 7-1999, f. 11-15-99, cert. ef. 12-1-99; MHD 5-2005, f. & cert. ef. 4-1-05; MHS 5-2009, f. & cert. ef. 12-17-09

**Rule Caption:** Amending rules defining who may represent persons during "captivity" hearings at the Oregon State Hospital.

**Adm. Order No.:** MHS 6-2009

**Filed with Sec. of State:** 12-28-2009

**Certified to be Effective:** 12-28-09

**Notice Publication Date:** 11-1-2009

**Rules Amended:** 309-114-0005

**Subject:** The Addictions & Mental Health (AMH) Division is amending rules in OAR 309-114 to comply with SB 288, which changes who may represent patients at hearings to determine "capacity" prior to the administration of "significant procedures." The bill added "or the right to be free from potentially unusual or hazardous treatment procedures under ORS 426.385(3)" (Rights o committed persons) to ORS 183.458.

**Rules Coordinator:** Richard Luthe—(503) 947-1186

## 309-114-0005

### Definitions

As used in these rules:

(1) "Authorized Representative" or "representative" means an individual who is an employee of the system described in ORS 192.517(1) and who may represent a party in a contested case hearing; the representative must be supervised by an attorney that is licensed by the Oregon State Bar and employed by the same system described in ORS 192.517(1).

(2) "Chief Medical Officer" means the physician designated by the superintendent of each state institution pursuant to ORS 179.360(1)(f) who is responsible for the administration of medical treatment at each state institution.

(3) "Division" means these Divisions of the Department of Human Services:

(a) Addictions and Mental Health Division (AMH) when referring to "patients;" and

(b) The Seniors and People with Disabilities Division (SPD) when referring to "residents."

(4) "Guardian" means a legal guardian who is an individual appointed by a court of law to act as guardian of a minor or a legally incapacitated person.

(5) "Legally Incapacitated" means having been found by a court of law under ORS 426.295 to be unable, without assistance, to properly manage or take care of one's personal affairs.

(6) "Material Risk." A risk is material if it may have a substantial adverse effect on the patient's or resident's psychological or physical health, or both. Tardive dyskinesia is a material risk of neuroleptic medication. Other risks include, but are not limited to, raised blood pressure, onset of diabetes, and metabolic changes.

(7) "Medication Educator" means a Qualified Mental Health Professional (QMHP) or Qualified Mental Retardation Professional who provides information about the proposed significant procedures to patients and residents.

(8) "Patient" means a person who is receiving care and treatment in a state institution for the mentally ill.

(9) "Person Committed to the Division" or "Person" means a patient or resident committed under ORS 161.327, 161.370, 179.478, 426.130, or 427.215, or certified by the State Training Center Review Board under 427.020.

(10) "Psychiatric Nurse Practitioner," means a registered nurse with prescription authority who independently provides health care to clients with mental and emotional needs or disorders.

(11) "Qualified Mental Health Professional" (QMHP) means any individual meeting the following minimum qualifications as documented by the state institution:

(a) Graduate degree in psychology;

(b) Bachelor's or graduate degree in nursing and licensed by the State of Oregon;

(c) Graduate degree in social work or counseling;

(d) Graduate degree in a behavioral science field;

(e) Graduate degree in recreational art, or music therapy;

(f) Bachelor's degree in occupational therapy and licensed by the State of Oregon; or

(g) Bachelor's or graduate degree in a relevant area.

(12) "Qualified Mental Retardation Professional" means an individual who meets the professional requirements under 42 CFR 483.430.

(13) "Resident" means a person who is receiving care, treatment, and training in a state institution for the mentally retarded.

(14) "Routine Medical Procedure" means a procedure customarily administered by facility medical staff under circumstances involving little or no risk of causing injury to a patient or resident, including, but not limited to physical examinations, blood draws, influenza vaccinations, tuberculosis (TB) testing, and hygiene.

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(15) "Significant Procedure" means a diagnostic or treatment modality, and all significant procedures of a similar class that pose a material risk of substantial pain or harm to the patient or resident such as, but not limited to, psychotropic medication and electro-convulsive therapy. Significant procedures do not include routine medical procedures. For purposes of these rules, "Human immunodeficiency virus" (HIV) testing shall be considered a "Significant Procedure."

(16) "Significant Procedures of a Similar Class" means a diagnostic or treatment modality that presents substantially similar material risks as the significant procedure listed on the treating physician's or psychiatric nurse practitioner's informed consent form and is generally considered in current clinical practice to be a substitute treatment or belong to the same class of medications as the listed significant procedure. Significant procedures of a similar class do not need to be specifically listed on the treating physician's or psychiatric nurse practitioner's form.

(17) "State Institution" or "Institution" means all Oregon State Hospital campuses and the Blue Mountain Recovery Center.

(18) "Superintendent" means the executive head of the state institution listed in section (17) of this rule, or the superintendent's designee.

Stat. Auth.: ORS 179.040  
Stats. Implemented: ORS 179.321, 183.458; 426.070, 426.385, 427.031 & 427.255  
Hist.: MHD 3-1983, f. 2-24-83, cf. 3-26-83; MHD 3-1988, f. 4-12-88, (and corrected 5-17-88), cert. ef. 6-1-88; MHS 14-2007(Temp), f. 11-30-07, cert. ef. 12-1-07 thru 5-29-08; MHS 2-2008(Temp), f. & cert. ef. 4-7-08 thru 10-4-08; MHS 6-2008, f. & cert. ef. 7-25-08; MHS 1-2009(Temp), f. & cert. ef. 1-23-09 thru 7-22-09; MHS 2-2009(Temp), f. & cert. ef. 4-2-09 thru 7-22-09; MHS 3-2009, f. & cert. ef. 6-26-09; MHS 6-2009, . & cert. ef. 12-28-09

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## Department of Human Services, Administrative Services Division and Director's Office Chapter 407

**Rule Caption:** Update of Criminal Records Check Rules for Department of Human Services Employees, Volunteers, and Contractors.

**Adm. Order No.:** DHSD 9-2009

**Filed with Sec. of State:** 12-31-2009

**Certified to be Effective:** 1-1-10

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**Rules Adopted:** 407-007-0065, 407-007-0075

**Rules Amended:** 407-007-0000, 407-007-0010, 407-007-0020, 407-007-0030, 407-007-0040, 407-007-0050, 407-007-0060, 407-007-0070, 407-007-0080, 407-007-0090, 407-007-0100

**Subject:** These rules describe the criminal records check process conducted on Department of Human Services employees, applicants, volunteers, and certain contractors. SB 157 becomes effective January 1, 2010, and these rules are being updated to reflect new statutory language regarding who is subject to criminal records checks. In addition, these rules are being updated to better align with ORS 181.534 and 181.537 and to meet Secretary of State requirements for rule writing.

**Rules Coordinator:** Jennifer Bittel—(503) 947-5250

### 407-007-0000

#### Purpose and Scope

(1) The purpose of these rules, OAR 407-007-0000 to 407-007-0100, is to provide for the reasonable screening under ORS 181.534 and 181.537 of the Department of Human Services' employees, volunteers, and contractors to determine if they have a history of criminal behavior such that they should not be allowed to work, volunteer, be employed, or otherwise perform in positions covered by these rules.

(2) These rules apply to evaluating criminal records and potentially disqualifying conditions of a subject individual when conducting fitness determinations based upon such information. The fact that a subject individual is approved does not guarantee employment or placement. These rules do not apply to subject individuals covered under OAR 407-007-0200 to 407-007-0370.

(3) Although abuse checks may occur concurrently with criminal records checks performed under these rules and may share similar processes, the criminal records check process is separate and distinct from the abuse checks that may be performed under OAR 407-007-0400 to 407-007-0460.

Stat. Auth.: ORS 181.534, 181.537, 409.050  
Stats. Implemented: ORS 181.534, 181.537, 409.010  
Hist.: DHSD 2-2008(Temp), f. & cert. ef. 3-31-08 thru 9-26-08; DHSD 7-2008, f. 8-29-08, cert. ef. 9-1-08; DHSD 9-2009, f. 12-31-09, cert. ef. 1-1-10

### 407-007-0010

#### Definitions

As used in OAR 407-007-0000 to 407-007-0100, unless the context of the rule requires otherwise, the following definitions apply:

(1) "Approved" means that a subject individual, following a final fitness determination, is fit to work, volunteer, be employed, or otherwise perform in the position listed on the Background Check Request form.

(2) "Approved with restrictions" means an approval in which some restriction is made including but not limited to the subject individual, the subject individual's environment, the type or number of clients for whom the subject individual may provide care, or the information to which the subject individual has access.

(3) "Authorized designee (AD)" means an individual whom the Department of Human Services designates and authorizes to receive and process Background Check Request forms from subject individuals and criminal records information from the Department of Human Services.

(4) "Background Check Unit" means the Department of Human Services' Background Check Unit (BCU).

(5) "Client" means any individual who receives services, care, or funding for care through the Department of Human Services.

(6) "Closed case" means a criminal records check application that has been closed without a final fitness determination.

(7) "Criminal records check" means obtaining and reviewing criminal records as required by these rules and includes any or all of the following:

(a) An Oregon criminal records check where criminal offender information is obtained from Oregon State Police (OSP) using the Law Enforcement Data System (LEDS). The Oregon criminal records check may also include a review of other criminal information.

(b) A national criminal records check where criminal records are obtained from the Federal Bureau of Investigation (FBI) through the use of fingerprint cards sent to OSP and other identifying information.

(c) A state-specific criminal records check where criminal records are obtained from law enforcement agencies, courts, or other criminal records information resources located in, or regarding, a state or jurisdiction outside Oregon.

(8) "Criminal offender information" means records, including fingerprints and photographs, received, compiled, and disseminated by OSP for purposes of identifying criminal offenders and alleged offenders and maintained as part of an individual's records of arrest, the nature and disposition of criminal charges, sentencing, confinement, but does not include the retention by OSP of records of transfer of inmates between penal institutions or other correctional facilities, and release. It also includes the OSP Computerized Criminal History System (see OAR 257-010-0015).

(9) "Denied" means that a subject individual, following a fitness determination including a weighing test, is not fit to work, volunteer, be employed, or otherwise perform in the position listed on the Background Check Request form.

(10) "Department" means the Department of Human Services.

(11) "Employee" means an individual working in the Department in any position including a new hire, promotion, demotion, direct appointment, re-employment, job rotation, developmental assignment, transfer, an individual impacted by the Department's lay-off process, or temporary hire.

(12) "Fitness determination" means the decision in a case that is not closed and includes:

(a) The decision regarding a Background Check Request form, an Oregon criminal records check, and preliminary review (a preliminary fitness determination); or

(b) The decision regarding a Background Check Request form, completed criminal records check including gathering of other information as necessary, and a final review by an AD (a final fitness determination).

(13) "Good cause" means a valid and sufficient reason for not complying with time frames set during the criminal records check process or contested case hearing process, including but not limited to an explanation of circumstances beyond a subject individual's reasonable control.

(14) "Hearing representative" means a Department employee representing the Department in a contested case hearing.

(15) "Hired on a preliminary basis" means a condition in which a subject individual may be allowed by the Department to work, volunteer, be trained, or reside in an environment following the submission of a completed Background Check Request form. Hired on a preliminary basis is applicable only during the time frame following a preliminary fitness determination and prior to a final fitness determination.

(16) "Office of Human Resources" means the Department's Office of Human Resources.

(17) "Other criminal records information" means information obtained and used in the criminal records check that is not criminal offender information from OSP. Other criminal records information includes but is not limited to police investigations and records, information from local or regional criminal records information systems, justice records, court records, information from the Oregon Judicial Information Network, sexual offender registration records, warrants, Oregon Department of Corrections records, Oregon Department of Transportation's Driver and Motor Vehicle Services Division information, information provided on the Background Check forms, disclosures by a subject individual, and any other information from any jurisdiction obtained by or provided to the Department for the purpose of conducting a fitness determination.

# ADMINISTRATIVE RULES

(18) "Position" means the position listed on the Background Check Request form for the subject individual which determines whether the individual is a subject individual under these rules. Covered positions include any type of employment, volunteer placement, or contract placement.

(19) "Subject individual (SI)" means an individual on whom the Department may conduct a criminal records check and from whom the Department may require fingerprints for the purpose of conducting a national criminal records check. An SI includes any of the following:

- (a) A Department employee.
- (b) An individual who has been offered employment by the Department.
- (c) An individual secured by the Department through the services of a temporary employment agency, staffing agency, or personnel services agency who is providing any of the duties or having access as described in OAR 407-007-0060(3).
- (d) A Department client who is placed in the Work Experience or JOBS Plus program at a Department site.

(e) An individual who provides or seeks to provide services to the Department at Department facilities, sites, or offices as a contractor, subcontractor, vendor, volunteer under Department direction and control, or student under Department direction and control who:

- (A) May have contact with clients;
- (B) Has access to personal information about employees of the Department, clients, or members of the public, including but not limited to Social Security numbers, dates of birth, driver license numbers, medical information, personal financial information, or criminal background information;

(C) Has access to information the disclosure of which is prohibited by state or federal laws, rules, or regulations or information that is defined as confidential under state or federal laws, rules, or regulations;

(D) Has access to property held in trust or to private property in the temporary custody of the state;

(E) Has payroll or fiscal functions or responsibility for:

(i) Receiving, receipting or depositing money or negotiable instruments;

(ii) Billing, collections, setting up financial accounts, or other financial transactions; or

(iii) Purchasing or selling property;

(F) Provides security, design or construction services for government buildings, grounds, or facilities;

(G) Has access to critical infrastructure or secure facilities information; or

(H) Is providing information technology services and has control over or access to information technology systems.

(f) Any individual applying for employment or a volunteer placement or any employee, volunteer, contractor, or employee of any contractor in any of the following:

(A) A State-operated or Department-contracted secure residential treatment facility;

(B) A State-operated group home within the Department's State-Operated Community Programs;

(C) Blue Mountain Recovery Center; or

(D) Oregon State Hospital.

(20) "Weighing test" means a process carried out by the Department in which available information is considered to make a fitness determination.

Stat. Auth.: ORS 181.534, 181.537, 409.050

Stats. Implemented: ORS 181.534, 181.537 & 409.010

Hist.: DHSD 2-2008(Temp), f. & cert. ef. 3-31-08 thru 9-26-08; DHSD 7-2008, f. 8-29-08, cert. ef. 9-1-08; DHSD 9-2009, f. 12-31-09, cert. ef. 1-1-10

## 407-007-0020

### Criminal History Check Required

(1) The Department conducts criminal records checks on all SIs through LEDS maintained by OSP pursuant to ORS Chapter 181 and the rules adopted pursuant thereto (see OAR 257-015).

(2) If a national criminal records check of an SI is necessary, OSP shall provide the Department the results of criminal records checks conducted pursuant to ORS 181.534, including fingerprint identification, through the FBI.

(3) SIs must have a criminal records check in the following circumstances:

(a) If an individual becomes an SI on or after the effective date of these rules.

(b) Except as provided in section (3) of this rule, if the individual, whether previously considered an SI or not, changes positions, and the position requires a criminal records check. Change in a position may include but is not limited to promotion, transfer, demotion, re-employment, job rotation, developmental assignment, restoration, layoff, or recall.

(c) If the Department has reason to believe that a criminal records check is justified. Examples include but are not limited to any indication of possible criminal behavior by an SI or quality assurance monitoring of a previously conducted criminal records check.

(4) The Office of Human Resources may determine that conducting a new criminal records check and fitness determination for a Department employee is not required.

(a) After the completion of the Background Check Request form, the Office of Human Resources may consider ending the criminal records check if:

(A) The SI who has been offered a new position has completed a previous criminal records check and fitness determination with an outcome of approved; and

(B) There has been no break in employment with the Department.

(b) The Office of Human Resources may cease the criminal records check without making a new fitness determination if there is no indication of new potentially disqualifying crimes or conditions, and at least one of the following is true:

(A) The previous criminal records check identified no potentially disqualifying crimes or conditions as defined at that time and the Office of Human Resources determines that the previous fitness determination is sufficient for the new position.

(B) The Office of Human Resources determines that the new position requires the same or less responsibility or access in the duties as described in OAR 407-007-0060(3).

(5) All SIs shall notify the Department's Office of Human Resources within five days of being arrested, charged, or convicted of any crime.

Stat. Auth.: ORS 181.534, 181.537, 409.050

Stats. Implemented: ORS 181.534, 181.537 & 409.010

Hist.: DHSD 2-2008(Temp), f. & cert. ef. 3-31-08 thru 9-26-08; DHSD 7-2008, f. 8-29-08, cert. ef. 9-1-08; DHSD 9-2009, f. 12-31-09, cert. ef. 1-1-10

## 407-007-0030

### Criminal History Check Process

(1) Only Department employees, called ADs, may be authorized and approved pursuant to OAR 407-007-0230 to 407-007-0240 to receive and evaluate criminal offender information and other criminal records information. Only ADs may conduct fitness determinations.

(2) An SI shall use the Background Check Request form to request the criminal records check and shall include:

(a) Name and aliases;

(b) Date of birth;

(c) Address and recent residency information;

(d) Driver license information;

(e) Position for which the SI is submitting the Background Check Request form;

(f) Disclosure of criminal history;

(A) All arrests, charges, and convictions.

(B) The disclosed crimes and the dates must reasonably match the SI's criminal offender information and other criminal records information, as determined by the Department.

(g) Disclosure of other history required under OAR 407-007-0400 to 407-007-0460; and

(h) Disclosure of other information to be considered in the event of a weighing test if the SI discloses any criminal history or other history required under OAR 407-007-0400 to 407-007-0460.

(3) The Background Check Request form shall include the following notices:

(a) A notice regarding disclosure of Social Security number indicating:

(A) The SI's disclosure is voluntary; and

(B) The Department requests the Social Security number solely for the purpose of positively identifying the SI during the criminal records check process.

(b) A notice that the SI may be subject to fingerprinting and a criminal records check.

(4) The Department shall verify the identity of an SI using methods which include but are not limited to asking the SI for current and valid government-issued photo identification and confirming the information on the photo identification with the SI, the information written on the Background Check Request form, and the information written on the fingerprint card if a national criminal records check is conducted.

(5) The Department shall conduct an Oregon criminal records check after a completed Background Check Request form is received.

(a) Using information submitted on the Background Check Request form, the Department may obtain criminal offender information from the LEDS system and may request other criminal records information as needed.

(b) The Department shall handle criminal offender information obtained through LEDS in accordance with applicable OSP requirements in ORS chapter 181 and the rules adopted pursuant thereto (see OAR chapter 257, division 15).

(6) The Department may conduct a fingerprint-based national criminal records check after an Oregon criminal records check is completed.

(a) A fingerprint-based national criminal records check may be completed under any of the following circumstances:

(A) The SI has out of state residency evidenced by the SI's possession of an out of state driver license or being outside Oregon for 60 or more consecutive days during the previous five years.

(B) The LEDS check, SI disclosures, or any other criminal records information obtained by the Department indicates there may be criminal records outside of Oregon.

# ADMINISTRATIVE RULES

(C) The Department has reason to question the identity or history of the SI.

(D) The SI's position is at Oregon state institutions under OAR 407-007-0010(19)(g).

(E) The SI is assigned duties involving any aspect of a criminal records or abuse check process.

(F) A fingerprint-based criminal records check is required by federal or state laws or regulations, other rules adopted by the Department, or by contract with the Department.

(G) If the Department has reason to believe that fingerprints are needed to make a final fitness determination.

(b) The Department must receive consent from the parent or guardian to obtain fingerprints from an SI under 18 years of age.

(c) The SI shall complete and submit a fingerprint card when requested by the Department.

(A) The SI shall use a fingerprint card provided by the Department. The Department shall give the SI notice regarding the Social Security number as set forth in OAR 407-007-0030(3)(a).

(B) The SI shall submit the fingerprint card to the BCU within 21 calendar days of the request.

(i) The Department shall close the application, making it a closed case, if the fingerprint card is not received within 21 calendar days.

(ii) The Department may extend the time allowed for good cause.

(C) The Department may require new fingerprint cards if previous cards are rejected by OSP or the FBI.

(7) The Department may also conduct a state-specific criminal records check in lieu of or in addition to a national criminal records check. Reasons for a state-specific criminal records check include but are not limited to:

(a) When the Department has reason to believe that out-of-state criminal records may exist.

(b) When the Department has been unable to complete a national criminal records check due to illegible fingerprints.

(c) When the national criminal records check results show incomplete information about charges or criminal records without final disposition.

(d) When there is indication of residency or criminal records in a state that does not submit all criminal records to the FBI.

(e) When, based on available information, the Department has reason to believe that a state-specific criminal records check is necessary.

(8) In order to complete a criminal records check and fitness determination, the Department may require additional information from an SI.

(a) Additional information includes but is not limited to criminal, judicial, other background information, or proof of identity.

(b) If an SI who is a represented Department employee is required to provide additional information, the process for obtaining that information through investigatory interviews shall adhere to collective bargaining agreements on investigatory interviews.

(9) The Department may conduct a criminal records check in situations of imminent danger.

(a) If the Department determines there is indication of criminal behavior by an SI that could more likely than not pose an immediate risk to the Department, its clients, or vulnerable persons, the Department shall authorize a criminal records check without the completion of a Background Check Request form.

(b) If the Department determines that a fitness determination based on the criminal records check would be adverse to the SI, the Department shall provide the SI, if available, the opportunity to disclose criminal records, potentially disqualifying conditions, and other information as indicated in OAR 407-007-0060 before the completion of the fitness determination.

(10) Criminal records checks conducted under this rule shall be documented in writing.

Stat. Auth.: ORS 181.534, 181.537, 409.050

Stats. Implemented: ORS 181.534, 181.537 & 409.010

Hist.: DHSD 2-2008(Temp), f. & cert. ef. 3-31-08 thru 9-26-08; DHSD 7-2008, f. 8-29-08, cert. ef. 9-1-08; DHSD 9-2009, f. 12-31-09, cert. ef. 1-1-10

## 407-007-0040

### Potentially Disqualifying Crimes

(1) A conviction of any of the following crimes is potentially disqualifying. Offenses or convictions that are classified as less than a misdemeanor, such as violations or infractions, are not potentially disqualifying (see ORS 161.505 to 161.565).

(a) Any federal crime.

(b) Any U.S. military crime.

(c) Any felony or misdemeanor in Oregon Revised Statutes or local codes in Oregon.

(d) Any felony or misdemeanor in a jurisdiction outside Oregon (including known crimes outside the United States) that is the substantial equivalent of any crime in Oregon Revised Statutes, or that is serious and demonstrates behavior that poses a threat or jeopardizes the safety of the Department, its clients, or vulnerable individuals as determined by the Department.

(e) Any crime that is no longer codified in Oregon or other jurisdiction but that is the substantial equivalent of any crime listed in this section as determined by the Department.

(2) Regardless of the conviction date, evaluations of crimes may be based on Oregon laws and laws in other jurisdictions in effect at the time of the fitness determination.

(3) Under no circumstances may an SI be denied under these rules because of a juvenile record that has been expunged or set aside pursuant to ORS 419A.260 to 419A.262.

(4) Under no circumstances may an SI be denied under these rules because of an adult record that has been set aside pursuant to ORS 137.225.

Stat. Auth.: ORS 181.534, 181.537, 409.050

Stats. Implemented: ORS 181.534, 181.537 & 409.010

Hist.: DHSD 2-2008(Temp), f. & cert. ef. 3-31-08 thru 9-26-08; DHSD 7-2008, f. 8-29-08, cert. ef. 9-1-08; DHSD 9-2009, f. 12-31-09, cert. ef. 1-1-10

## 407-007-0050

### Other Potentially Disqualifying Conditions

The following are potentially disqualifying conditions:

(1) The SI makes a false statement to the Department, including the provision of materially false information, false information regarding criminal history, or failure to disclose information regarding criminal history. Nondisclosure of charges classified as less than a misdemeanor such as violations or infractions may not be considered as false statement.

(2) The SI is a registered sex offender in any jurisdiction. There is a rebuttable presumption that an SI is likely to engage in conduct that would pose a significant risk to the Department, its clients, or vulnerable individuals if the SI has been designated a predatory sex offender under ORS 181.585 or found to be a sexually violent dangerous offender under ORS 144.635 (or similar statutes in other jurisdictions).

(3) The SI has an outstanding warrant in any jurisdiction.

(4) The SI has a deferred sentence, conditional discharge, or is participating in a diversion program in any jurisdiction for any potentially disqualifying crime.

(5) The SI is currently on probation, parole, or post-prison supervision for any crime in any jurisdiction, regardless of the original conviction date or date of guilty or no contest plea if there is no conviction date.

(6) The SI is found in violation of post-prison supervision, parole, or probation for any crime in any jurisdiction regardless of the original conviction date or date of guilty or no contest plea if there is no conviction date, within five years or less from the date the Background Check Request form was signed or the date the Department conducted a criminal records check due to imminent danger.

(7) The SI has an unresolved arrest, charge, or a pending indictment for any crime in any jurisdiction.

(8) The SI has been arrested in any jurisdiction as a fugitive from another state or a fugitive from justice, regardless of the date of arrest.

(9) An adjudication in a juvenile court in any jurisdiction, finding that the SI was responsible for a potentially disqualifying crime that would result in a conviction if committed by an adult.

(10) A finding of "guilty except for insanity," "guilty except by reason of insanity," "not guilty by reason of insanity," "responsible except for insanity," "not responsible by reason of mental disease or defect," or similarly worded disposition in any jurisdiction regarding a potentially disqualifying crime, unless the local statutes indicate that such an outcome is considered an acquittal.

Stat. Auth.: ORS 181.534, 181.537, 409.050

Stats. Implemented: ORS 181.534, 181.537 & 409.010

Hist.: DHSD 2-2008(Temp), f. & cert. ef. 3-31-08 thru 9-26-08; DHSD 7-2008, f. 8-29-08, cert. ef. 9-1-08; DHSD 9-2009, f. 12-31-09, cert. ef. 1-1-10

## 407-007-0060

### Weighing Test

If the SI has potentially disqualifying crimes or conditions, the Department shall consider any of the following factors disclosed by the SI or otherwise known when making the fitness determination:

(1) Circumstances regarding the nature of potentially disqualifying crimes and conditions including but not limited to:

(a) Age of the SI at time of the potentially disqualifying crime or condition.

(b) Details of incidents leading to the charges of potentially disqualifying crimes or resulting in potentially disqualifying conditions.

(c) Facts that support the conviction or other potentially disqualifying condition.

(d) Passage of time since commission of the crime or potentially disqualifying condition.

(e) Consideration of state or federal laws, regulations, or rules covering the position or the Department, regarding the potentially disqualifying crimes or conditions.

(2) Other factors when available including but not limited to:

(a) Other information related to criminal activity including charges, arrests, pending indictments, or convictions. Other behavior involving contact with law enforcement may also be reviewed if information is relevant to other criminal records or shows a pattern relevant to criminal history.

(b) Periods of incarceration.

(c) Status of and compliance with parole, post-prison supervision, or probation.

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(d) Evidence of drug or alcohol issues directly related to criminal activity or potentially disqualifying conditions.

(e) Evidence of other treatment or rehabilitation related to criminal activity or potentially disqualifying conditions.

(f) Likelihood of repetition of criminal behavior or behaviors leading to potentially disqualifying conditions, including but not limited to patterns of criminal activity or behavior or whether the SI appears to accept responsibility for past actions, as determined by the Department.

(g) Changes in circumstances subsequent to the criminal activity or disqualifying conditions including but not limited to:

(A) History of high school, college, or other education related accomplishments.

(B) Work history (employee or volunteer).

(C) History regarding licensure, certification, or training for licensure or certification.

(D) Written recommendations from current or past employers.

(h) Indication of the SI's cooperation, honesty, or the making of a false statement during the criminal records check process, including acknowledgment and acceptance of responsibility of criminal activity and potentially disqualifying conditions.

(3) The relevancy of the SI's criminal history or potentially disqualifying conditions to the position or to the environment of the position, shall be considered. Consideration includes the relation between the SI's potentially disqualifying crimes or conditions and the following tasks or duties in the position:

(a) Access to or direct contact with Department clients, client property, or client funds.

(b) Access to information technology services, or control over or access to information technology systems that would allow an individual holding the position to harm the information technology systems or the information contained in the systems.

(c) Access to information, the disclosure of which is prohibited by state or federal laws, rules, or regulations, or information that is defined as confidential under state or federal laws, rules, or regulations.

(d) Access to payroll functions.

(e) Responsibility for receiving, receipting, or depositing money or negotiable instruments.

(f) Responsibility for billing, collections, or other financial transactions.

(g) Access to mail received or sent to the Department, including interagency mail, or access to any mail facilities in the Department.

(h) Responsibility for auditing the Department or other governmental agencies.

(i) Responsibility for any personnel or human resources functions.

(j) Access to personal information about employees, clients, or members of the public including Social Security numbers, dates of birth, driver license numbers, residency information, medical information, personal financial information, criminal offender information, or other criminal records information.

(k) Access to medications, chemicals, or hazardous materials; access to facilities in which medications, chemicals, and hazardous materials are present; or access to information regarding the transportation of medications, chemicals, or hazardous materials.

(L) Access to property to which access is restricted in order to protect the health or safety of the public.

(m) Responsibility for security, design, or construction services. This includes government buildings, grounds, or facilities or buildings, owned, leased, or rented for government purposes.

(n) Access to critical infrastructure or security-sensitive facilities or information.

Stat. Auth.: ORS 181.534, 181.537, 409.050

Stats. Implemented: ORS 181.534, 181.537 & 409.010

Hist.: DHSD 2-2008(Temp), f. & cert. ef. 3-31-08 thru 9-26-08; DHSD 7-2008, f. 8-29-08, cert. ef. 9-1-08; DHSD 9-2009, f. 12-31-09, cert. ef. 1-1-10

## 407-007-0065

### Hired on a Preliminary Basis

The Department shall make a preliminary fitness determination to determine if an SI may work, volunteer, be employed, or otherwise perform in the position listed on the Background Check Request form prior to a final fitness determination. The Department may not hire an SI on a preliminary basis prior to the completion of a preliminary fitness determination.

(1) The SI shall complete and submit a Background Check Request form.

(2) The Department shall complete a preliminary fitness determination and send notice to the hiring manager.

(3) After review of the Background Check Request form, the Department shall make one of the following determinations:

(a) An SI may be hired on a preliminary basis, only during the time period prior to a final fitness determination, into the position listed on the Background Check Request form and allowed to participate in training, orientation, and position activities under the one of the following circumstances:

(A) If there is no indication of potentially disqualifying crimes or conditions on the Background Check Request form and the Department has no reason to believe the SI has potentially disqualifying crimes or conditions.

(B) If an SI discloses potentially disqualifying crimes or conditions, the SI may be hired on a preliminary basis only after the Office of Human Resources completes a weighing test. The Department may hire an SI on a preliminary basis only if, based on information available at the time, the Office of Human Resources determines that more likely than not that the SI poses no potential threat to the Department, its clients, or vulnerable persons.

(b) The Department shall not hire an SI on a preliminary basis if the Office of Human Resources determines that:

(A) After a weighing test, the SI more likely than not poses a potential threat to the Department, its clients, or vulnerable persons;

(B) The SI's most recent criminal records check under these rules or other Department criminal records check rules resulted in a denial; or

(C) The SI is currently involved in contesting a criminal records check determination under these or other Department criminal records check or abuse check rules.

(4) An SI who is hired on a preliminary basis shall be actively supervised at all times by an individual who has been approved without restrictions pursuant to these rules or previous Department criminal records check rules. The individual providing active supervision shall do at all times the following:

(a) Be in the same building as the SI or, if outdoors of Department buildings or any location off Department property, be within line of sight and hearing of the SI;

(b) Know where the SI is and what the SI is doing; and

(c) Periodically observe the actions of the SI.

(5) An SI who was approved without restrictions within the previous 24 months through a documented criminal records check pursuant to these rules may work after being hired on a preliminary basis without active supervision. The 24 month time frame is calculated from the date of previous approval to the date starting the new position. This exemption is not allowed in any of the following situations:

(a) If the SI cannot provide documented proof that he or she worked continuously under the previous approval for at least one year.

(b) If there is evidence of criminal activity within the previous 24 months.

(c) If the Department determines the job duties in the new position are so substantially different from the previous position that the previous fitness determination is inadequate for the new position.

(6) The Department may immediately remove an SI hired on a preliminary basis from the position listed on the Background Check Request form. Removal is not subject to hearing or appeal. Reasons for removal include but are not limited to the following:

(a) There is any indication of falsification on the Background Check Request form.

(b) The SI fails to disclose convictions for any potentially disqualifying crimes, any arrests that did not result in convictions, or any out of state arrests or convictions.

(c) The Department determines that allowing the SI to be hired on a preliminary basis is not appropriate, based on the application, criminal records, position duties, or regulations regarding the position.

(7) Nothing in this rule is intended to require that an SI, who is eligible for being hired on a preliminary basis be allowed to work, volunteer, be employed, or otherwise perform in the position listed on the Background Check Request form prior to a final fitness determination.

Stat. Auth.: ORS 181.534, 181.537 & 409.050

Stats. Implemented: ORS 181.534, 181.537 & 409.010

Hist.: DHSD 9-2009, f. 12-31-09, cert. ef. 1-1-10

## 407-007-0070

### Final Fitness Determinations

The Office of Human Resources shall make a final fitness determination after all necessary criminal records checks, and a weighing test if necessary, have been completed. The Office of Human Resources may obtain and consider additional information as necessary to complete the final fitness determination.

(1) The final fitness determination may result in one of the following outcomes:

(a) The Office of Human Resources may approve an SI if:

(A) The SI has no potentially disqualifying crimes or potentially disqualifying conditions; or

(B) The SI has potentially disqualifying crimes or potentially disqualifying conditions and, after a weighing test with available information, the Department determines that more likely than not the SI poses no risk to the Department, its clients, or vulnerable persons.

(b) The Office of Human Resources may approve an SI with restrictions if, after a weighing test with available information, it determines that more likely than not that the SI poses no risk to the Department, its clients, or vulnerable persons, if certain restrictions are placed on the SI, such as but not limited to restrictions to one or more specific clients, position duties, or environments. The Department shall complete a new background check and fitness determination on the SI before removing a restriction. A fitness determination of approved with restrictions shall only be considered for the following SIs:

# ADMINISTRATIVE RULES

(A) An individual secured by the Department through the services of a temporary employment agency, staffing agency, or personnel services agency who is providing any of the duties or having access as described in OAR 407-007-0060(3).

(B) A volunteer or student under Department direction and control.

(C) A Department client who is placed in a Work Experience or JOBS Plus program at a Department site.

(D) Any individual who is required to complete a criminal records check pursuant to the statutory authority of ORS 181.534 and 181.537 or the authority of these rules pursuant to a contract with the Department.

(c) The Office of Human Resources shall deny an SI whom it determines, after a weighing test with available information, more likely than not poses a risk to the Department, its clients, or vulnerable individuals.

(2) The BCU may assist in or handle final fitness determinations as requested by the Office of Human Resources.

(3) Upon completion of a final fitness determination, the Office of Human Resources shall provide written notice to the SI. The notice shall:

(a) Be in a Department approved format;

(b) Include information regarding appeal rights for denied or approved with restrictions outcomes. The notice shall also include a statement that it becomes a final order by default in the event of a withdrawal or a failure to participate during the appeal or hearing; and

(c) Be mailed or hand-delivered to the SI no later than 14 calendar days after the decision. The effective date of action shall be recorded on the notice.

(d) The Office of Human Resources shall also provide employees with all formal disciplinary documents and letters up to and including a letter of dismissal.

(4) When an SI is denied, the Department shall not allow the SI to work, volunteer, be employed, or otherwise perform in the position listed on the Background Check Request form. A denial applies only to the position in question.

(a) The process for a Department employee's removal from service or dismissal shall adhere to Department-wide Support Services discharge policies, Department of Administrative Services' Human Resource Services Division dismissal policies, and collective bargaining agreements on discharge, as applicable.

(b) For all other SIs, a denial shall result in immediate dismissal.

(5) Final fitness determinations shall be documented in writing, including any other necessary details including but not limited to restrictions in a restricted approval or potentially disqualifying crimes or conditions in a denial.

(6) The Department shall make new fitness determinations for each application. The outcome of previous fitness determinations does not set a precedent for subsequent fitness determinations.

Stat. Auth.: ORS 181.534, 181.537, 409.050

Stats. Implemented: ORS 181.534, 181.537 & 409.010

Hist.: DHSD 2-2008(Temp), f. & cert. ef. 3-31-08 thru 9-26-08; DHSD 7-2008, f. 8-29-08, cert. ef. 9-1-08; DHSD 9-2009, f. 12-31-09, cert. ef. 1-1-10

## 407-007-0075

### Closed Case

If an SI discontinues the application or fails to cooperate with the criminal records check or fitness determination process, the application is considered incomplete and shall be closed.

(1) Discontinuance or failure to cooperate includes but is not limited to the following circumstances:

(a) The SI refuses to be fingerprinted when required by these rules.

(b) The SI fails to respond within a stated time period to a request for corrections to the application, fingerprints, or provide any other information necessary to conduct a criminal records check and there is not enough information available to make a fitness determination.

(c) The SI withdraws the application, leaves the position prior to completion of the criminal records check, or the Department cannot locate or contact the SI.

(d) The SI is determined to be ineligible for the position for reasons other than the criminal records check.

(2) When the application is closed without a final fitness determination, there is no right to contest the closure.

(3) When a case is closed, the SI shall not be allowed to work, volunteer, be employed, or otherwise perform in the position listed on the Background Check Request form. A closed case applies only to the position in question.

(a) The process for a Department employee's removal from service or dismissal shall adhere to Department-wide Support Services discharge policies, Department of Administrative Services' Human Resource Services Division dismissal policies, and collective bargaining agreements on discharge, as applicable.

(b) For all other SIs, a closed case shall result in immediate dismissal.

(4) The Office of Human Resources or the BCU shall document in writing the reasons for a closed case, and shall provide that information to the SI.

Stat. Auth.: ORS 181.534, 181.537 & 409.050

Stats. Implemented: ORS 181.534, 181.537 & 409.010

Hist.: DHSD 9-2009, f. 12-31-09, cert. ef. 1-1-10

## 407-007-0080

### Contesting a Final Fitness Determination

(1) A final fitness determination of denied or approved with restrictions is considered an adverse outcome. An SI with an adverse outcome may contest that outcome.

(2) If an SI is denied, then the SI may not work, volunteer, be employed, or otherwise perform in positions covered by these rules. An SI appealing a restricted approval may only work under the terms of the restriction during the appeal.

(3) If an adverse outcome is changed at any time during the appeal process, the change does not guarantee employment or placement.

(4) If an SI wishes to challenge the accuracy or completeness of criminal offender information provided by OSP, the FBI, or other criminal records information from other agencies reporting information to the Department, the SI may appeal to the entity providing the information. These challenges are not subject to the Department's appeal process.

(5) The SI has the right to represent himself or herself or have legal representation during the appeal process. The SI may not be represented by a lay person. In this rule, the term "SI" shall be considered to include the SI's legal representative.

(6) An SI who is already employed by the Department at the time of the final fitness determination may appeal through applicable personnel rules, policies, and collective bargaining provisions. The SI's decision to do so is an election of remedies as to the rights of the SI with respect to the fitness determination and constitutes a waiver of the contested case process described in this rule.

(7) An SI who wishes to challenge an adverse fitness determination may appeal the determination by requesting a contested case hearing. The appeal process is conducted pursuant to ORS 183.411 to 183.497 and the Attorney General's Uniform and Model Rules of Procedure for the Office of Administrative Hearings (OAH), OAR 137-003-0501 to 137-003-0700.

(a) To request a contested case hearing the SI shall complete and sign the Hearing Request form.

(b) The completed and signed form must be received by the Department within the following time lines:

(A) For Department employees and SIs offered employment by the Department, no later than 15 calendar days after the effective date of action listed on the notice of the fitness determination.

(B) For all other SIs, no later than 45 calendar days after the effective date of action listed on the notice of the fitness determination.

(c) If a request for hearing is not timely, the Department shall determine, based on a written statement from the SI and available information, if there is good cause to proceed with the appeal.

(d) The Department may refer an untimely request to OAH for a hearing on the issue of timeliness.

(8) When an SI requests a contested case hearing, the Department may conduct an administrative review before referring the appeal to OAH.

(a) The SI must participate in the administrative review. Participation may include but is not limited to providing additional information or additional documents requested by the Department within a specified amount of time.

(b) The administrative review is not open to the public.

(9) The Department may conduct additional criminal records checks during the appeal process to update or verify the SI's criminal records. If needed, the Department shall amend the notice of fitness determination during the appeal process while still maintaining the original hearing rights and deadlines.

(10) A hearing representative shall represent the Department in contested case hearings, or may use representation through the Department of Justice's Office of the Attorney General.

(a) The Department shall provide the administrative law judge and the SI a complete copy of available information used during the criminal records checks and fitness determinations. The notice of contested case and prehearing summary and all other documents shall be mailed by regular first class mail.

(b) The contested case hearing is not open to the public.

(c) The administrative law judge shall make a new fitness determination based on the evidence and the contested case hearing record.

(d) The only remedy that may be awarded is a fitness determination that the SI is approved or denied. Under no circumstances shall the Department be required to place an SI in any position, nor shall the Department be required to accept services or enter into a contractual agreement with an SI.

(11) The result of an appeal is a final order.

(a) In the following situations, the notice of fitness determination becomes the final order as if the SI never requested a hearing:

(A) Failure to request a hearing in the time allotted in this rule. No other document shall be issued after the notice of fitness determination.

(B) Withdrawal of the request for hearing at any time during the appeal process.

(b) The Department may make an informal disposition based on the administrative review. The Department shall issue a final order and new notice of fitness determination. If the resulting fitness determination is an adverse outcome, the appeal shall proceed to contested case hearing.



# ADMINISTRATIVE RULES

(c) The Department shall issue a dismissal order in the following circumstances:

(A) The SI may withdraw a hearing request verbally or in writing at any time before the issuance of a final order. A dismissal order due to a withdrawal is effective the date the withdrawal is received by the Department or OAH. The SI may cancel the withdrawal in writing within 14 calendar days after the date of withdrawal.

(B) The Department shall dismiss a hearing request when the SI fails to participate in the administrative review. Failure to participate in the administrative review shall result in termination of hearing rights. The order is effective on the due date for participation in the administrative review. The Department shall review a good cause request to reinstate hearing rights if received in writing by the Department within 14 calendar days.

(C) The Department shall dismiss a hearing request when the SI fails to appear at the time and place specified for the contested case hearing. The order is effective on the date scheduled for the hearing. The Department shall review a good cause request to reinstate hearing rights if received in writing by the Department within 14 calendar days.

(d) After a hearing, the administrative law judge shall issue a proposed and final order.

(A) If no written exceptions are received by the Department within 14 calendar days after the service of the proposed and final order, the proposed and final order shall become the final order.

(B) If timely written exceptions to the proposed and final order are received by the Department, the Department's Director or designee shall consider the exceptions and serve a final order, or request a written response or a revised proposed and final order from the administrative law judge.

(12) Final orders, including dismissal and default orders, are subject to reconsideration or rehearing petitions within 60 calendar days after the final order is served, pursuant to OAR 137-003-0675.

Stat. Auth.: ORS 181.534, 181.537, 409.050  
Stats. Implemented: ORS 181.534, 181.537, 183.341 & 409.010  
Hist.: DHSD 2-2008(Temp), f. & cert. ef. 3-31-08 thru 9-26-08; DHSD 7-2008, f. 8-29-08, cert. ef. 9-1-08; DHSD 9-2009, f. 12-31-09, cert. ef. 1-1-10

## 407-007-0090

### Record Keeping, Confidentiality

(1) All LEADS reports are confidential and the Department shall maintain the reports in accordance with applicable OSP requirements in ORS chapter 181 and the rules adopted pursuant thereto (see OAR chapter 257, division 15).

(a) LEADS reports may only be shared with approved Department authorized designees if there is a need to know consistent with these rules.

(b) The LEADS report and any photocopies may not be shown or given to the SI.

(2) The results of a national criminal records check provided by the FBI or through OSP are confidential and may not be disseminated by the Department except:

(a) If a fingerprint-based criminal records check was conducted on the SI, the SI shall be provided a copy of the results upon request.

(b) During the contested case hearing, the Department shall provide state and national criminal offender information as exhibits.

(3) All completed Background Check Request forms, other criminal records information, and other records collected or developed during the criminal records check process shall be kept confidential and disseminated only on a need-to-know basis.

(4) The Department shall retain and destroy all criminal records check documents pursuant to federal law and records retention schedules published by Oregon State Archives.

Stat. Auth.: ORS 181.534, 181.537, 409.050  
Stats. Implemented: ORS 181.534, 181.537 & 409.010  
Hist.: DHSD 2-2008(Temp), f. & cert. ef. 3-31-08 thru 9-26-08; DHSD 7-2008, f. 8-29-08, cert. ef. 9-1-08; DHSD 9-2009, f. 12-31-09, cert. ef. 1-1-10

## 407-007-0100

### Variations

(1) The outcome of a fitness determination made pursuant to these rules is not subject to variance. Challenges to fitness determinations may only be made through contested case hearing rights set forth in these rules or alternative options available to Department employees.

(2) The Department may grant a variance based upon a demonstration by the Department program area or work unit that the variance would not pose a significant risk to the Department, its clients, or vulnerable individuals.

(3) The program office or work unit requesting a variance shall submit, in writing, an application to the BCU that contains the following:

- (a) The section of the rule from which the variance is sought;
- (b) The reason for the proposed variance;
- (c) The alternative practice, service, method, concept or procedure proposed;

(d) A plan and timetable for compliance with the section of the rule from which the variance is sought; and

(e) An explanation on how the safety and well-being of the Department or affected individuals will be ensured during the time the variance period is in effect.

(4) The Assistant Director or designee for the Department's Administrative Services Division shall approve or deny the request for a variance.

(5) The Department shall notify the program office or work unit of the decision. This notice shall be sent within 30 calendar days of the receipt of the request by the Department with a copy to other relevant divisions of the Department.

(6) Appeal of the denial of a variance request shall be made in writing to the Department's Director or designee, whose decision shall be final.

(7) The duration of the variance shall be determined by the Department's Director or designee.

(8) The Department program office or work unit may implement a variance only after receipt of written approval from the Department.

(9) Granting a variance does not set a precedent for subsequent requests for variances.

Stat. Auth.: ORS 181.537 & 409.050  
Stats. Implemented: ORS 181.537 & 409.010  
Hist.: DHSD 3-2008(Temp), f. & cert. ef. 5-22-08 thru 11-17-08; DHSD 7-2008, f. 8-29-08, cert. ef. 9-1-08; DHSD 9-2009, f. 12-31-09, cert. ef. 1-1-10

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**Rule Caption:** Update of Criminal Records Check Rules for Department of Human Services Providers.

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**Rules Adopted:** 407-007-0315, 407-007-0325

**Rules Amended:** 407-007-0200, 407-007-0210, 407-007-0220, 407-007-0230, 407-007-0240, 407-007-0250, 407-007-0280, 407-007-0290, 407-007-0300, 407-007-0320, 407-007-0330, 407-007-0340, 407-007-0350, 407-007-0370

**Rules Repealed:** 407-007-0355

**Subject:** The Department of Human Services (Department) is updating the term "probationary status" to "hired on a preliminary basis" to align with statutory language. The definition of "subject individual" is modified to include language from HB 2442 (2009.) The Department's Criminal History Request form is being renamed the Background Check Request form, so references in the rules are being updated. The crimes lists are being updated to include new crimes added to the Oregon Revised Statutes since 2007. Rule language is being clarified and changed to meet Secretary of State guidelines and to more closely align the Department's two sets of criminal records check rules. Additional guidelines are being provided for the appointment and responsibilities of authorized designees and contact persons. OAR 407-007-0320 is expanding into three rules — 407-007-0315, 407-007-0320 and 407-007-0325 — for clarification. OAR 407-007-0355 is being repealed because it was never implemented and direction from the Federal Bureau of Investigation indicates that it does not meet their requirements for confidentiality of national criminal records check results.

**Rules Coordinator:** Jennifer Bittel—(503) 947-5250

## 407-007-0200

### Purpose

(1) The purpose of these rules, OAR 407-007-0200 to 407-007-0370, is to provide for the reasonable screening under ORS 181.534 and 181.537 of subject individuals to determine if they have a history of criminal behavior such that they should not be allowed to work, volunteer, be employed, reside, or otherwise perform in positions covered by these rules.

(2) These rules apply to evaluating criminal records and potentially disqualifying conditions of a subject individual when conducting fitness determinations based upon such information. The fact that a subject individual is approved does not guarantee employment or placement. These rules do not apply to individuals subject to OAR 407-007-0000 to 407-007-0100.

Stat. Auth.: ORS 181.534, 181.537, 409.050, 410.020, 411.060, 411.122, 418.016, 418.640, 441.055, 443.730, 443.735 & 678.153  
Stats. Implemented: ORS 181.534, 181.537, 409.010, 411.060 & 411.122  
Hist.: OMAP 8-2004, f. 2-26-04, cert. ef. 3-1-04; Renumbered from 410-007-0200, DHSD 8-2007, f. 8-31-07, cert. ef. 9-1-07; DHSD 10-2008, f. 12-26-08, cert. ef. 1-1-09; DHSD 2-2009, f. & cert. ef. 4-1-09; DHSD 7-2009, f. & cert. ef. 10-1-09; DHSD 10-2009, f. 12-31-09, cert. ef. 1-1-10

# ADMINISTRATIVE RULES

## 407-007-0210

### Definitions

As used in OAR 407-007-0200 to 407-007-0370, unless the context of the rule requires otherwise, the following definitions apply:

(1) "Appointing authority" means the individual designated by the qualified entity responsible for appointing authorized designees and contact persons. Examples include but are not limited to human resources staff with the authority to offer and terminate employment, business owners, a member of the board of directors, a director, or a program administrator.

(2) "Approved" means, with regard to a fitness determination, that a subject individual, following a final fitness determination, is fit to work, volunteer, be employed, or otherwise perform in the position listed on the Background Check Request form.

(3) "Approved with restrictions" means an approval in which some restriction is made including but not limited to the subject individual, the subject individual's environment, the type or number of clients for whom the subject individual may provide care, or the information to which the subject individual has access.

(4) "Authorized designee (AD)" means an individual designated by the Department of Human Services, or an approved qualified entity authorized by the Department of Human Services to receive and process criminal records check request forms from subject individuals and criminal records information from the Department of Human Services.

(5) "Background Check Unit (BCU)" means the Department of Human Services' Background Check Unit.

(6) "Care" means the provision of care, treatment, education, training, instruction, supervision, placement services, recreation, or support to children, the elderly, or individuals with disabilities (see ORS 181.537).

(7) "Client" means any individual who receives services, care, or funding for care through the Department of Human Services.

(8) "Closed case" means a criminal records check application that has been closed without a final fitness determination.

(9) "Contact person (CP)" means an individual who is designated by the Department of Human Services or an approved qualified entity to receive and process criminal records check request forms from subject individuals, but who is not authorized to receive criminal records information from the Department of Human Services.

(10) "Criminal records check" means obtaining and reviewing criminal records as required by these rules and includes any or all of the following:

(a) An Oregon criminal records check where criminal offender information is obtained from the Oregon State Police (OSP) using the Law Enforcement Data System (LEDS). The Oregon criminal records check may also include a review of other criminal records information.

(b) A national criminal records check where records are obtained from the Federal Bureau of Investigation (FBI) through the use of fingerprint cards sent to OSP and other identifying information. The national criminal records check may also include a review of other criminal records information.

(c) A state-specific criminal records check where records are obtained from law enforcement agencies, courts, or other criminal records information resources located in, or regarding, a state or jurisdiction outside Oregon.

(11) "Criminal offender information" means records, including fingerprints and photographs, received, compiled, and disseminated by OSP for purposes of identifying criminal offenders and alleged offenders and maintained as part of an individual's records of arrest, the nature and disposition of criminal charges, sentencing, confinement, and release, but does not include the retention by OSP of records of transfer of inmates between penal institutions or other correctional facilities. It also includes the OSP Computerized Criminal History System (see OAR 257-010-0015).

(12) "Denied" means, with regard to a fitness determination, that a subject individual, following a fitness determination including a weighing test, is not fit to work, volunteer, be employed, reside, or otherwise hold the position listed on the Background Check Request form.

(13) "Department" means the Department of Human Services.

(14) "Fitness determination" means the decision in a case that is not closed, and includes:

(a) The decision regarding a Background Check Request form and preliminary review (a preliminary fitness determination); or

(b) The decision regarding a Background Check Request form, completed criminal records check, including gathering other information as necessary, and a final review by an AD (a final fitness determination).

(15) "Good cause" means a valid and sufficient reason for not complying with time frames set during the criminal records check process or contested case hearing process that includes but is not limited to an explanation of circumstances beyond a subject individual's reasonable control.

(16) "Hearing representative" means a Department employee representing the Department in a contested case hearing.

(17) "Hired on a preliminary basis" means a condition in which a qualified entity allows a subject individual to work, volunteer, be trained, or reside in an environment following the submission of a completed Background Check Request form. Hired on a preliminary basis may also be called probationary status.

(18) "Other criminal records information" means information obtained and used in the criminal records check process that is not criminal offender

information from OSP. Other criminal records information includes but is not limited to police investigations and records, information from local or regional criminal records information systems, justice records, court records, information from the Oregon Judicial Information Network, sexual offender registration records, warrants, Oregon Department of Corrections records, Oregon Department of Transportation's Driver and Motor Vehicle Services Division information, information provided on the Background Check Request forms, disclosures by a subject individual, and any other information from any jurisdiction obtained by or provided to the Department for the purpose of conducting a fitness determination.

(19) "Position" means the position listed on the Background Check Request form which determines whether the individual is a subject individual under these or Department program rules.

(20) "Qualified entity (QE)" means a community mental health or developmental disability program, local health department, or an individual, business, or organization, whether public, private, for-profit, nonprofit, or voluntary, that provides care, including a business or organization that licenses, certifies, or registers others to provide care (see ORS 181.537).

(21) "Subject individual (SI)" means an individual on whom the Department may conduct a criminal records check and from whom the Department may require fingerprints for the purpose of conducting a national criminal records check.

(a) An SI includes any of the following:

(A) An individual who is licensed, certified, registered, or otherwise regulated or authorized for payment by the Department and who provides care.

(B) An employee, contractor, temporary worker, or volunteer who provides care, or has access to clients, client information, or client funds, within any entity or agency licensed, certified, registered, or otherwise regulated by the Department.

(C) Any individual who is paid directly or indirectly with public funds who has or will have contact with recipients of:

(i) Services within an adult foster home (defined in ORS 443.705); or

(ii) Services within a residential facility (defined in ORS 443.400).

(D) Any direct care staff secured by any long term care facility licensed by the Department pursuant to ORS chapter 441 through the services of a personnel services or staffing agency who works in the long term care facility.

(E) Except as provided in section (21)(b)(C) and (D) of this rule, an individual who lives in a facility that is licensed, certified, registered, or otherwise regulated by the Department to provide care. The position of this SI includes but is not limited to resident manager, household member, or boarder.

(F) An individual working or volunteering for a private licensed child caring agency or system of care contractor providing child welfare services pursuant to ORS chapter 418.

(G) A homecare worker, personal care services provider, or an independent provider employed by a Department client who provides care to the client if the Department helps pay for the services.

(H) A child care provider and their employees reimbursed through the Department's child care program and other individuals in child care facilities that are exempt from certification or registration by the Child Care Division of the Oregon Employment Department (OED). This includes all individuals who reside in or who are frequent visitors to the residence or facility where the child care services are provided and who may have unsupervised access to the children (see OAR 461-165-0180).

(I) An AD or CP in any entity or agency licensed, certified, registered, or otherwise regulated by the Department.

(J) An individual providing on the job certified nursing assistant classes to staff within a long term care facility.

(K) A student at a long term care facility enrolled in a certified nursing assistant class for employment at the facility.

(L) Any individual serving as an owner, operator, or manager of a room and board facility pursuant to OAR 411-068.

(M) Except as provided in section (21)(b) of this rule, any individual who is required to complete a criminal records check pursuant to other Department program rules or a contract with the Department or if the requirement is within Department's statutory authority. Specific statutory authority or reference to these rules and the positions under the contract subject to a criminal records check must be specified in the contract.

(b) An SI does not include:

(A) Any individual under 16 years of age.

(B) An individual receiving training in a Department-licensed or Department-certified facility as part of the required curriculum through any college, university, or other training program and who is not an employee in the facility in which training is provided. The individual may not be considered a volunteer under these rules. Facilities must ensure that all students or interns have passed a substantially equivalent background check process through the training program or are:

(i) Actively supervised at all times as defined in OAR 407-007-0315; and

(ii) Not allowed to have unsupervised access to vulnerable individuals.

(C) Department clients or QE clients, unless specific written permission to conduct a criminal records check is received from the Department.

# ADMINISTRATIVE RULES

The only circumstance in which the Department shall allow a check to be performed on a client pursuant to this paragraph is if the client falls within the definition of "subject individual" as listed in sections (21)(a)(A)-(D) and 21(a)(F)-(M) of this rule.

(D) Individuals who live in or visit relative adult foster homes. This exclusion does not apply to the licensee.

(E) Individuals working in child care facilities certified or registered by the OED.

(F) Individuals employed by a private business that provides services to clients and the general public and is not regulated by the Department.

(G) Individuals employed by a business that provides appliance or structural repair for clients and the general public, and who are temporarily providing these services in an environment regulated by the Department. The QE shall ensure active supervision of these individuals while on QE property and the QE may not allow unsupervised contact with QE clients or residents. This exclusion does not apply to a business that receives funds from the Department for care provided by an employee of the business.

(H) Individuals employed by a private business in which a client of the Department is working as part of a Department-sponsored employment service program. This exclusion does not apply to an employee of a business that receives funds from the Department for care provided by the employee.

(I) Employees and volunteers working in hospitals, ambulatory surgical centers, special inpatient care facilities, outpatient renal dialysis facilities, and freestanding birthing centers as defined in ORS 442.015, in-home care agencies as defined on ORS 443.305, and home health agencies as defined in ORS 443.005.

(J) Volunteers, who are not under the direction and control of any entity licensed, certified, registered, or otherwise regulated by the Department.

(K) Individuals employed or volunteering in a Medicare-certified health care business which is not subject to licensure or certification by the State of Oregon.

(L) Individuals working in restaurants or at public swimming pools.

(M) Hemodialysis technicians.

(N) Individuals employed by alcohol and drug programs that are certified, licensed, or approved by the Department's Addictions and Mental Health Division to provide prevention, evaluation, or treatment services. This exclusion does not apply to programs specifically required by other Department rules to conduct criminal records checks in accordance with these rules.

(O) Individuals working for a transit service provider which conducts background checks pursuant to ORS 267.237.

(P) Individuals being certified by the Department as interpreters pursuant to ORS 409.623. This exclusion does not apply to Department-certified interpreters when being considered for a specific position.

(Q) Provider group categories that were authorized for payment by the Department for care if the provider group categories were not covered by a Department criminal record check process prior to 2004.

(R) Emergency medical technicians and first responders certified by the Department's Emergency Medical Services and Trauma Systems program.

(S) An individual employed by an entity that provides services solely contracted under ORS 414.022.

(22) "Weighing test" means a process in which one or more ADs consider available information to make a fitness determination when an SI has potentially disqualifying crimes or conditions.

Stat. Auth.: ORS 181.537 & 409.050

Stats. Implemented: ORS 181.534, 181.537 & 409.010

Hist.: OMAP 8-2004, f. 2-26-04, cert. ef. 3-1-04; OMAP 77-2004(Temp), f. & cert. ef. 10-1-04 thru 3-29-05; OMAP 22-2005, f. & cert. ef. 3-29-05; Renumbered from 410-007-0210, DHSD 8-2007, f. 8-31-07, cert. ef. 9-1-07; Hist.: DHSD 2-2008(Temp), f. & cert. ef. 3-31-08 thru 9-26-08; DHSD 7-2008, f. 8-29-08, cert. ef. 9-1-08; DHSD 10-2008, f. 12-26-08, cert. ef. 1-1-09; DHSD 2-2009, f. & cert. ef. 4-1-09; DHSD 7-2009, f. & cert. ef. 10-1-09; DHSD 10-2009, f. 12-31-09 cert. ef. 1-1-10

## 407-007-0220

### Criminal History Check Required

(1) The Department or a Department authorized QE shall conduct criminal records checks on all SIs through LEDS maintained by OSP in accordance with ORS Chapter 181 and the rules adopted thereto (see OAR chapter 257, division 15).

(2) If a national criminal records check of an SI is necessary, OSP shall provide the Department the results of criminal records checks conducted pursuant to ORS 181.534, including fingerprint identification, through the FBI.

(3) An SI is required to have a check in the following circumstances:

(a) An individual who becomes an SI on or after the effective date of these rules.

(b) The SI changes employers to a different QE.

(c) Except as provided in section (4) of this rule, the individual, whether previously considered an SI or not, changes positions under the same QE, and the new position requires a criminal records check.

(d) The individual, whether previously considered an SI or not, changes Department-issued licenses, certifications, or registrations, and the license, certification, or registration requires a criminal records check under these rules.

(e) A criminal records check is required by federal or state laws or regulations, other Department administrative rules, or by contract with the Department.

(f) When the Department or the AD has reason to believe that a criminal records check is justified. Examples include but are not limited to any indication of possible criminal behavior by an SI or quality assurance monitoring of a previously conducted criminal records check.

(4) A criminal records check is not required under the following circumstances:

(a) A personal care services provider, Lifespan Respite care provider, or an independent provider paid with Department funds who changes or adds clients, and the prior, documented criminal records check conducted within the previous 24 months through the Department has been approved without restrictions.

(b) The SI is a child care provider as described in OAR 461-165-0180 who has been approved without restrictions and who changes or adds clients.

(c) The SI remains with a QE in the same position while the QE merges with another QE, is sold to another QE, or changes names. The changes may be noted in documentation attached to the notice of fitness determination but do not warrant a new criminal records check.

(5) An AD must document in writing the reason why a new criminal records check was not completed.

(6) Criminal records checks are completed on SIs who otherwise meet the qualifications of the position in question. A criminal records check may not be used to screen applicants for a position.

Stat. Auth.: ORS 181.537 & 409.050

Stats. Implemented: ORS 181.534, 181.537 & 409.010

Hist.: OMAP 8-2004, f. 2-26-04, cert. ef. 3-1-04; OMAP 77-2004(Temp), f. & cert. ef. 10-1-04 thru 3-29-05; OMAP 22-2005, f. & cert. ef. 3-29-05; Renumbered from 410-007-0220, DHSD 8-2007, f. 8-31-07, cert. ef. 9-1-07; DHSD 10-2008, f. 12-26-08, cert. ef. 1-1-09; DHSD 2-2009, f. & cert. ef. 4-1-09; DHSD 7-2009, f. & cert. ef. 10-1-09; DHSD 10-2009, f. 12-31-09 cert. ef. 1-1-10

## 407-007-0230

### Qualified Entity

(1) A QE and its appointing authorities must be approved in writing by the Department pursuant to these rules in order to appoint an AD or CP. Unless specifically indicated otherwise in these rules, all QEs and appointing authorities discussed in these rules are considered approved.

(2) Except as provided in section (3) of this rule, all QEs shall ensure the completion of criminal records checks for SIs who are the QE's employees, volunteers, or other SIs under the direction or control of the QE.

(a) The QE's appointing authority shall appoint ADs or CPs within 30 calendar days following Department approval, or within time frames required by Department program offices.

(b) Unless specifically allowed by the Department, an appointing authority may not appoint themselves as an AD.

(c) Appointing authorities in all QEs shall appoint one or more ADs, or have a written agreement with another QE to handle AD responsibilities.

(d) Appointing authorities in all QEs may also appoint one or more CPs, or may have a written agreement with another QE to perform CP responsibilities.

(3) The Department's appointing authorities shall appoint ADs and CPs within the Department. Department-employed ADs shall make fitness determinations for the following QEs:

(a) Private QEs with fewer than 10 employed SIs are not eligible to appoint ADs. These QEs shall do one of the following:

(A) Use another QE to perform AD responsibilities instead of using the Department. If another QE is used, the two QEs must have a written agreement. The QE must provide the Department with a copy of the agreement.

(B) Appoint one or more CPs, or have a written agreement with another QE to perform CP responsibilities. The QE must provide the Department with a copy of the agreement.

(b) QEs with SIs not under the direction and control of the QE but who provide care under programs administered by the QE may have the Department ADs make fitness determinations.

(A) The QE shall appoint one or more CPs, or use an AD or CP appointed under section (2) of this rule to perform CP responsibilities.

(B) The QE may appoint an AD for SIs not under the direction and control of the QE if the QE chooses to do so or is required to do so under other Department program rules or contract with the Department. The QE shall notify the Department in writing which programs are affected and which AD shall perform the responsibilities for each program.

(c) QEs may have specific direction by administrative rule or Department program about AD or CP appointments.

(A) Administrative rules governing certain QEs may prohibit AD appointment or CP appointment, such as private licensed child caring agencies.

(B) Department program offices may determine that:

(i) Certain QEs may not have their own ADs or CPs, but must use ADs or CPs at a local Department branch or a local QE. Examples include but are not limited to adult foster homes and child foster homes.

(ii) Specific QEs may have specific AD or CP requirements resulting from licensing actions, sanctions, or from quality assurance monitoring.

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(d) The Department may require certain QEs to use Department-employed ADs to make fitness determinations. Examples include but are not limited to initial opening of a new QE, newly adopted administrative rules creating a new type of QE, or Department investigation or review of the QE.

(4) The Department may revoke approval of the QE to appoint or maintain ADs if the Department is investigating a compliance issue or determines that the QE, or an AD or CP appointed by the QE, has failed to comply with these rules. The BCU and the appropriate entity or program office within the Department may develop a plan of action to resolve the compliance issues.

(5) The QE's appointing authorities shall appoint ADs and CPs as needed to remain in compliance with these rules. If a QE no longer has an AD or CP for any reason, the appointing authorities shall ensure that new ADs or CPs are appointed within 30 calendar days from the date of no longer having ADs or CPs, and shall communicate any changes to the BCU.

(6) The Department shall provide QEs with periodic training and ongoing technical assistance.

(7) Any decisions made by the Department in regard to these rules are final and may not be overturned by any QE, its ADs or CPs.

Stat. Auth.: ORS 181.537 & 409.050

Stats. Implemented: ORS 181.534, 181.537 & 409.010

Hist.: OMAP 8-2004, f. 2-26-04, cert. ef. 3-1-04; OMAP 77-2004(Temp), f. & cert. ef. 10-1-04 thru 3-29-05; OMAP 85-2004(Temp), f. & cert. ef. 11-4-04 thru 3-29-05; OMAP 22-2005, f. & cert. ef. 3-29-05; Renumbered from 410-007-0230, DHS 8-2007, f. 8-31-07, cert. ef. 9-1-07; DHS 10-2008, f. 12-26-08, cert. ef. 1-1-09; DHS 2-2009, f. & cert. ef. 4-1-09; DHS 7-2009, f. & cert. ef. 10-1-09; DHS 10-2009, f. 12-31-09 cert. ef. 1-1-10

## 407-007-0240

### Authorized Designees and Contact Persons

(1) All requirements in this section must be completed within 90 calendar days. To receive Department approval, all ADs and CPs must meet the following requirements:

(a) ADs and CPs for the Department must be employed by the Department. For QEs, the ADs and CPs must be one of the following:

(A) Employed by the agency for which they will handle criminal records check information.

(B) Contracted with the QE to perform as an AD or CP.

(C) Employed by another similar QE or a parent QE (e.g., assisted living facility AD helping another assisted living facility).

(b) ADs and CPs shall complete a training program and successfully pass any testing as required by the Department.

(c) An appointing authority shall appoint an AD or CP in writing on a form provided by the Department. The applicant AD or CP shall complete and submit the form to the Department for processing and registration.

(d) The Department shall conduct an Oregon criminal records check, a national criminal records check, and if necessary, a state-specific criminal records check. The AD or CP must have:

(A) No conviction for a potentially disqualifying permanent review crime;

(B) No convictions for any other crime in the past 15 years;

(C) No potentially disqualifying conditions; and

(D) If an AD, Criminal Justice Information Systems (CJIS) clearance and approval to view criminal records in accordance with OSP rules.

(e) The Department shall conduct an abuse check if Department program rules require an abuse check on SIs and the BCU has the authority to conduct the abuse check. The AD or CP may not have been found responsible for abuse of a vulnerable person.

(2) The Department shall deny the individual's status as an AD or CP if the individual does not meet the AD or CP requirements. Once denied, the individual may no longer perform the duties of an AD or CP. There are no exceptions for individuals who do not meet the AD or CP requirements.

(3) Approved ADs and CPs shall have the following responsibilities:

(a) Demonstrate understanding of and adherence to these rules in all actions pertaining to the criminal records check process.

(b) Act as the Department's designee in any action pursuant to these rules and the criminal records check process. The AD or CP may not advocate for an SI during any part of the criminal records check process, including contesting a fitness determination.

(c) Ensure that adequate measures are taken to protect the confidentiality of the records and documents required by these rules. Only an AD may view criminal offender information. A CP may not view criminal offender information.

(d) Verify the identity of an SI. The AD or CP shall verify identity or ensure that the same verification requirements are understood by each individual responsible for verifying identity.

(A) If conducting a criminal records check on the SI for the first time or at rehire of the SI, the AD or CP shall verify identity by using methods which include but are not limited to asking the SI for current and valid government-issued photo identification and confirming the information on the photo identification with the SI, the information written on the Background Check Request form, and the information written on the fingerprint card if a national criminal records check is conducted.

(B) If an AD or CP is verifying the identity of an SI who is being rechecked, review of government-issued photo identification may not be necessary, but the AD or CP shall verify the SI's name, current address, and any

aliases or previous names. (e) Ensure that an SI is not permitted to work, volunteer, reside, or otherwise hold any position covered by these rules before the completion of a preliminary fitness determination and submission of the Background Check Request form to the Department along with a fingerprint card if the SI discloses out of state criminal records or residency.

(f) Ensure that when an SI is hired on a preliminary basis, the need for active supervision is understood by each individual responsible for providing active supervision.

(g) Ensure that if an SI is removed from working on a preliminary basis, the SI is immediately removed from the position and remains removed until the completion of a final fitness determination or unless the BCU reinstates hired on a preliminary basis.

(h) Notify the Department of any changes regarding an SI who still has a criminal records check being processed, including but not limited to address or employment status changes.

(i) Monitor the status of criminal records check applications and investigate any delays in processing.

(j) Ensure that documentation required by these rules is processed and maintained in accordance with these rules.

(k) Notify the BCU immediately if arrested, charged, or convicted of any crime.

(4) A CP may not conduct final fitness determinations or review criminal offender information. A CP has the following limitations when making preliminary fitness determinations:

(a) The CP may review the SIs completed Background Check Request form to ensure completeness of the form, verify identity, and to determine if the SI has any potentially disqualifying crimes or conditions.

(b) The CP may allow the SI to be hired on a preliminary basis only after the CP has reviewed the Background Check Request form and determined there is no indication that the SI has any potentially disqualifying crimes or conditions.

(c) The CP shall not allow an SI who discloses any potentially disqualifying crimes or conditions to work on a preliminary basis.

(d) If the SI discloses potentially disqualifying crimes or conditions, the CP shall forward the Background Check Request form to an AD for preliminary fitness determination, or to the BCU for processing if there is no local AD available.

(5) In addition to the responsibilities listed in section (3) of this rule, the AD shall:

(a) Review the completed Background Check Request form (if not already done so by a CP) and conduct a preliminary fitness determination to determine eligibility for probationary status before forwarding the Background Check Request form to the BCU.

(b) Make a final fitness determination on all SIs when the Department returns their Background Check Request form to the AD for final review. The decision of an AD may not be overruled by an employee, owner, or board member of a QE who is not an AD.

(c) Participate in the appeal process if requested by the Department.

(d) Ensure the confidentiality and integrity of criminal records check documents. After the completion of a criminal records check, ADs not involved with original fitness determinations may not review criminal records check documents to gain information on an SI's criminal history. If a review is necessary, the AD must have written approval from the Department prior to reviewing any documents.

(6) An AD may not have access to criminal offender information, other criminal information (except the Background Check Request form), or make a fitness determination if there is a conflict of interest between the AD and the SI.

(A) A conflict of interest includes but is not limited to the following situations:

(A) If the AD is related to the SI. In this context, "related" means spouse, domestic partner, natural parent, child, sibling, adopted child, adopted parent, stepparent, stepchild, stepbrother, stepsister, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, grandparent, grandchild, aunt, uncle, niece, nephew, or cousin.

(B) If the AD has a close personal or financial relationship, other than an employee-employer relationship, with the SI.

(b) When there is a conflict of interest and the QE has no other ADs available to conduct the fitness determination, the Department shall complete the fitness determination.

(7) The Department may change AD or CP status in the following circumstances which include but are not limited to:

(a) The Department shall inactivate AD or CP status when the AD or CP position with the QE ends or when the QE terminates the appointment. The QE shall notify the Department immediately upon the end of the position or termination of the appointment.

(b) The Department or QE shall suspend or revoke the appointment if an AD or CP fails to comply with responsibilities or fails to continue to meet the requirements for AD or CP, as applicable. After suspending or revoking the appointment, the QE must immediately notify the BCU in writing. If the Department takes the action, it must immediately notify the QE in writing.

(c) The Department shall revoke AD or CP status if an AD or CP fails to recertify.

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(6) Any changes to AD or CP status are not subject to appeal rights unless the denial or termination results in immediate loss of employment or position. ADs or CPs losing employment or position have the same hearing rights as other SIs under these rules. (7) If an AD or CP leaves employment with the QE for any reason, the Department shall inactivate AD or CP status. If the individual finds employment with another QE, a new appointment, application, and registration must be completed.

(8) The Department shall review and recertify appointments of ADs and CPs, up to and including a new application, criminal records check, abuse check if required, and additional training, to under the following circumstances:

(a) Every three years; or

(b) Any time the Department has reason to believe the individual no longer meets the AD or CP requirements including but not limited to indication of criminal behavior or indication of noncompliance with these rules.

Stat. Auth.: ORS 181.537 & 409.050

Stats. Implemented: ORS 181.534, 181.537 & 409.010

Hist.: OMAP 8-2004, f. 2-26-04, cert. ef. 3-1-04; OMAP 22-2005, f. & cert. ef. 3-29-05; Renumbered from 410-007-0240, DHSD 8-2007, f. 8-31-07, cert. ef. 9-1-07; DHSD 10-2008, f. 12-26-08, cert. ef. 1-1-09; DHSD 2-2009, f. & cert. ef. 4-1-09; DHSD 7-2009, f. & cert. ef. 10-1-09; DHSD 10-2009, f. 12-31-09 cert. ef. 1-1-10

## 407-007-0250

### Oregon Criminal History Check Process

(1) A QE and SI shall use the Background Check Request form to request a criminal records check that must include the following information:

(a) Name and aliases;

(b) Date of birth;

(c) Address and recent residency information;

(d) Driver license or identification card information;

(e) Position the SI is completing the Background Check Request form;

(f) Disclosure of all criminal history;

(A) The SI must disclose all arrests, charges, and convictions regardless of outcome or when the arrests, charges, or convictions occurred.

(B) The disclosed crimes and the dates must reasonably match the SI's criminal offender information and other criminal records information, as determined by the Department.

(g) Disclosure of other information to be considered in the event of a weighing test.

(2) The Background Check Request form shall include the following notices:

(a) A notice regarding disclosure of Social Security number indicating that:

(A) The SI's disclosure is voluntary; and

(B) The Department requests the Social Security number solely for the purpose of positively identifying the SI during the criminal records check process.

(b) A notice that the SI may be subject to fingerprinting as part of a criminal records check.

(3) The BCU shall review each Background Check Request form received for completeness and timeliness. If the BCU rejects the form, the QE's AD or CP shall immediately remove the SI from the position. If the QE still plans to hire the SI, the QE shall resolve the reasons for rejection and re-submit the form.

(4) The Department or an approved QE under contract with OSP for LEDS access shall conduct an Oregon criminal records check after a completed Background Check Request form is received. Using information submitted on the Background Check Request form, the Department or QE may obtain criminal offender information from LEDS and may request other criminal records information as needed.

(5) The Department and all QEs receiving LEDS information shall handle criminal offender information in accordance with applicable OSP requirements in ORS chapter 181 and the rules adopted pursuant thereto (see OAR chapter 257, division 15).

(6) The Department may conduct a fingerprint-based national criminal records check after an Oregon criminal records check has been completed.

(a) A fingerprint-based national criminal records check may be completed under any of the following circumstances:

(A) The SI has been outside Oregon:

(i) For 60 or more consecutive days during the previous 18 months and the SI is a child care provider or other individual included in OAR 461-165-0180.

(ii) For 60 or more consecutive days during the previous five years for all other SIs.

(B) The LEDS check, SI disclosures, or any other criminal records information obtained by the Department indicate there may be criminal records outside of Oregon.

(C) The SI has an out-of-state driver license.

(D) The Department has reason to question the identity or criminal record of the SI.

(E) A fingerprint-based criminal records check is required by federal or state laws or regulations, other Department rules, or by contract with the Department.

(F) The SI is an AD or CP.

(G) The Department has reason to believe that fingerprints are needed to make a final fitness determination.

(b) The Department must receive consent from the parent or guardian to obtain fingerprints from an SI under 18 years of age.

(c) The SI shall complete and submit a fingerprint card when requested by the Department. The Department shall send the request to the QE and the AD or CP shall notify the SI.

(A) The SI shall use a fingerprint card provided by the Department. The Department shall give the SI notice regarding the Social Security number as set forth in OAR 407-007-0250(2)(a).

(B) The SI shall submit the fingerprint card to the BCU within 21 calendar days of the request.

(i) The Department shall close the application, making it a closed case, if the fingerprint card is not received within 21 calendar days. When a case is closed, the SI may not be allowed to work, volunteer, be employed, or otherwise perform in positions covered by these rules, and shall be immediately terminated and removed from the position.

(ii) The Department may extend the time allowed for good cause provided by the SI or QE.

(C) The Department may require new fingerprint cards if previous cards are rejected by OSP or the FBI.

(5) The Department may also conduct a state-specific criminal records check instead of or in addition to a national criminal records check. Reasons for a state-specific criminal records check include but are not limited to:

(a) When the Department has reason to believe that out-of-state criminal records may exist and a national criminal records check may not be accomplished.

(b) When the Department has been unable to complete a national criminal records check due to illegible fingerprints.

(c) When the national criminal records check results show incomplete information about charges or criminal records without final disposition.

(d) When there is indication of residency or criminal records in a state that does not submit all criminal records to the FBI.

(e) When, based on available information, the Department has reason to believe that a state-specific criminal records check is necessary.

(6) In order to complete a criminal records check and fitness determination, the Department may require additional information from the SI including but not limited to additional criminal, judicial, other background information, or proof of identity.

(7) The Department may conduct a criminal records check in situations of imminent danger.

(a) If the Department determines there is indication of criminal behavior that could more likely than not pose an immediate risk to vulnerable individuals, the Department shall conduct a new criminal records check on an SI without the completion of a new Background Check Request form.

(b) If the Department determines that a fitness determination based on the new criminal records check would be adverse to the SI, the Department shall provide the SI, if available, the opportunity to disclose criminal records, potentially disqualifying conditions, and other information as indicated in OAR 407-007-0300 before the completion of the fitness determination.

(8) All criminal records checks conducted under this rule shall be documented in writing.

Stat. Auth.: ORS 181.537 & 409.050

Stats. Implemented: ORS 181.534, 181.537 & 409.010

Hist.: OMAP 8-2004, f. 2-26-04, cert. ef. 3-1-04; OMAP 22-2005, f. & cert. ef. 3-29-05; Renumbered from 410-007-0250, DHSD 8-2007, f. 8-31-07, cert. ef. 9-1-07; DHSD 10-2008, f. 12-26-08, cert. ef. 1-1-09; DHSD 2-2009, f. & cert. ef. 4-1-09; DHSD 7-2009, f. & cert. ef. 10-1-09; DHSD 10-2009, f. 12-31-09 cert. ef. 1-1-10

## 407-007-0280

### Potentially Disqualifying Crimes

A conviction of any of the following crimes is potentially disqualifying. Offenses or convictions that are classified as less than a misdemeanor, such as violations or infractions, are not potentially disqualifying (see ORS 161.505 to 161.565).

(1) The crimes listed in this section are permanent review crimes which require that a fitness determination be completed regardless of date of conviction.

(a) ORS 162.155, Escape II

(b) ORS 162.165, Escape I

(c) ORS 162.285, Tampering with a witness

(d) ORS 162.325, Hindering prosecution

(e) ORS 163.005, Criminal homicide

(f) ORS 163.095, Aggravated murder

(g) ORS 163.115, Murder

(h) ORS 163.118, Manslaughter I

(i) ORS 163.125, Manslaughter II

(j) ORS 163.145, Criminally negligent homicide

(k) ORS 163.149, Aggravated vehicular homicide

(l) ORS 163.160, Assault IV

(m) ORS 163.165, Assault III

(n) ORS 163.175, Assault II

(o) ORS 163.185, Assault I

(p) ORS 163.187, Strangulation

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- (q) ORS 163.190, Menacing
- (r) ORS 163.200, Criminal mistreatment II
- (s) ORS 163.205, Criminal mistreatment I
- (t) ORS 163.207, Female genital mutilation
- (u) ORS 163.208, Assault of public safety officer
- (v) ORS 163.213, Unlawful use of an electrical stun gun, tear gas, or mace I
- (w) ORS 163.225, Kidnapping II
- (x) ORS 163.235, Kidnapping I
- (y) ORS 163.257, Custodial interference I
- (z) ORS 163.263, Subjecting another person to involuntary servitude in the second degree
- (aa) ORS 163.264, Subjecting another person to involuntary servitude in the first degree
- (bb) ORS 163.266, Trafficking in persons
- (cc) ORS 163.275, Coercion
- (dd) ORS 163.355, Rape III
- (ee) ORS 163.365, Rape II
- (ff) ORS 163.375, Rape I
- (gg) ORS 163.385, Sodomy III
- (hh) ORS 163.395, Sodomy II
- (ii) ORS 163.405, Sodomy I
- (jj) ORS 163.408, Unlawful sexual penetration II
- (kk) ORS 163.411, Unlawful sexual penetration I
- (LL) ORS 163.415, Sexual abuse III
- (mm) ORS 163.425, Sexual abuse II
- (nn) ORS 163.427, Sexual abuse I
- (oo) ORS 163.432, Online sexual corruption of a child in the second degree
- (pp) ORS 163.433, Online sexual corruption of a child in the first degree
- (qq) ORS 163.435, Contributing to the sexual delinquency of a minor
- (rr) ORS 163.445, Sexual misconduct
- (ss) ORS 163.452, Custodial sexual misconduct I
- (tt) ORS 163.454, Custodial sexual misconduct II
- (uu) ORS 163.465, Public indecency
- (vv) ORS 163.467, Private indecency
- (ww) ORS 163.476, Unlawfully being in a location where children regularly congregate
- (xx) ORS 163.479, Unlawful contact with a child
- (yy) ORS 163.515, Bigamy
- (zz) ORS 163.525, Incest
- (aaa) ORS 163.535, Abandonment of a child
- (bbb) ORS 163.537, Buying or selling a person under 18 years of age
- (ccc) ORS 163.545, Child neglect II
- (ddd) ORS 163.547, Child neglect I
- (eee) ORS 163.555, Criminal nonsupport
- (fff) ORS 163.575, Endangering the welfare of a minor
- (ggg) ORS 163.670, Using child in display of sexually explicit conduct
- (hhh) ORS 163.680, Paying for viewing a child's sexually explicit conduct
- (iii) ORS 163.684, Encouraging child sexual abuse I
- (jjj) ORS 163.686, Encouraging child sexual abuse II
- (kkk) ORS 163.687, Encouraging child sexual abuse III
- (LLL) ORS 163.688, Possession of materials depicting sexually explicit conduct of a child I
- (mmm) ORS 163.689, Possession of materials depicting sexually explicit conduct of a child II
- (nnn) ORS 163.693, Failure to report child pornography
- (ooo) ORS 163.700, Invasion of personal privacy
- (ppp) ORS 163.732, Stalking
- (qqq) ORS 163.750, Violating court's stalking protective order
- (rrr) ORS 164.055, Theft I
- (sss) ORS 164.057, Aggravated theft I
- (ttt) ORS 164.075, Theft by extortion
- (uuu) ORS 164.085, Theft by deception
- (vvv) ORS 164.098, Organized retail theft
- (www) ORS 164.125, Theft of services
- (xxx) ORS 164.135, Unauthorized use of a vehicle
- (yyy) ORS 164.170, Laundering a monetary instrument
- (zzz) ORS 164.215, Burglary II
- (aaaa) ORS 164.225, Burglary I
- (bbbb) ORS 164.315, Arson II
- (cccc) ORS 164.325, Arson I
- (dddd) ORS 164.377, Computer crime
- (eeee) ORS 164.395, Robbery III
- (ffff) ORS 164.405, Robbery II
- (gggg) ORS 164.415, Robbery I
- (hhhh) ORS 165.013, Forgery I
- (iiii) ORS 165.022, Criminal possession of a forged instrument I
- (jjjj) ORS 165.032, Criminal possession of a forgery device
- (kkkk) ORS 165.055, Fraudulent use of a credit card
- (LLLL) ORS 165.065, Negotiating a bad check
- (mmmm) ORS 165.581, Cellular counterfeiting I
- (nnnn) ORS 165.800, Identity theft
- (oooo) ORS 165.803, Aggravated identity theft
- (pppp) ORS 165.810, Unlawful possession of a personal identification device
- (qqqq) ORS 166.005, Treason
- (rrrr) ORS 166.085, Abuse of corpse II
- (ssss) ORS 166.087, Abuse of corpse I
- (tttt) ORS 166.155, Intimidation II
- (uuuu) ORS 166.165, Intimidation I
- (vvvv) ORS 166.220, Unlawful use of weapon
- (wwww) ORS 166.270, Possession of weapons by certain felons
- (xxxx) ORS 166.272, Unlawful possession of machine guns, certain short-barreled firearms and firearm silencers
- (yyyy) ORS 166.275, Possession of weapons by inmates of institutions
- (zzzz) ORS 166.370, Possession of firearm or dangerous weapon in public building or court facility; exceptions: discharging firearm at school
- (aaaaa) ORS 166.382, Possession of destructive device prohibited
- (bbbbb) ORS 166.384, Unlawful manufacture of destructive device
- (ccccc) ORS 166.429, Firearms used in felony
- (ddddd) ORS 166.720, Racketeering activity unlawful
- (eeeee) ORS 167.012, Promoting prostitution
- (fffff) ORS 167.017, Compelling prostitution
- (ggggg) ORS 167.054, Furnishing sexually explicit material to a child
- (hhhhh) ORS 167.057, Luring a minor
- (iiiiii) ORS 167.062, Sadomasochistic abuse or sexual conduct in live show
- (jjjjj) ORS 167.075, Exhibiting an obscene performance to a minor
- (kkkkk) ORS 167.080, Displaying obscene materials to minors
- (LLLLL) ORS 167.212, Tampering with drug records
- (mmmmm) ORS 167.262, Adult using minor in commission of controlled substance offense
- (nnnnn) ORS 167.315, Animal abuse II
- (ooooo) ORS 167.320, Animal abuse I
- (ppppp) ORS 167.322, Aggravated animal abuse I
- (qqqqq) ORS 167.333, Sexual assault of animal
- (rrrrr) ORS 167.339, Assaulting law enforcement animal
- (sssss) ORS 181.594, Sex crimes including transporting child pornography into the state
- (ttttt) ORS 181.599, Failure to report as sex offender
- (uuuuu) ORS 433.010, Spreading disease (willfully) prohibited
- (vvvvv) ORS 475.525, Sale of drug paraphernalia prohibited
- (wwwww) ORS 475.805, Providing hypodermic device to minor prohibited
- (xxxxx) ORS 475.840, Prohibited acts generally (regarding drug crimes)
- (yyyyy) ORS 475.846, Unlawful manufacture of heroin
- (zzzzz) ORS 475.848, Unlawful manufacture of heroin within 1,000 feet of school
- (aaaaa) ORS 475.850, Unlawful delivery of heroin
- (bbbbb) ORS 475.852, Unlawful delivery of heroin within 1,000 feet of school
- (ccccc) ORS 475.854, Unlawful possession of heroin
- (ddddd) ORS 475.856, Unlawful manufacture of marijuana
- (eeeee) ORS 475.858, Unlawful manufacture of marijuana within 1,000 feet of school
- (fffff) ORS 475.860, Unlawful delivery of marijuana
- (ggggg) ORS 475.862, Unlawful delivery of marijuana within 1,000 feet of school
- (hhhhh) ORS 475.864, Unlawful possession of marijuana
- (iiiiii) ORS 475.866, Unlawful manufacture of 3,4-methylenedioxymethamphetamine
- (jjjjj) ORS 475.868, Unlawful manufacture of 3,4-methylenedioxymethamphetamine within 1,000 feet of school
- (kkkkk) ORS 475.870, Unlawful delivery of 3,4-methylenedioxymethamphetamine
- (LLLLL) ORS 475.872, Unlawful delivery of 3,4-methylenedioxymethamphetamine within 1,000 feet of school
- (mmmmm) ORS 475.874, Unlawful possession of 3,4-methylenedioxymethamphetamine
- (nnnnn) ORS 475.876, Unlawful manufacture of cocaine
- (ooooo) ORS 475.878, Unlawful manufacture of cocaine within 1,000 feet of school
- (ppppp) ORS 475.880, Unlawful delivery of cocaine
- (qqqqq) ORS 475.882, Unlawful delivery of cocaine within 1,000 feet of school
- (rrrrr) ORS 475.884, Unlawful possession of cocaine
- (sssss) ORS 475.886, Unlawful manufacture of methamphetamine
- (ttttt) ORS 475.888, Unlawful manufacture of methamphetamine within 1,000 feet of school
- (uuuuu) ORS 475.890, Unlawful delivery of methamphetamine
- (vvvvv) ORS 475.892, Unlawful delivery of methamphetamine within 1,000 feet of school

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(wwwwww) ORS 475.894, Unlawful possession of methamphetamine  
(xxxxxx) ORS 475.904, Unlawful delivery of controlled substance within 1,000 feet of school  
(yyyyyy) ORS 475.906, Penalties for distribution to minors  
(zzzzzz) ORS 475.908, Causing another person to ingest a controlled substance  
(aaaaaaa) ORS 475.910, Application of controlled substance to the body of another person  
(bbbbbbb) ORS 475.914, Prohibited acts for registrants (with the Oregon State Board of Pharmacy)  
(ccccccc) ORS 475.967, Possession of precursor substance with intent to manufacture controlled substance  
(ddddddd) ORS 475.990, Commercial drug offense  
(eeeeeee) ORS 677.080, Prohibited acts (regarding the practice of medicine)  
(ffffff) ORS 685.990, Penalties (pertaining to naturopathic medicine)  
(ggggggg) Any federal crime  
(hhhhhhh) Any U.S. military crime  
(iiiiiii) Any unclassified felony defined in Oregon Revised Statutes not listed in this rule  
(jjjjjjj) Any other felony in Oregon Revised Statutes not listed in this rule that is serious and indicates behavior that poses a threat or jeopardizes the safety of vulnerable persons, as determined by the AD  
(kkkkkkk) Any felony in a jurisdiction outside Oregon that is not the substantial equivalent of any of the Oregon crimes listed in this section but that is serious and indicates behavior that poses a threat or jeopardizes the safety of vulnerable persons, as determined by the AD  
(LLLLLLL) Any crime of attempt, solicitation, or conspiracy to commit a crime listed in this section pursuant to ORS 161.405, 161.435, or 161.450, including any crime based on criminal liability for conduct of another pursuant to ORS 161.155  
(mmmmmmm) Any crime in any other jurisdiction that is the substantial equivalent of any of the Oregon crimes listed in section (1), as determined by the AD  
(nnnnnnn) Any crime that is no longer codified in Oregon or other jurisdiction but that is the substantial equivalent of any of the crimes listed in section (1), as determined by the AD  
(2) The crimes listed in this section are ten-year review crimes which require that a fitness determination be completed if the date of conviction is within ten years of the date the Background Check Request form was signed or the date the Department conducted a criminal records check due to imminent risk.  
(a) ORS 109.311, Prohibited fees-adoption  
(b) ORS 133.076, Failure to appear on criminal citation  
(c) ORS 162.015, Bribe giving  
(d) ORS 162.025, Bribe receiving  
(e) ORS 162.065, Perjury  
(f) ORS 162.075, False swearing  
(g) ORS 162.117, Public investment fraud  
(h) ORS 162.145, Escape III  
(i) ORS 162.175, Unauthorized departure  
(j) ORS 162.185, Supplying contraband  
(k) ORS 162.195, Failure to appear II  
(L) ORS 162.205, Failure to appear I  
(m) ORS 162.247, Interfering with a peace officer  
(n) ORS 162.257, Interfering with a firefighter or emergency medical technician  
(o) ORS 162.265, Bribing a witness  
(p) ORS 162.275, Bribe receiving by a witness  
(q) ORS 162.295, Tampering with physical evidence  
(r) ORS 162.305, Tampering with public records  
(s) ORS 162.315, Resisting arrest  
(t) ORS 162.335, Compounding  
(u) ORS 162.355, Simulating legal process  
(v) ORS 162.365, Criminal impersonation  
(w) ORS 162.367, Criminal impersonation of peace officer  
(x) ORS 162.369, Possession of false law enforcement identification card  
(y) ORS 162.375, Initiating a false report  
(z) ORS 162.385, Giving false information to police officer for a citation  
(aa) ORS 162.405, Official misconduct II  
(bb) ORS 162.415, Official misconduct I  
(cc) ORS 162.425, Misuse of confidential information  
(dd) ORS 163.195, Recklessly endangering another person  
(ee) ORS 163.212, Unlawful use of an electrical stun gun, tear gas, or mace II  
(ff) ORS 163.245, Custodial interference II  
(gg) ORS 164.043, Theft III  
(hh) ORS 164.045, Theft II  
(ii) ORS 164.095, Theft by receiving  
(jj) ORS 164.138, Criminal possession of a rented or leased motor vehicle

(kk) ORS 164.140, Criminal possession of rented or leased personal property  
(LL) ORS 164.162, Mail theft or receipt of stolen mail  
(mm) ORS 164.235, Possession of a burglary tool or theft device  
(nn) ORS 164.255, Criminal trespass I  
(oo) ORS 164.265, Criminal trespass while in possession of firearm  
(pp) ORS 164.272, Unlawful entry into motor vehicle  
(qq) ORS 164.354, Criminal mischief II  
(rr) ORS 164.365, Criminal mischief I  
(ss) ORS 165.007, Forgery II  
(tt) ORS 165.017, Criminal possession of a forged instrument II  
(uu) ORS 165.037, Criminal simulation  
(vv) ORS 165.042, Fraudulently obtaining a signature  
(ww) ORS 165.070, Possessing fraudulent communications device.  
(xx) ORS 165.074, Unlawful factoring of credit card transaction.  
(yy) ORS 165.080, Falsifying business records  
(zz) ORS 165.085, Sports bribery  
(aaa) ORS 165.090, Sports bribe receiving  
(bbb) ORS 165.095, Misapplication of entrusted property  
(ccc) ORS 165.100, Issuing a false financial statement  
(ddd) ORS 165.102, Obtaining execution of documents by deception.  
(eee) ORS 165.540, Obtaining contents of communication  
(fff) ORS 165.543, Interception of communications  
(ggg) ORS 165.570, Improper use of 9-1-1 emergency reporting system.  
(hhh) ORS 165.572, Interference with making a report  
(iii) ORS 165.577, Cellular counterfeiting III  
(jjj) ORS 165.579, Cellular counterfeiting II  
(kkk) ORS 165.692, Making false claim for health care payment.  
(LLL) ORS 166.015, Riot  
(mmm) ORS 166.023, Disorderly conduct I  
(nnn) ORS 166.025, Disorderly conduct II  
(ooo) ORS 166.065, Harassment  
(ppp) ORS 166.076, Abuse of a memorial to the dead  
(qqq) ORS 166.090, Telephonic harassment  
(rrr) ORS 166.116, Interfering with public transportation  
(sss) ORS 166.180, Negligently wounding another  
(ttt) ORS 166.190, Pointing firearm at another  
(uuu) ORS 166.240, Carrying of concealed weapon  
(vvv) ORS 166.250, Unlawful possession of firearms  
(www) ORS 166.470, Limitations and conditions for sales of firearms.  
(xxx) ORS 166.480, Sale or gift of explosives to children  
(yyy) ORS 166.649, Throwing an object off an overpass II  
(zzz) ORS 166.651, Throwing an object off an overpass I  
(aaaa) ORS 166.660, Unlawful paramilitary activity  
(bbbb) ORS 167.007, Prostitution  
(ccc) ORS 167.090, Publicly displaying nudity or sex for advertising purposes.  
(ddd) ORS 167.122, Unlawful gambling in the second degree  
(eee) ORS 167.127, Unlawful gambling in the first degree  
(fff) ORS 167.167, Cheating  
(gggg) ORS 167.222, Frequenting a place where controlled substances are used.  
(hhhh) ORS 167.325, Animal neglect II  
(iiii) ORS 167.330, Animal neglect I  
(jjjj) ORS 167.337, Interfering with law enforcement animal  
(kkkk) ORS 167.340, Animal abandonment  
(LLLL) ORS 167.352, Interfering with assistance, search and rescue or therapy animal.  
(mmmm) ORS 167.355, Involvement in animal fighting  
(nnnn) ORS 167.365, Dogfighting  
(oooo) ORS 167.370, Participation in dogfighting  
(pppp) ORS 167.428, Cockfighting  
(qqqq) ORS 167.431, Participation in cockfighting  
(rrrr) ORS 167.820, Concealing the birth of an infant  
(ssss) ORS 192.865, Criminal penalty (pertaining to Address Confidentiality Program).  
(tttt) ORS 314.075, Evading requirements of law prohibited (tax evasion).  
(uuuu) ORS 411.630, Unlawfully obtaining public assistance  
(vvvv) ORS 411.640, Unlawfully receiving public assistance  
(wwww) ORS 411.675, Submitting wrongful claim or payment (e.g., public assistance).  
(xxxx) ORS 411.840, Unlawfully obtaining or disposing of food stamp benefits.  
(yyyy) ORS 412.074, Unauthorized use and custody of records of temporary assistance for needy families program.  
(zzzz) ORS 412.099, Sharing assistance prohibited.  
(aaaaa) ORS 417.990, Penalty for placement of children in violation of compact.  
(bbbbb) ORS 471.410, Providing liquor to persons under 21 or to intoxicated persons; allowing consumption by minor on property.

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(cccc) ORS 475.912, Unlawful delivery of imitation controlled substance.

(dddd) ORS 475.916, Prohibited acts involving records and fraud.

(eeee) ORS 475.918, Falsifying drug test results

(ffff) ORS 475.950, Failure to report precursor substances transaction.

(gggg) ORS 475.955, Failure to report missing precursor substances.

(hhhh) ORS 475.960, Illegally selling drug equipment

(iiii) ORS 475.965, Providing false information on precursor substances report.

(jjjj) ORS 803.230, Forging, altering or unlawfully producing or using title or registration.

(kkkk) ORS 807.620, Giving false information to police officer.

(LLLL) ORS 811.060, Vehicular assault of bicyclist or pedestrian.

(mmmm) ORS 811.140, Reckless driving.

(nnnn) ORS 811.540, Fleeing or attempting to elude police officer.

(oooo) ORS 811.700, Failure to perform duties of driver when property is damaged.

(pppp) ORS 811.705, Failure to perform duties of driver to injured persons.

(qqqq) ORS 819.300, Possession of a stolen vehicle.

(rrrr) ORS 830.475, Failure to perform the duties of an operator (boat)

(ssss) Any unclassified misdemeanor defined in Oregon Revised Statutes not listed elsewhere in this rule.

(tttt) Any other misdemeanor in Oregon Revised Statutes not listed in this rule that is serious and indicates behavior that poses a threat or jeopardizes the safety of vulnerable persons, as determined by the AD.

(uuuu) Any misdemeanor in a jurisdiction outside Oregon that is not the substantial equivalent of any of the Oregon crimes listed in section (2) but that is serious and indicates behavior that poses a threat or jeopardizes the safety of vulnerable persons, as determined by the AD. If a misdemeanor in a jurisdiction outside Oregon is similar to a violation in Oregon, then it may not be considered potentially disqualifying under this section.

(vvvv) Any crime of attempt, solicitation or conspiracy to commit a crime listed in this section pursuant to ORS 161.405 or 161.435, including any conviction based on criminal liability for conduct of another pursuant to ORS 161.155.

(wwww) Any crime in any other jurisdiction which is the substantial equivalent of any of the Oregon crimes listed in section (2), as determined by the AD.

(xxxx) Any crime which is no longer codified in Oregon, but which is the substantial equivalent of any of the crimes listed in section (2), as determined by the AD.

(3) The crimes listed in this section are five-year review crimes which require that a fitness determination be completed if the date of conviction is within five years of the date the Background Check Request form was signed or the date the Department conducted a criminal records check due to imminent risk.

(a) ORS 033.045, Contempt of court

(b) ORS 133.310, Violation of restraining order

(c) ORS 135.290, Punishment by contempt of court (violation of release agreement)

(d) ORS 162.085, Unsworn falsification

(e) ORS 162.235, Obstructing governmental or judicial administration

(f) ORS 164.245, Criminal trespass II

(g) ORS 164.335, Reckless burning

(h) ORS 164.345, Criminal mischief III

(i) ORS 165.555, Unlawful telephone solicitation of contributions for charitable purposes

(j) ORS 165.813, Unlawful possession of fictitious identification

(k) ORS 166.075, Abuse of venerated objects

(L) ORS 166.095, Misconduct with emergency telephone calls

(m) ORS 811.182, Criminal driving while suspended or revoked

(n) ORS 813.010, Driving under the influence of intoxicants (DUII)

(o) ORS 830.315, Reckless operation of a boat

(p) ORS 830.325, Operating boat while under influence of intoxicating liquor or controlled substance

(q) ORS 830.730, False information to peace officer or Oregon State Marine Board

(r) Any conviction for attempt, solicitation or conspiracy to commit a crime listed in this section pursuant to ORS 161.405 or 161.435, including any conviction based on criminal liability for conduct of another pursuant to ORS 161.155

(s) Any crime in any other jurisdiction which is the substantial equivalent of any of the Oregon crimes listed in section (3), as determined by the AD

(t) Any crime which is no longer codified in Oregon, but which is the substantial equivalent of any of the crimes listed in section (3), as determined by the AD

(4) Evaluations of crimes may be based on Oregon laws and laws in other jurisdictions in effect at the time of the fitness determination, regardless of the jurisdiction in which the conviction occurred.

(5) An SI may not be denied under these rules due to the existence or contents of a juvenile record that has been expunged pursuant to ORS 419A.260 to 419A.262.

(6) An SI may not be denied under these rules due to the existence or contents of an adult record that has been set aside pursuant to ORS 137.225.

Stat. Auth.: ORS 181.537 & 409.050

Stats. Implemented: ORS 181.534, 181.537 & 409.010

Hist.: OMAP 8-2004, f. 2-26-04, cert. ef. 3-1-04; OMAP 22-2005, f. & cert. ef. 3-29-05;

Renumbered from 410-007-0280, DHSD 8-2007, f. 8-31-07, cert. ef. 9-1-07; DHSD 10-

2008, f. 12-26-08, cert. ef. 1-1-09; DHSD 2-2009, f. & cert. ef. 4-1-09; DHSD 7-2009, f. &

cert. ef. 10-1-09; DHSD 10-2009, f. 12-31-09 cert. ef. 1-1-10

## 407-007-0290

### Other Potentially Disqualifying Conditions

The following are potentially disqualifying conditions:

(1) The SI makes a false statement to the QE, AD, or Department, including the provision of materially false information, false information regarding criminal records, or failure to disclose information regarding criminal records. Nondisclosure of violation or infraction charges may not be considered a false statement.

(2) The SI is a registered sex offender in any jurisdiction. There is a rebuttable presumption that an SI is likely to engage in conduct that would pose a significant risk to vulnerable individuals if the SI has been designated a predatory sex offender in any jurisdiction under ORS 181.585 or found to be a sexually violent dangerous offender under ORS 144.635 (or similar statutes in other jurisdictions).

(3) The SI has an outstanding warrant for any crime in any jurisdiction.

(4) The SI has a deferred sentence, conditional discharge, or is participating in a diversion program in any jurisdiction for any potentially disqualifying crime.

(5) The SI is currently on probation, parole, or post-prison supervision for any crime in any jurisdiction, regardless of the original conviction date (or date of guilty or no contest plea if there is no conviction date).

(6) The SI has been found in violation of post-prison supervision, parole, or probation for any crime in any jurisdiction, regardless of the original conviction date (or date of guilty or no contest plea if there is no conviction date), within five years from the date the Background Check Request form was signed or the date the Department conducted a criminal records check due to imminent danger.

(7) The SI has an unresolved arrest, charge, or a pending indictment for any crime in any jurisdiction.

(8) The SI has been arrested in any jurisdiction as a fugitive from another state or a fugitive from justice, regardless of the date of arrest.

(9) The SI has an adjudication in a juvenile court in any jurisdiction, finding that the SI was responsible for a potentially disqualifying crime that would result in a conviction if committed by an adult.

(10) The SI has a finding of "guilty except for insanity," "guilty except by reason of insanity," "not guilty by reason of insanity," "responsible except for insanity," "not responsible by reason of mental disease or defect," or similarly worded disposition in any jurisdiction regarding a potentially disqualifying crime, unless the local statutes indicate that such an outcome is considered an acquittal.

(10) Child protective services reports that show behavior or conduct by the SI that would pose a risk to or jeopardize the safety of vulnerable individuals. This potentially disqualifying condition only applies when:

(a) The Department administrative rules specifically require a protective services background check as part of the application process including but not limited to child foster homes, adoptive families, licensed private child caring agencies, or child care providers; and

(b) The BCU has the authority to conduct an abuse check.

Stat. Auth.: ORS 181.537 & 409.050

Stats. Implemented: ORS 181.534, 181.537 & 409.010

Hist.: OMAP 8-2004, f. 2-26-04, cert. ef. 3-1-04; OMAP 22-2005, f. & cert. ef. 3-29-05;

Renumbered from 410-007-0290, DHSD 8-2007, f. 8-31-07, cert. ef. 9-1-07; DHSD 10-

2008, f. 12-26-08, cert. ef. 1-1-09; DHSD 2-2009, f. & cert. ef. 4-1-09; DHSD 7-2009, f. &

cert. ef. 10-1-09; DHSD 10-2009, f. 12-31-09 cert. ef. 1-1-10

## 407-007-0300

### Weighing Test

When making a fitness determination, the AD shall consider any of the following factors if an SI has potentially disqualifying crimes or conditions as disclosed by the SI or which is otherwise known:

(1) Circumstances regarding the nature of potentially disqualifying crimes and conditions including but not limited to:

(a) The details of incidents leading to the charges of potentially disqualifying crimes or resulting in potentially disqualifying conditions.

(b) Age of the SI at time of the potentially disqualifying crimes or conditions.

(c) Facts that support the convictions or potentially disqualifying conditions.

(d) Passage of time since commission of the potentially disqualifying crimes or conditions.

(e) Consideration of state or federal laws, regulations, or rules covering the position, facility, employer, or QE regarding the potentially disqualifying crimes or conditions.



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(2) Other factors when available including but not limited to:

(a) Other information related to criminal activity including charges, arrests, pending indictments, and convictions. Other behavior involving contact with law enforcement may also be reviewed if information is relevant to other criminal records or shows a pattern relevant to criminal history.

(b) Periods of incarceration.

(c) Status of and compliance with parole, post-prison supervision, or probation.

(d) Evidence of alcohol or drug issues directly related to criminal activity or potentially disqualifying conditions.

(e) Evidence of other treatment or rehabilitation related to criminal activity or potentially disqualifying conditions.

(f) Likelihood of repetition of criminal behavior or behaviors leading to potentially disqualifying conditions, including but not limited to patterns of criminal activity or behavior.

(g) Changes in circumstances subsequent to the criminal activity or disqualifying conditions including but not limited to:

(A) History of high school, college, or other education related accomplishments.

(B) Work history (employee or volunteer).

(C) History regarding licensure, certification, or training for licensure or certification.

(D) Written recommendations from current or past employers, including Department client employers.

(m) Indication of the SI's cooperation, honesty, or the making of a false statement during the criminal records check process, including acknowledgment and acceptance of responsibility of criminal activity and potentially disqualifying conditions.

(3) The AD shall consider the relevancy of the SI's criminal activity or potentially disqualifying conditions to the paid or volunteer position, or to the environment in which the SI will reside, work, or visit.

Stat. Auth.: ORS 181.537 & 409.050

Stats. Implemented: ORS 181.534, 181.537 & 409.010

Hist.: OMAP 8-2004, f. 2-26-04, cert. ef. 3-1-04; OMAP 22-2005, f. & cert. ef. 3-29-05; Renumbered from 410-007-0300, DHSD 8-2007, f. 8-31-07, cert. ef. 9-1-07; DHSD 10-2008, f. 12-26-08, cert. ef. 1-1-09; DHSD 7-2009, f. & cert. ef. 10-1-09; DHSD 10-2009, f. 12-31-09 cert. ef. 1-1-10

## 407-007-0315

### Hired on a Preliminary Basis

A preliminary fitness determination is required to determine if an SI may work, volunteer, be employed, or otherwise perform in the position listed on the Background Check Request form prior to a final fitness determination. The SI may not be hired on a preliminary basis prior to the completion of a preliminary fitness determination.

(1) The SI must complete required information on a Background Check Request form and the AD or CP must review the form.

(2) The AD or CP shall review the Background Check Request form, complete a preliminary fitness determination and shall then make one of the following determinations

(a) An SI may be hired on a preliminary basis, only during the period of time prior to a final fitness determination, into the position listed on the Background Check Request form and be allowed to participate in training, orientation, and position activities under the one of the following circumstances:

(A) If there is no indication of a potentially disqualifying crime or condition on the Background Check Request form and the AD or CP have no reason to believe the SI has potentially disqualifying history., This is the only situation in which a CP may hire an SI on a preliminary basis.

(B) If the SI discloses convictions or arrests for a potentially disqualifying crime or any other potentially disqualifying condition, the SI may be hired on a preliminary basis only after the completion of a weighing test by an AD. The SI may be hired on a preliminary basis only if, based on information available at the time, the AD determines that more likely than not that the SI poses no potential threat to vulnerable individuals.

(b) The QE may not hire a SI on a preliminary basis under any of the following circumstances:

(A) Being hired on a preliminary basis or probationary status is not allowed by program rules.

(B) The SI has disclosed potentially disqualifying crimes or conditions and the QE does not have an AD to make a preliminary fitness determination.

(C) The AD or Department determine that:

(i) More likely than not, the SI poses a potential threat to vulnerable individuals, based on a preliminary fitness determination and weighing test;

(ii) The SI's most recent criminal records check under these rules or other Department criminal records check rules resulted in a denial; or

(iii) The SI is currently involved in contesting a criminal records check under these or other Department criminal records check rules.

(D) An outcome of no hiring on a preliminary basis may only be overturned by the Department.

(3) The QE shall forward the Background Check Request form to the Department immediately upon completion of the preliminary fitness determination or, if the QE cannot make a preliminary fitness determination, immediately

after the SI's completion of the form and verification of the SIs identity.

(4) The Department shall review the preliminary fitness determination made by the QE.

(a) The Department may change the outcome of the preliminary fitness determination based on available information.

(b) A QE without access to an AD may request the Department make a preliminary fitness determination if the SI discloses potentially disqualifying crimes or conditions.

(5) An SI hired on a preliminary basis shall be actively supervised at all times by an individual who has been approved without restrictions pursuant to these rules or previous Department criminal records check rules.

(a) The individual providing active supervision at all times shall do the following:

(A) Be in the same building as the SI or, if outdoors of QE buildings or any location off the QE property, be within line-of-sight and hearing, except as provided in section (6)(b)(B) of this rule;

(B) Know where the SI is and what the SI is doing; and

(C) Periodically observe the actions of the SI.

(b) A Department client, an adult client's adult relation, or a child's parent or guardian may provide active supervision without a criminal records check.

(A) The client may actively supervise a homecare worker, personal care services provider, or independent provider if the client makes an informed decision to employ the provider. Someone related to the client may also provide active supervision if the relative has been approved by the AD.

(B) A child's parent or guardian shall be responsible for providing active supervision in the case of child care providers. The supervision is not required to be performed by someone in the same building as the child.

(6) An SI approved without restrictions within the previous 24 months through a documented criminal records check pursuant to these rules or prior Department criminal records check rules may be hired on a preliminary basis without active supervision. Twenty-four months is calculated from date of previous approval to the date of hire in the new position. This exemption from active supervision is not allowed in any of the following situations:

(a) If the SI cannot provide documented proof that he or she worked continuously under the previous approval for at least one year.

(b) If there is evidence of criminal activity within the previous 24 months.

(c) If, as determined by the AD or the Department, the job duties in the new position are so substantially different from the previous position that the previous fitness determination is inadequate for the current position.

(7) Revocation of hired on a preliminary basis is not subject to hearing or appeal. The QE or the Department may immediately revoke hired on a preliminary basis for any of the following reasons:

(a) There is any indication of falsification of application.

(b) The QE or Department determines that allowing the SI to be hired on a preliminary basis is not appropriate, based on the application, criminal record, position duties, or Department program rules.

(8) Nothing in this rule is intended to require that an SI who is eligible to be hired on a preliminary basis be allowed to work, volunteer, be employed, or otherwise perform in the position listed on the Background Check Request form prior to a final fitness determination.

(9) Preliminary fitness determinations must be documented in writing, including any details regarding a weighing test, if required.

Stat. Auth.: ORS 181.537 & 409.050

Stats. Implemented: ORS 181.537 & 409.010

Hist.: DHSD 10-2009, f. 12-31-09 cert. ef. 1-1-10

## 407-007-0320

### Final Fitness Determinations

The AD shall make a final fitness determination after all necessary criminal records checks have been received and a weighing test, if necessary, has been completed. The AD may obtain and consider additional information as necessary to complete the final fitness determination.

(1) The final fitness determination results in one of the following outcomes:

(a) The AD may approve an SI if:

(A) The SI has no potentially disqualifying crimes or potentially disqualifying conditions; or

(B) The SI has potentially disqualifying crimes or potentially disqualifying conditions and, after a weighing test, the AD determines that more likely than not that the SI poses no risk to the physical, emotional, or financial well-being of vulnerable individuals.

(b) The AD may approve an SI with restrictions if the AD determines that more likely than not that the SI poses no risk to the physical, emotional, or financial well-being of vulnerable individuals, if certain restrictions are placed on the SI. Restrictions may include but are not limited to restrictions to one or more specific clients, job duties, or environments. A new criminal records check and fitness determination shall be completed on the SI before removing a restriction.

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(c) The AD shall deny an SI whom the AD determines, after a weighing test, more likely than not poses a risk to the physical, emotional, or financial well-being of vulnerable individuals.

(2) The Department shall make a final fitness determination in the following situations:

(a) A national or state-specific criminal records check has been completed on the SI;

(b) If program rules governing the QE or the position require that the Department makes the final fitness determination;

(c) The SI has the following history regarding criminal records checks:

(A) The SI's most recent criminal records check under these rules or other Department criminal records check rules resulted in a denial; or

(B) The SI's most recent criminal records check under these or other Department criminal records check rules required a weighing test which was completed by the Department.

(d) If, after conducting a criminal records check, the Department determines that, based on the presence of a potentially disqualifying crime or condition, there is a potential for imminent danger to vulnerable individuals;

(e) If the QE requests the Department to make the final fitness determination because the QE is temporarily unable to provide an AD to conduct a fitness determination;

(f) Upon request of an AD, the Department may provide technical assistance or make the final fitness determination;

(g) If the Department has reason to believe a final fitness determination has not been conducted in compliance with these rules, the Department may repeat the criminal records check and make a final fitness determination; or

(h) If the QE or AD is under investigation regarding compliance with these rules and the status of all ADs have been suspended during the investigation.

(3) The Department may review final fitness determinations made by local ADs and make a new final fitness determination at its discretion.

(4) Upon completion of a final fitness determination, the Department or AD making the decision shall provide written notice to the SI. The notice shall:

(a) Be in a Department approved format;

(b) If denied or approved with restrictions, include information regarding appeal rights and the notice becoming a final order in the event of a withdrawal or failure to appear at the hearing; and

(c) Be mailed or hand-delivered to the SI within 14 calendar days after the decision. The effective date of action shall be recorded on the form.

(5) When an SI is denied, the SI shall not be allowed to work, volunteer, be employed, or otherwise perform in the position listed on the Background Check Request form. A denial applies only to the position and application in question. A denial shall result in immediate termination, dismissal, or removal of the SI.

(6) Final fitness determinations must be documented in writing, including any details needed including but not limited to the weighing test, restrictions in a restricted approval, or the potentially disqualifying crimes or convictions in a denial.

(7) The Department or AD shall make new fitness determinations for each application. The outcome of previous fitness determinations does not set a precedent for subsequent fitness determinations.

Stat. Auth.: ORS 181.537 & 409.050

Stats. Implemented: ORS 181.537 & 409.010

Hist.: OMAP 8-2004, f. 2-26-04, cert. ef. 3-1-04; OMAP 22-2005, f. & cert. ef. 3-29-05; Renumbered from 410-007-0320, DHSD 8-2007, f. 8-31-07, cert. ef. 9-1-07; DHSD 10-2008, f. 12-26-08, cert. ef. 1-1-09; DHSD 2-2009, f. & cert. ef. 4-1-09; DHSD 7-2009, f. & cert. ef. 10-1-09; DHSD 10-2009, f. 12-31-09 cert. ef. 1-1-10

## 407-007-0325

### Closed Case

If the SI discontinues the application or fails to cooperate with the criminal records check or fitness determination process, the application is considered incomplete and may be closed.

(1) Discontinuance or failure to cooperate includes but is not limited to the following circumstances:

(a) The SI fails to disclose all criminal history on the Background Check Request form.

(b) The SI refuses to be fingerprinted when required by these rules.

(c) The SI fails to respond within a stated time period to a request for corrections to the application, fingerprints, or any other information necessary to conduct a criminal records check and there is not enough information available to make a fitness determination.

(d) The SI withdraws the application, leaves the position prior to completion of the criminal records check, or the Department cannot locate or contact the subject individual.

(e) The SI is determined to be ineligible for the position for reasons other than the criminal records check.

(2) When the application is closed without a final fitness determination, the SI does not have a right to contest the closure.

(3) When a case is closed, the SI shall not be allowed to work, volunteer, be employed, or otherwise perform in the position listed on the Background Check Request form. A closed case applies only to the position

in question. A closed case shall result in immediate termination, dismissal, or removal of the SI.

(4) The AD or CP shall document in writing the reasons for a closed case, and shall provide that information to the SI.

Stat. Auth.: ORS 181.534, 181.537 & 409.050

Stats. Implemented: ORS 181.534, 181.537 & 409.010

Hist.: DHSD 10-2009, f. 12-31-09 cert. ef. 1-1-10

## 407-007-0330

### Contesting a Fitness Determination

(1) A final fitness determination of denied or restricted approval is considered an adverse outcome. An SI with an adverse outcome may contest that fitness determination.

(2) If an SI is denied, the SI may not hold the position, provide services or be employed, licensed, certified, or registered, or otherwise perform in positions covered by these rules. An SI appealing a restricted approval may only work under the terms of the restriction during the appeal.

(3) If an adverse outcome is changed at any time during the appeal process, the change does not guarantee employment or placement.

(4) An SI may challenge the accuracy or completeness of information provided by the OSP, the FBI, or other agencies reporting information to the Department, by appealing to the entity providing the information. These challenges are not subject to the Department's appeal process.

(5) An SI has the right to represent him or herself or have legal representation during the appeal process. The SI may not be represented by a lay person. In this rule, the term "SI" shall be considered to include the SI's legal representative.

(6) An SI may contest an adverse fitness determination by requesting a contested case hearing. The contested case hearing process is conducted in accordance with ORS 183.411 to 183.497 and the Attorney General's Uniform and Model Rules of Procedure for the Office of Administrative Hearings (OAH), OAR 137-003-0501 to 137-003-0700.

(a) To request a contested case hearing, the SI shall complete and sign the Hearing Request form.

(b) The completed and signed form must be received by the Department within 45 calendar days after the effective date of action listed on the notice of the fitness determination.

(c) In the event an appeal is not timely, the Department shall determine, based on a written statement from the SI and available information, if there is good cause to proceed with the appeal.

(d) The Department may refer an untimely request to the OAH for a hearing on the issue of timeliness.

(7) The Department may conduct an administrative review before referring the appeal to OAH.

(a) The SI must participate in the administrative review. Participation may include but is not limited to providing additional information or additional documents requested by the BCU within a specified amount of time.

(b) The administrative review is not open to the public.

(8) The Department may conduct additional criminal records checks during the contested case hearing process to update or verify the SI's criminal records. If needed, the Department shall amend the notice of fitness determination while still maintaining the original hearing rights and deadlines.

(9) The Department shall be represented by a hearing representative in contested case hearings. The Department may also be represented by Department of Justice's Office of the Attorney General.

(a) The Department shall provide the administrative law judge and the SI a complete copy of available information used during the criminal records checks and fitness determinations. The notice of contested case and prehearing summary and other documents may be mailed by regular first class mail.

(b) SIs may not have access to confidential information contained in abuse investigation reports or other records collected or developed during the abuse check process without a protective order limiting further disclosure of the information.

(A) A protective order issued pursuant to this section must be issued by an administrative law judge as provided for in OAR 137-003-0570(8) or by a court of law.

(B) In conjunction with a protective order issued pursuant to this section, individually identifying information relating to clients, witnesses, and other persons identified in abuse investigation reports or other records collected or developed during the abuse check process shall be redacted prior to disclosure, except for the information identifying the SI.

(c) The contested case hearing is not open to the public.

(d) The administrative law judge shall make a new fitness determination based on evidence and the contested case hearing record.

(e) The only remedy an administrative law judge may grant is a fitness determination that the subject individual is approved, approved with restrictions, or denied. Under no circumstances shall the Department or the QE be required to place an SI in any position, nor shall the Department or the QE be required to accept services or enter into a contractual agreement with an SI.

(f) A hearing pursuant to these rules may be conducted in conjunction with a licensure or certification hearing for the SI.

(10) The notice of fitness determination issued is final as if the SI never requested a hearing in the following situations:

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(a) The SI failed to request a hearing in the time allotted in this rule. No other document will be issued after the notice of fitness determination.

(b) The SI withdraws the request for hearing at any time during the appeal process.

(11) The Department may make an informal disposition based on the administrative review. The Department shall issue a final order and new notice of fitness determination. If the resulting fitness determination is an adverse outcome, the appeal shall proceed to contested case hearing.

(12) The Department shall issue a dismissal order in the following situations:

(a) The SI may withdraw a hearing request verbally or in writing at any time before the issuance of a final order. A dismissal order due to the withdrawal is effective the date the withdrawal is received by the Department or the OAH. The SI may cancel the withdrawal in writing within 14 calendar days after the date of withdrawal.

(b) The Department shall dismiss a hearing request when the SI fails to participate in the administrative review. Failure to participate in the administrative review shall result in termination of hearing rights. The order is effective on the due date for participation in the administrative review. The Department shall review a good cause request to reinstate hearing rights if received in writing by the Department within 14 calendar days.

(c) The Department shall dismiss a hearing request when the SI fails to appear at the time and place specified for the contested case hearing. The order is effective on the date scheduled for the hearing. The Department shall review a good cause request to reinstate hearing rights if received in writing by the Department within 14 calendar days of the order.

(13) After a hearing, the administrative law judge shall issue a proposed and final order.

(a) If no written exceptions are received by the Department within 14 calendar days after the service of the proposed and final order, the proposed and final order becomes the final order.

(b) If timely written exceptions to the proposed and final order are received by the Department, the Department's Director or designee shall consider the exceptions and serve a final order, or request a written response or a revised proposed and final order from the administrative law judge.

(14) Final orders, including dismissal and default orders, are subject to reconsideration or rehearing petitions within 60 calendar days after the order is served, pursuant to OAR 137-003-0675.

(15) The Department may provide the QE's AD with the results of the appeal.

Stat. Auth.: ORS 181.537 & 409.050

Stats. Implemented: ORS 181.534, 181.537, 183.341 & 409.010

Hist.: OMAP 8-2004, f. 2-26-04, cert. ef. 3-1-04; OMAP 22-2005, f. & cert. ef. 3-29-05; Renumbered from 410-007-0330, DHSD 8-2007, f. 8-31-07, cert. ef. 9-1-07; DHSD 2-2008(Temp), f. & cert. ef. 3-31-08 thru 9-26-08; DHSD 7-2008, f. 8-29-08, cert. ef. 9-1-08; DHSD 10-2008, f. 12-26-08, cert. ef. 1-1-09; DHSD 2-2009, f. & cert. ef. 4-1-09; DHSD 7-2009, f. & cert. ef. 10-1-09; DHSD 10-2009, f. 12-31-09 cert. ef. 1-1-10

## 407-007-0340

### Record Keeping, Confidentiality

(1) All LEDS reports are confidential and the AD shall maintain the reports in accordance with applicable OSP requirements in ORS Chapter 181 and the rules adopted pursuant thereto (see OAR chapter 257, division 15).

(a) LEDS reports are confidential and may only be shared with another AD if there is a need to know consistent with these rules.

(b) The LEDS report and any photocopies may not be shown or given to the SI.

(2) The results of a national criminal records check provided by the FBI or the OSP are confidential and may not be disseminated by the Department unless:

(a) If a fingerprint-based criminal records check was conducted on the SI, the SI shall be provided a copy of the results if requested.

(b) The state and national criminal offender information shall be provided as exhibits during the contested case hearing.

(3) All completed Background Check Request forms, other criminal records information, and other records collected or developed during the criminal records check process shall be kept confidential and disseminated only on a need-to-know basis.

(4) The Department shall retain and destroy all criminal records check documents pursuant to federal law and records retention schedules published by Oregon State Archives.

(5) Documents may be requested and reviewed by the Department and the OSP for the purposes of determining and ensuring compliance with these rules.

(6) Neither local ADs nor the Department may re-create past notices of fitness determinations. If an error is discovered on a notice of fitness determination, the local AD or the Department may correct it by issuing an amended notice of fitness determination.

Stat. Auth.: ORS 181.537 & 409.050

Stats. Implemented: ORS 181.534, 181.537 & 409.010

Hist.: OMAP 8-2004, f. 2-26-04, cert. ef. 3-1-04; OMAP 22-2005, f. & cert. ef. 3-29-05; Renumbered from 410-007-0340, DHSD 8-2007, f. 8-31-07, cert. ef. 9-1-07; DHSD 10-2008, f. 12-26-08, cert. ef. 1-1-09; DHSD 2-2009, f. & cert. ef. 4-1-09; DHSD 7-2009, f. & cert. ef. 10-1-09; DHSD 10-2009, f. 12-31-09 cert. ef. 1-1-10

## 407-007-0350

### Immunity from Liability

(1) The Department, QE, AD, or CP, acting within the course and scope of employment, have immunity from any civil liability that might otherwise be incurred or imposed for determining, in accordance with ORS 181.537, that an SI is fit or not fit to hold a position, provide services, or be employed, licensed, certified, or registered.

(2) The Department, QE, AD, or CP, acting within the course and scope of employment, and an employer or employer's agent are not liable for the failure to hire a prospective employee or the decision to discharge an employee on the basis of the QE's decision if they in good faith comply with:

(a) ORS 181.537; and

(b) The decision of the QE or employee of the QE acting within the course and scope of employment.

(3) No employee of the state, a business, or an organization, acting within the course or scope of employment, is liable for defamation, invasion of privacy, negligence, or any other civil claim in connection with the lawful dissemination of information lawfully obtained under ORS 181.537.

Stat. Auth.: ORS 181.537 & 409.050

Stats. Implemented: ORS 181.534, 181.537 & 409.010

Hist.: OMAP 8-2004, f. 2-26-04, cert. ef. 3-1-04; OMAP 22-2005, f. & cert. ef. 3-29-05; Renumbered from 410-007-0350, DHSD 8-2007, f. 8-31-07, cert. ef. 9-1-07; DHSD 10-2008, f. 12-26-08, cert. ef. 1-1-09; DHSD 2-2009, f. & cert. ef. 4-1-09; DHSD 7-2009, f. & cert. ef. 10-1-09; DHSD 10-2009, f. 12-31-09 cert. ef. 1-1-10

## 407-007-0370

### Variations

(1) The Department may consider variance requests regarding these rules.

(a) The outcomes of a fitness determination made pursuant to these rules is not subject to variance. Challenges to fitness determinations may only be made by SIs through contested case hearing rights set forth in these rules.

(b) The Department may not grant variances to ORS 181.534 and 181.537.

(2) The Department may grant a variance to any section of these rules based upon a demonstration by the QE that the variance would not pose a significant risk to physical, emotional, or financial well-being of vulnerable individuals.

(3) The QE requesting a variance must submit, in writing, an application to the BCU that contains:

(a) The section of the rule from which the variance is sought;

(b) The reason for the proposed variance;

(c) The alternative practice, service, method, concept, or procedure proposed;

(d) A plan and timetable for compliance with the section of the rule from which the variance is sought; and

(e) An explanation on how the welfare, health, or safety of individuals receiving care will be ensured during the time the variance is in effect.

(4) The Assistant Director or designee for the Department's Administrative Services Division shall approve or deny the request for a variance.

(5) The Department shall notify the QE of the decision within 60 calendar days of the receipt of the request and shall provide a copy to other relevant Department program offices.

(6) Appeal of the denial of a variance request must be made in writing to the Department's Director, whose decision is final.

(7) The Department shall determine the duration of the variance.

(8) The QE may implement a variance only after receipt of written approval from the Department.

(9) Granting a variance does not set a precedent that must be followed by the Department when evaluating subsequent variance requests.

Stat. Auth.: ORS 181.537 & 409.050

Stats. Implemented: ORS 181.534, 181.537 & 409.010

Hist.: OMAP 8-2004, f. 2-26-04, cert. ef. 3-1-04; OMAP 22-2005, f. & cert. ef. 3-29-05; Renumbered from 410-007-0370, DHSD 8-2007, f. 8-31-07, cert. ef. 9-1-07; DHSD 10-2008, f. 12-26-08, cert. ef. 1-1-09; DHSD 7-2009, f. & cert. ef. 10-1-09; DHSD 10-2009, f. 12-31-09 cert. ef. 1-1-10

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**Rule Caption:** Department of Human Services Roles and Responsibilities During Oregon Health Authority Operational Transition Period.

**Adm. Order No.:** DHSD 11-2009

**Filed with Sec. of State:** 12-31-2009

**Certified to be Effective:** 1-1-10

**Notice Publication Date:** 12-1-2009

**Rules Amended:** 407-043-0010

**Rules Repealed:** 407-043-0010(T)

**Subject:** Effective June 26, 2009, 2009 Or. Laws Chapter 595 (House Bill 2009) created the Oregon Health Authority (OHA) and transferred to OHA certain duties, functions, and powers of the Department of Human Services (Department) with respect to health and health care. House Bill 2009 authorized an operational transition

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Hist.: DHSD 6-2009(Temp), f. & cert. ef. 9-14-09 thru 3-12-10; DHSD 11-2009, f. 12-31-09, cert. ef. 1-1-10

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period beginning June 26, 2009 and ending no later than June 30, 2011. These rules explain the roles and responsibilities of the Department and OHA concerning these transferred duties, functions, and powers during the operational transition period. The adoption of these rules will repeal temporary rules currently in effect from 9/14/09 to 3/12/10.

**Rules Coordinator:** Jennifer Bittel—(503) 947-5250

## 407-043-0010

### Oregon Health Authority Transition Period Roles and Responsibilities

(1) Effective June 26, 2009, 2009 Or. Laws Chapter 595 (House Bill 2009) created the Oregon Health Authority and transferred certain duties, functions, and powers of the Department of Human Services (Department) with respect to health and health care to the Oregon Health Authority. House Bill 2009 also authorized an operational transition period beginning June 26, 2009 and ending no later than June 30, 2011. The transferred subject areas are generally described in Section 19(1)(a), 2009 Or. Laws Chapter 595 as including but not limited to:

- (a) Developing the policies for and the provision of publicly funded medical care and medical assistance in Oregon;
- (b) Ensuring the promotion and protection of public health and the licensing of health care facilities;
- (c) Developing the policies for and the provision of mental health treatment and treatment for substance use disorders;
- (d) Administering the Oregon Prescription Drug Program; and
- (e) Establishing responsibility for the Office for Oregon Health Policy and Research and all functions of the office.

(2) The transferred functions described in section (1)(a)–(e) above are generally carried out as currently described in Department rules by the Public Health Division, the Addictions and Mental Health Division, and the Division of Medical Assistance Programs.

(3) Operational transfer of any Department program, business transaction, judicial or administrative proceeding, or any other duty, function, or power transferred to the Oregon Health Authority may occur, in whole or in part, on the date specified by the Oregon Health Authority, but no later than June 30, 2011.

(4) In accordance with OAR 943-001-0010 to 943-001-0015, the Department shall continue to exercise all of the duties, functions, and powers relating to the transfer to the Oregon Health Authority, subject to the supervision and oversight of the Oregon Health Authority, until superseded by operational transfer, either in whole or in part, to the Oregon Health Authority as follows:

- (a) All rules shall remain in effect and ongoing rule filing processes may continue.
- (b) All program administration, policies, and procedures shall remain in effect and may continue to be developed and implemented.
- (c) Any judicial or administrative action, proceeding, contested case hearing, administrative review matter, or new action, proceeding, or matter involving or relating to the Department's duties, functions, or powers transferred to the Oregon Health Authority shall continue under the Department.
- (d) All procurements, contracts, grants, or other business transactions shall remain the Department's responsibility.
- (e) Rights and obligations legally incurred under contracts, leases, and business transactions shall remain legally valid.
- (f) Any taxes, assessments, fees, charges, or any payments due and payable to or reimbursable by the Department relating to the duties, functions, or powers transferred to the Oregon Health Authority shall continue to be paid to or reimbursed by the Department on behalf of the Oregon Health Authority.
- (g) Any former statutorily required findings, determinations, or recommendations to be made by the Department shall remain the Department's responsibility.
- (h) All filings, notices, or service documents that were formerly mailed, provided to, or served upon the Department relating to the duties, functions, or powers transferred to the Oregon Health Authority shall continue to be made, provided to, or served upon the Department on behalf of the Oregon Health Authority.

(A) Mailing or service of notices or documents on the Department shall be considered notice to the Oregon Health Authority. For example, any notice sent to the Department of Human Services Estate Administration Unit for purposes of ORS 113.145, 114.525, and 130.370 shall be considered notice to the Oregon Health Authority.

(B) If mailed, provided to, or served on the Oregon Health Authority, the filing, notice, or document shall be transmitted to the Department to respond or take such other actions as necessary to protect the state's interests.

(5) Any and all remaining duties, functions, or powers relating to the duties, functions, and powers transferred to the Oregon Health Authority that are not described in section (4) shall continue in effect or be exercised by the Department until superseded by operational transfer, either in whole or in part, to the Oregon Health Authority.

Stat. Auth.: ORS 409.050 & 2009 OL Ch. 595 (HB 2009)  
Stats. Implemented: 2009 OL Ch 595 (HB 2009)

**Rule Caption:** Amendments to Abuse Reporting and Protective Services in Community Programs and Community Facilities Rules.  
**Adm. Order No.:** DHSD 12-2009(Temp)

**Filed with Sec. of State:** 12-31-2009

**Certified to be Effective:** 1-1-10 thru 6-29-10

**Notice Publication Date:**

**Rules Amended:** 407-045-0260, 407-045-0290, 407-045-0350

**Subject:** The Department of Human Services, Office of Investigations and Training is filing temporary rules to modify the above mentioned rules to implement House Bill 2442 that was passed in the 2009 legislative session and which changed the definitions for abuse of adults with mental illness or developmental disabilities and added firefighters and emergency medical technicians to the list of mandatory reporters of abuse. These amendments also provide immunity for employers when sharing facts of an employee or former employee's substantiated abuse.

Temporary rules are available on the DHS Website: <http://www.oregon.gov/DHS/admin/dwssrules/index.shtml>

For hardcopy requests, call: (503) 947-5250.

**Rules Coordinator:** Jennifer Bittel—(503) 947-5250

## 407-045-0260

### Definitions

As used in OAR 407-045-0250 to 407-045-0360, the following definitions apply:

- (1) "Abuse of an adult with developmental disabilities" means:
  - (a) "Abandonment" means desertion by a caregiver or other individual.
  - (b) Death of an adult caused by other than accidental or natural means or occurring in unusual circumstances.
  - (c) "Financial exploitation" means:
    - (A) Wrongfully taking the assets, funds, or property belonging to or intended for the use of a person with a developmental disability.
    - (B) Alarming a person with a developmental disability by conveying a threat to wrongfully take or appropriate money or property of the person if the person 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 a person with a developmental disability.
    - (D) Failing to use the income or assets of a person with a developmental disability effectively for the support and maintenance of the person. "Effectively" means use of income or assets for the benefit of the person.
  - (d) "Neglect" means:
    - (A) Withholding services necessary to maintain the health and well-being of an adult which leads to physical harm or significant mental injury to an adult. "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 well-being of an adult.
    - (B) Failure to provide the care, supervision, or services necessary to maintain the physical and mental health of a person with a developmental disability that results in actual harm or creates a significant risk of physical harm or significant emotional harm to the person with a developmental disability. Such failure may occur whether due to passive or active neglect, or through negligent omission or negligent treatment.
    - (C) Failure of a caregiver to make a reasonable effort to protect a person with a developmental disability from abuse.
- (e) "Physical abuse" means:
  - (A) Any physical injury by other than accidental means or that appears to be at variance with the explanation given for the injury.
  - (B) Willful infliction of physical pain or injury.
  - (f) "Restraint" means:
    - (A) A wrongful use of a physical or chemical restraint upon a person with a developmental disability, excluding an act of restraint prescribed by a licensed physician and any treatment team activities that are consistent with an approved treatment plan or in connection with a court order.
    - (B) Involuntary seclusion of a person with a developmental disability for the convenience of a caregiver or to discipline the person. Involuntary seclusion includes placing restrictions on an individual's freedom of movement by restriction to an area of the facility, residence, or program, or restriction from access to ordinarily accessible areas of the facility, residence, or program, unless agreed to by the Individual Support Plan (ISP) team and included in an approved Behavior Support Plan (BSP). Involuntary seclusion may also include confinement in a home setting.
  - (g) "Sexual abuse" means:

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(A) Sexual contact with a nonconsenting adult or with an adult considered incapable of consenting to a sexual act under ORS 163.315.

(B) Sexual harassment, sexual exploitation, or inappropriate exposure to sexually explicit material or language. Sexual harassment or exploitation includes but is not limited to any sexual contact between an employee of a community facility or community program, provider, or other caregiver and an adult. For situations other than those involving an employee, provider, or other caregiver and an adult, sexual harassment or exploitation means unwelcome physical sexual contact including requests for sexual favors and other physical conduct directed toward an adult.

(C) Any sexual contact between an employee of a facility or paid caregiver and an adult served by the facility or caregiver. Sexual abuse does not mean consensual sexual contact between an adult and a paid caregiver who is the spouse or partner of the adult.

(D) Any sexual contact that is achieved through force, trickery, threat, or coercion.

(E) Any sexual contact between a person with a developmental disability and a relative of the person with a developmental disability other than a spouse or partner. "Relative" means a parent, grandparent, children, brother, sister, uncle, aunt, niece, nephew, half brother, half sister, stepparent, or stepchild.

(F) As defined in ORS 163.305, "sexual contact" means any touching of the sexual or other intimate parts of a person or causing such person to touch the sexual or other intimate parts of the actor for the purpose of arousing or gratifying the sexual desire of either party.

(h) "Verbal abuse" means to threaten significant physical or emotional harm to a person with a developmental disability through the use of:

(A) Derogatory or inappropriate names, insults, verbal assaults, profanity, or ridicule;

(B) Harassment, coercion, threats, intimidation, humiliation, mental cruelty, or inappropriate sexual comments; or

(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 services essential to the well-being of an adult.

(D) For purposes of this section, verbal conduct includes but is not limited to the use of oral, written, or gestured communication that is directed to a person with a developmental disability or within their hearing distance, regardless of their ability to comprehend.

(E) The emotional harm that can result from verbal abuse may include but is not limited to anguish, distress, or fear.

(F) In a facility setting, verbal abuse includes but is not limited to direct or implied threats of harm, punishment, or deprivation directed toward the person.

(2) "Abuse of an adult with mental illness" means:

(a) Death of an adult caused by other than accidental or natural means or occurring in unusual circumstances.

(b) "Neglect" means withholding services necessary to maintain the health and well-being of an adult which leads to physical harm or significant mental injury to an adult. "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 well-being of an adult.

(c) "Physical abuse" means:

(A) Any physical injury by other than accidental means or that appears to be at variance with the explanation given for the injury.

(B) Willful infliction of physical pain or injury.

(d) "Sexual abuse" means:

(A) Sexual contact with a nonconsenting adult or with an adult considered incapable of consenting to a sexual act under ORS 163.315.

(B) Sexual harassment, sexual exploitation, or inappropriate exposure to sexually explicit material or language. Sexual harassment or exploitation includes but is not limited to any sexual contact between an employee of a community facility or community program, provider, or other caregiver and an adult. For situations other than those involving an employee, provider, or other caregiver and an adult, sexual harassment or exploitation means unwelcome physical sexual contact including requests for sexual favors and other physical conduct directed toward an adult.

(C) Any sexual contact between an employee of a facility or paid caregiver and an adult served by the facility or caregiver. Sexual abuse does not mean consensual sexual contact between an adult and a paid caregiver who is the spouse or partner of the adult.

(D) Any sexual contact that is achieved through force, trickery, threat, or coercion.

(E) As defined in ORS 163.305, "sexual contact" means any touching of sexual or other intimate parts of a person or causing such person to touch sexual or other intimate parts of the actor for the purpose of arousing or gratifying the sexual desire of either party.

(e) Abuse does not include spiritual treatments by a duly accredited practitioner of a recognized church or religious denomination when an adult voluntarily consents.

(3) "Abuse Investigation and Protective Services Report" means a completed report.

(4) "Adult" means an individual who is 18 years of age or older who:

(a) Has a developmental disability and is currently receiving services from a community program or facility or was previously determined eligible for services as an adult by a community program or facility; or

(b) Has a mental illness and is receiving services from a community program or facility.

(c) Receives services from a community program or facility or care provider which is licensed or certified by or contracts with the Department of Human Services; and

(d) Is the alleged abuse victim.

(5) "Adult protective services" means the necessary actions taken to prevent abuse or exploitation of an adult, to prevent self-destructive acts, and to safeguard an allegedly abused adult's person, property, and funds.

(6) "Brokerage" or "Support service brokerage" means an entity, or distinct operating unit within an existing entity, that performs the functions listed in OAR 411-340-0120(1)(a) to (g) associated with planning for and implementation of support services for an adult with developmental disabilities.

(7) "Caregiver" means an individual or facility that has assumed responsibility for all or a portion of the care of an adult as a result of a contract or agreement.

(8) "Community facility" means a community residential treatment home or facility, community residential facility, adult foster home, community residential training home or facility, or a facility approved by the Department's Addictions and Mental Health Division (AMH) for acute care services or crisis respite.

(9) "Community program" means the community mental health or developmental disabilities program as established in ORS 430.610 to 430.700.

(10) "Designee" means the community program.

(11) "Department" means the Department of Human Services.

(12) "Inconclusive" means there is insufficient evidence to conclude the alleged abuse occurred or did not occur by a preponderance of the evidence. The inconclusive determination may be used only in the following circumstances:

(a) After diligent efforts have been made, the protective services investigator is unable to locate the individual alleged to have committed the abuse, or cannot locate the alleged victim or another individual who might have information critical to the investigation; or

(b) Relevant records or documents are unavailable, or there is conflicting or inconsistent information from witnesses, documents, or records, with the result that after the investigation is complete, there is insufficient evidence to support a substantiated or not substantiated conclusion.

(13) "Law enforcement agency" means any city or municipal police department, county sheriff's office, the Oregon State Police, or any district attorney.

(14) "Mandatory reporter" means any public or private official who, while acting in an official capacity, comes in contact with and has reasonable cause to believe that an adult has suffered abuse, or that any individual with whom the official comes in contact while acting in an official capacity has abused an adult. Pursuant to ORS 430.765(2), psychiatrists, psychologists, clergy, and attorneys are not mandatory reporters with regard to information received through communications that are privileged under ORS 40.225 to 20.295

(15) "Not substantiated" means the preponderance of evidence establishes the alleged abuse did not occur.

(16) "OIT" means the Department's Office of Investigations and Training.

(17) "Provider agency" means an entity licensed or certified to provide services, or which is responsible for the management of services to clients.

(18) "Public or private official" means:

(a) Physician, naturopathic physician, osteopathic physician, psychologist, chiropractor, or podiatrist, including any intern or resident;

(b) Licensed practical nurse, registered nurse, nurse's aide, home health aide, or employee of an in-home health services organization;

(c) Employee of the Department, county health department, community mental health or developmental disabilities program or private agency contracting with a public body to provide any community mental health services;

(d) Peace officer;

(e) Member of the clergy;

(f) Licensed clinical social worker;

(g) Physical, speech, or occupational therapist;

(h) Information and referral, outreach, or crisis worker;

(i) Attorney;

(j) Firefighter or emergency medical technician; or

(k) Any public official who comes in contact with adults in the performance of the official's duties.

(19) "Substantiated" means that the preponderance of evidence establishes the abuse occurred.

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(20) "Unbiased investigation" means an investigation that is conducted by a community program that does not have an actual or potential conflict of interest with the outcome of the investigation.

Stat. Authority: ORS 179.040 & 409.050

Stats. Implemented: ORS 430.735 - 430.765, 443.400 - 443.460, 443.705 - 443.825

Hist.: MHD 5-1994, f. 8-22-94 & cert. ef. 9-1-94; Renumbered from 309-040-0210, OMAP 87-2004, f. 11-10-04, cert. ef. 12-1-04; Renumbered from 410-009-0060, DHS 5-2007, f. 6-29-07, cert. ef. 7-1-07; DHS 3-2009, f. & cert. ef. 5-1-09; DHS 12-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-29-10

## 407-045-0290

### General Duties of the Community Program and Initial Action on Report of Alleged Abuse

(1) For the purpose of carrying out these rules, community programs are the designee of the Department.

(2) Mandatory reporters must report abuse, when the reporter has reasonable cause to believe abuse has occurred, to the community program and to a local law enforcement agency when the reporter believes a crime may have been committed.

(3) Each community program shall designate at least one employee to conduct protective services investigations. Community programs shall require their designated protective services investigators to participate in training, and to demonstrate an understanding of investigative core competencies.

(4) If the Department or community program has reasonable cause to believe abuse occurred, it must immediately notify the appropriate public licensing or certifying agency and provide a copy of the abuse investigation and completed protective services report.

(5) If the Department or community program has reasonable cause to believe that an individual licensed or certified by any state agency to provide care has committed abuse, it must immediately notify the appropriate state licensing or certifying agency and provide that agency with a copy of the abuse investigation and completed protective services report.

(6) The Department or community program may share information prior to the completion of the abuse investigation and protective services report if the information is necessary for:

(a) The provision of protective services; or

(b) The function of licensing and certifying agencies or law enforcement agencies.

(7) Each community program must establish an after hours reporting system.

(8) Upon receipt of any report of alleged abuse or upon receipt of a report of a death that may have been caused by other than accidental or natural means, the community program must begin:

(a) Investigation into the nature and cause of the alleged abuse within one working day of receipt of the report to determine if abuse occurred or whether a death was caused by abuse;

(b) Assessment of the need for protective services; and

(c) Provision of protective services, if protective services are needed.

(9) The community program receiving a report alleging abuse must document the information required by ORS 430.743(1) and any additional reported information. The community program must attempt to elicit the following information from the individual making a report:

(a) The name, age, and present location of the adult;

(b) The names and addresses of individuals, programs, or facilities responsible for the adult's care;

(c) The nature and extent of the alleged abuse, including any evidence of previous abuse of the adult or by the individual alleged to have committed the abuse;

(d) Any information that led the individual making the report to suspect abuse had occurred;

(e) Any information that the individual believes might be helpful in establishing the cause of the abuse and the identity of the individual alleged to have committed the abuse;

(f) The date of the incident;

(10) The community program shall maintain all reports of abuse in a confidential location.

(11) If there is reason to believe a crime has been committed, the community program must contact the law enforcement agency with jurisdiction in the county where the report is made.

(12) If there is reasonable cause to believe that abuse has occurred, the community program must determine if the adult is in danger or in need of immediate protective services and shall provide those services immediately. Under these circumstances the community program must also advise the provider agency, brokerage, or guardian about the allegation, and must include any information appropriate or necessary for the health, safety, and best interests of the adult in need of protection.

(13) The community program shall immediately, but no later than one working day, notify the Department it has received a report of abuse, in the format provided by the Department.

(14) If the community program determines from the report that there is no reasonable cause to believe abuse occurred, the community program shall notify the provider agency or brokerage within two working days that a protective services investigation shall not commence and explain the reasons for

that decision. The community program shall document the notice and maintain a record of all notices.

(15) If the community program determines that a report will be assigned for investigation, the community program must notify the provider agency, brokerage, guardian, and any other individual with responsibility for providing services and protection, unless doing so would compromise the safety, health, or best interests of the adult in need of protection, or would compromise the integrity of the abuse investigation or a criminal investigation. The notice shall include information that the case will be assigned for investigation, identify the investigator, and provide information regarding how the assigned investigator may be contacted. The notice must be provided within five working days from the date the report was received.

(16) The community program or law enforcement agency shall notify the appropriate medical examiner in cases where the community program or law enforcement agency finds reasonable cause to believe that an adult has died as a result of abuse or where the death occurred under suspicious or unknown circumstances.

Stat. Authority: ORS 179.040 & 409.050

Stats. Implemented: ORS 430.735 - 430.765, 443.400 - 443.460, 443.705 - 443.825

Hist.: MHD 5-1994, f. 8-22-94 & cert. ef. 9-1-94; Renumbered from 309-040-0230, OMAP 87-2004, f. 11-10-04, cert. ef. 12-1-04; Renumbered from 410-009-0090, DHS 5-2007, f. 6-29-07, cert. ef. 7-1-07; DHS 3-2009, f. & cert. ef. 5-1-09; DHS 12-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-29-10

## 407-045-0350

### Immunity of Individuals Making Reports in Good Faith

(1) Any individual who makes a good faith report and who has reasonable grounds for making the report shall have immunity from civil liability with respect to having made the report.

(2) The reporter shall have the same immunity in any judicial proceeding resulting from the report as may be available in that proceeding.

(3) An individual who has personal knowledge that an employee or former employee of the individual was found to have committed abuse is immune from civil liability for the disclosure to a prospective employer of the employee or former employee of known facts concerning the abuse.

Stat. Authority: ORS 179.040 & 409.050

Stats. Implemented: ORS 430.735 - 430.765, 443.400 - 443.460, 443.705 - 443.825

Hist.: OMAP 87-2004, f. 11-10-04, cert. ef. 12-1-04; Renumbered from 410-009-0150, DHS 5-2007, f. 6-29-07, cert. ef. 7-1-07; DHS 3-2009, f. & cert. ef. 5-1-09; DHS 12-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-29-10

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**Rule Caption:** Administrative Review Rights for Department Employees Contesting a Founded or Substantiated Abuse Investigation.

**Adm. Order No.:** DHS 1-2010(Temp)

**Filed with Sec. of State:** 1-8-2010

**Certified to be Effective:** 1-8-10 thru 3-29-10

**Notice Publication Date:**

**Rules Adopted:** 407-007-0440

**Subject:** This temporary rule explains administrative review rights for Department employees who have been founded or substantiated for abuse.

Temporary rules are available on the DHS Website: <http://www.oregon.gov/DHS/admin/dwssrules/index.shtml>

For hardcopy requests, call: (503) 947-5250.

**Rules Coordinator:** Jennifer Bittel—(503) 947-5250

## 407-007-0440

### Current Employees of the Department

(1) This rule applies to any subject individual who is a current Department employee.

(2) If a subject individual is identified as an alleged perpetrator, reported perpetrator, or accused person in an abuse investigation, all relevant abuse investigation and licensing rules shall apply.

(3) The Department shall apply Department employee administrative review policies if the person identified as responsible in a founded or substantiated abuse finding is a Department employee.

(4) If a current subject individual is identified as an alleged perpetrator, reported perpetrator, or accused person in an abuse investigation, the Office of Human Resources may initiate an investigation during or following the investigation of the alleged abuse to determine whether to take any action, up to and including dismissal or removal from employment.

(a) If the abuse investigation results in potentially disqualifying abuse, the Office of Human Resources shall initiate an investigation which may include conducting a weighing test as described in OAR 407-007-0430(5). The purpose of the investigation is to determine whether any action, up to and including dismissal or removal from employment, is justified.

(b) If the Office of Human Resources learns of potentially disqualifying abuse from previous investigations that may be inconsistent with a subject individual's current position, the Office of Human Resources may initiate an investigation which may include conducting a weighing test as described in OAR 407-007-0430(5). The purpose of the investigation is to

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determine whether any action, up to and including dismissal or removal from employment, is justified.

(c) For Department employees, if disciplinary action up to and including dismissal, is appropriate, the action shall be taken in accordance with:

(A) Relevant collective bargaining agreements;

(B) Statutory provisions for unrepresented or management services employees; or

(C) Relevant Department or statewide policies or procedures.

(5) A pending related action, such as a civil, criminal, juvenile, or administrative proceeding in which the allegations of abuse are at issue shall not automatically be grounds for the subject individual to seek to detain or stay either the review of the founded or substantiated disposition or any resulting disciplinary action. The Department may detain or stay either the review of the founded or substantiated abuse disposition or any resulting disciplinary action based on the pending related action such as a civil, criminal, juvenile, or administrative proceeding in which the allegations of abuse are at issue.

Stat. Auth.: ORS 409.027 & 409.050

Stats. Implemented: ORS 409.027 & 409.050

Hist.: DHSD 8-2009(Temp), f. & cert. ef. 10-1-09 thru 3-29-10; DHSD 1-2010(Temp), f. & cert. ef. 1-8-10 thru 3-29-10

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

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

**Adm. Order No.:** CWP 18-2009(Temp)

**Filed with Sec. of State:** 12-16-2009

**Certified to be Effective:** 12-16-09 thru 6-14-10

**Notice Publication Date:**

**Rules Adopted:** 413-070-0919, 413-070-0969

**Rules Amended:** 413-070-0900, 413-070-0905, 413-070-0909, 413-070-0915, 413-070-0917, 413-070-0925, 413-070-0970

**Rules Ren. & Amend:** 413-070-0920 to 413-070-0929, 413-070-0930 to 413-070-0939, 413-070-0935 to 413-070-0949, 413-070-0937 to 413-070-0959, 413-070-0940 to 413-070-0974, 413-070-0945 to 413-070-0964, 413-070-0955 to 413-070-0964, 413-070-0960 to 413-070-0944, 413-070-0965 to 413-070-0934

**Subject:** OAR 413-070-0900 about the purpose of the Department's Guardianship Assistance program rules (413-070-0900 to 413-070-0974), 413-070-0905 about the definitions used in the Department's Guardianship Assistance program rules, 413-070-0909 about how the Department funds guardianship assistance, 413-070-0915 about the requirements for a child to be eligible for guardianship assistance, 413-070-0917 about the requirements for a child to be eligible for guardianship assistance, 413-070-0925 about when the Department may approve guardianship assistance, and 413-070-0970 about social and support services available to the child and the guardian program are being amended; 413-070-0920 about when guardianship is determined to be the most appropriate permanency plan for a child is being amended and renumbered to 413-070-0929; 413-070-0930 about the requirements for income and payment standards and medical benefits in the Guardianship Assistance program is being amended and renumbered to 413-070-0939; 413-070-0935 about the formulation of a guardianship assistance agreement between the Department and a guardian is being amended and renumbered to 413-070-0949; 413-070-0937 about court orders for guardianship is being amended and renumbered to 413-070-0959; 413-070-0940 about the suspension or termination of guardianship assistance benefits is being amended and renumbered to 413-070-0974; 413-070-0945 about annual reviews of guardianship assistance eligibility and required reporting by a guardian and 413-070-0955 about changes a guardian must report are being amended and renumbered to 413-070-0964; 413-070-0960 about special payments to vendor attorneys and for legal expenses is being amended and renumbered to 413-070-0944; 413-070-0965 about the application requirements for guardianship assistance is being amended and renumbered to 413-070-0934; and 413-070-0919 about the requirements for a tribe and a child in the care and custody of a tribe to be eligible for guardianship assistance and 413-070-0969 about the renegotiation of a guardianship assistance agreement between the Department and a guardian are

being adopted to clarify the Department's policies for this program, include definitions used throughout the Guardianship Assistance program rules (413-070-0900 to 413-070-0974), reflect current Department terminology, and bring the Guardianship Assistance program into compliance with federal requirements.

**Rules Coordinator:** Annette Tesch—(503) 945-6067

### 413-070-0900

#### Purpose

The purpose of these rules, OAR 413-070-0900 to 413-070-0974, is to state Department criteria for program eligibility and receipt of guardianship assistance for Title IV-E eligible children in Oregon. Guardianship assistance for a child from another state placed with a guardian in Oregon is the responsibility of the sending state.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SOSCF 18-1999(Temp), f. & cert. ef. 9-14-99 thru 3-12-00; SOSCF 7-2000, f. & cert. ef. 2-10-00; SOSCF 43-2001, f. 12-31-01, cert. ef. 1-1-02; CWP 26-2003, f. & cert. ef. 7-31-03; CWP 8-2004, f. & cert. ef. 4-1-04; CWP 5-2009(Temp), f. & cert. ef. 3-31-09 thru 9-27-09; CWP 7-2009(Temp), f. & cert. ef. 7-1-09 thru 9-27-09; CWP 12-2009, f. & cert. ef. 9-28-09; CWP 18-2009(Temp), f. & cert. ef. 12-16-09 thru 6-14-10

### 413-070-0905

#### Definitions

The following definitions apply to OAR 413-070-0900 to 413-070-0974:

(1) "APPLA" means Another Planned Permanent Living Arrangement, a permanency plan for a stable secure living arrangement for a child that includes building relationships with significant people in the child's life that may continue after substitute care. APPLA is the least preferred permanency plan of the four permanency plan options for a child and is appropriate only in very limited circumstances.

(a) "Planned" means the arrangement is intended, designed, and deliberate.

(b) "Permanent" means enduring and stable.

(2) "CANS screening" means Child and Adolescent Needs and Strengths screening, a process of integrating information on a child or young adult's needs and strengths for the purposes of case planning, service planning, and determining the supervision needs of the child or young adult. The Department uses two versions of the CANS Comprehensive Screening Tool, one version for an individual birth through five years old and another version for an individual six through twenty years old.

(3) "Certified family" means an individual or individuals who hold a current Certificate of Approval from the Department to operate a home to provide care, in the home in which he or she resides, to a child or young adult in the care or custody of the Department.

(4) "Child" means a person less than 18 years of age.

(5) "Enhanced supervision" means the additional support, direction, observation, regulation, and guidance provided by a certified family to a child or young adult to promote and ensure the safety and well-being of the child or young adult, beyond the level of supervision that typically is required for a child or young adult of the same age.

(6) "Guardianship assistance" means financial assistance or medical benefits to a child's guardian on behalf of an eligible child under guardianship. Benefits may be in the form of a monthly guardianship assistance payment, Medicaid coverage, and nonrecurring legal costs incurred in establishing the guardianship.

(7) "Guardianship assistance agreement" means a written agreement between the Department and the guardian of an eligible child setting forth the assistance the Department is to provide the child, the responsibilities of the guardian and the Department, and the manner in which the agreement and amount of assistance may be modified or terminated.

(8) "Guardianship assistance payment" means a monthly cash payment made by the Department to the guardian on behalf of the eligible child.

(9) "Parent" means the biological or adoptive mother or the legal father of the child. A legal father is a man who has adopted the child or whose paternity has been established or declared under ORS 109.070, 416.400 to 416.465, or by a juvenile court. In cases involving an Indian child under the Indian Child Welfare Act (ICWA), a legal father includes a man who is a father under applicable tribal law. "Parent" also includes a putative father who has demonstrated a direct and significant commitment to the child by assuming or attempting to assume responsibilities normally associated with parenthood unless a court finds that the putative father is not the legal father.

(10) "Permanency Committee" means a group of three individuals, responsible for making a recommendation regarding a child's permanency plan when the child likely is not returning to his or her parent.

(a) The committee must:

(A) Include two Department staff and may include a community partner, all of whom are approved by the District Manager or designee; and

(B) When the child is an ICWA child, and a Permanency Committee is appropriate, identify an individual from a federally recognized tribe as one of the three individuals on the committee; and

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(C) Have an identified chairperson approved by the District Manager or designee.

(b) The Permanency Committee members must:

(A) Be knowledgeable of permanency issues;

(B) Be knowledgeable of the importance of cultural connections;

(C) Have no personal or professional relationship to the child or prospective placement resource; and

(D) Represent multiple child welfare offices.

(11) "Qualified alien" means, but is not limited to, a permanent resident, an asylee, or a refugee under 8 USC 1641(b), as described in OAR 413-130-0045.

(12) "Relative" means:

(a) An individual with one of the following relationships to the child through the child's parent:

(A) Any blood relative or half-blood relative of preceding generations denoted by the prefixes of grand, great, or great-great (individuals with one common biological parent are half-blood relatives).

(B) A sibling.

(C) An aunt, uncle, nephew, niece, first cousin, and first cousin once removed.

(b) An individual with one of the following relationships to the child:

(A) A stepparent described in OAR 413-100-0020(27)(c), stepbrother, or stepsister.

(B) A spouse of anyone listed in subsection (a) of this section, even if the marriage is terminated by death or divorce.

(C) The adoptive parent of a child's sibling.

(D) The unrelated legal or biological father or mother of a child's half-sibling.

(E) An individual defined as a relative by the law or custom of the child's tribe if the child is an Indian child under the Indian Child Welfare Act.

(F) An individual defined as a relative of a refugee child under OAR 413-070-0300 to 413-070-0380.

(G) The registered domestic partner or former registered domestic partner of the child's parent.

(H) For the purposes of an international adoption, relative means an individual described in subsection (a) or paragraph (b)(C) of this section.

(c) An individual identified by the child or the child's family, or an individual who self-identifies, related to the child by blood, adoption, or marriage to a degree other than an individual specified as a child's relative in subsection (a) of this section.

(d) An individual identified by the child or the child's family, not related by blood, marriage or adoption, as an individual with an emotionally significant relationship with the child or the child's family such as, godparents, neighbors, family friends or a member of the child's tribe.

(13) "Sibling" means one of two or more children or young adults related:

(a) By blood or adoption through a common legal parent;

(b) Through the marriage of the children's or young adults' legal or biological parents; or

(c) Through a legal or biological parent who is the registered domestic partner of the child or young adult's legal or biological parent.

(14) "Substitute care" means the out-of-home placement of a child or young adult who is in the legal or physical custody and care of the Department.

(15) "Tribe" means a federally recognized Indian tribe in Oregon with a Title IV-E agreement with the Department.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SOSCF 18-1999(Temp), f. & cert. ef. 9-14-99 thru 3-12-00; SOSCF 7-2000, f. & cert. ef. 2-10-00; SOSCF 43-2001, f. 12-31-01, cert. ef. 1-1-02; CWP 14-2003, f. & cert. ef. 1-9-03; CWP 26-2003, f. & cert. ef. 7-31-03; CWP 8-2004, f. & cert. ef. 4-1-04; CWP 5-2009(Temp), f. & cert. ef. 3-31-09 thru 9-27-09; CWP 7-2009(Temp), f. & cert. ef. 7-1-09 thru 9-27-09; CWP 12-2009, f. & cert. ef. 9-28-09; CWP 18-2009(Temp), f. & cert. ef. 12-16-09 thru 6-14-10

## 413-070-0909

### Funding of Guardianship Assistance

(1) Non-relative guardianship assistance established under the Title IV-E Waiver Project is funded by Title IV-E waiver funds until the waiver expires or is terminated. At that time the Oregon general fund provides monies for any current and new non-relative guardianship assistance for Title IV-E eligible children.

(2) Effective January 1, 2009, newly established relative caretaker guardianship assistance for Title IV-E children is funded with Guardianship Assistance program funds as authorized by the Fostering Connections to Success and Increasing Adoptions Act of 2008 (Public Law 110-351).

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: CWP 12-2009, f. & cert. ef. 9-28-09; CWP 18-2009(Temp), f. & cert. ef. 12-16-09 thru 6-14-10

## 413-070-0915

### Child Title IV-E Eligibility for Guardianship Assistance

(1) A *child* is eligible for guardianship assistance when:

(a) The Department determines other permanency options, return to a parent or adoption, are not in the child's best interest or an existing APPLA plan is determined to no longer be in the child's best interest; and

(b) But for receipt of SSI benefits, the child was eligible for Title IV-E maintenance payments for six consecutive months while residing in the home of the prospective guardian.

(2) A *child's* eligibility for Title IV-E is determined under Child Welfare Policy I-E.6.1, "Title IV-E Foster Care and General Assistance" OAR 413-100-0000 to 413-100-0345.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SOSCF 18-1999(Temp), f. & cert. ef. 9-14-99 thru 3-12-00; SOSCF 7-2000, f. & cert. ef. 2-10-00; SOSCF 43-2001, f. 12-31-01, cert. ef. 1-1-02; CWP 14-2003, f. & cert. ef. 1-9-03; CWP 26-2003, f. & cert. ef. 7-31-03; CWP 49-2003(Temp), f. 12-31-03, cert. ef. 1-1-04 thru 4-28-04; CWP 8-2004, f. & cert. ef. 4-1-04; CWP 5-2009(Temp), f. & cert. ef. 3-31-09 thru 9-27-09; CWP 7-2009(Temp), f. & cert. ef. 7-1-09 thru 9-27-09; CWP 12-2009, f. & cert. ef. 9-28-09; CWP 18-2009(Temp), f. & cert. ef. 12-16-09 thru 6-14-10

## 413-070-0917

### Eligibility: Child

(1) To be eligible for guardianship assistance a child must:

(a) Be a United States citizen or qualified alien.

(b) Have been removed from his or her home pursuant to a voluntary placement agreement or as a result of a judicial determination that continuation in the home would be contrary to the welfare of the child.

(c) Have been eligible for Title IV-E foster care maintenance payments during a six consecutive month period during which the child resided in the home of the prospective guardian who was licensed or approved as meeting the licensure requirements of a foster family home.

(d) Have been in the Department's or participating tribe's legal custody for a minimum of:

(A) Six months, if the prospective guardian is the child's relative; or

(B) Twelve months, if the prospective guardian is not related to the child.

(e) Be 12 years of age or older if the prospective guardian is not a relative or any age if the prospective guardian is a relative. The Department waives the age requirement when the child is:

(A) A member of a sibling group placed with a non-relative if at least one sibling is 12 years of age or older and meets all other guardianship assistance eligibility criteria under this rule; or

(B) An Indian Child Welfare Act (ICWA) identified child in the care and custody of the Department if the child's tribe supports the plan of guardianship with the current caretaker.

(f) Have a stable positive relationship with the prospective guardian.

(g) Demonstrate a strong attachment to the prospective guardian.

(h) If the child is a Title IV-E eligible Indian child as defined by the ICWA and in the care and custody of the Department, have a permanency plan for guardianship approved by the participating tribe.

(3) The sibling of a Title IV-E eligible child may be eligible for guardianship assistance if the Title IV-E eligible child meets all Guardianship Assistance program criteria and both children will be in a guardianship with the same guardian.

(4) When guardianship has been approved as a child's permanency plan, the child's case plan must include:

(a) The steps taken by the Department to determine that it is not appropriate for the child to return home or be adopted;

(b) The reasons, if any, that siblings were separated during placement;

(c) The reasons why permanent placement with a fit and willing guardian through a guardianship assistance arrangement is in the child's best interests;

(d) How the child meets the eligibility requirements described in OAR 413-070-0917;

(e) The efforts made by the Department or tribe to discuss with the substitute caregiver adoption rather than guardianship as the preferred permanency plan and why adoption was not chosen; and

(f) The efforts made by the Department or tribe to discuss with the child's parents the guardianship assistance arrangement or the reasons why no such efforts were made.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SOSCF 7-2000, f. & cert. ef. 2-10-00; SOSCF 43-2001, f. 12-31-01, cert. ef. 1-1-02; CWP 26-2003, f. & cert. ef. 7-31-03; CWP 8-2004, f. & cert. ef. 4-1-04; CWP 5-2009(Temp), f. & cert. ef. 3-31-09 thru 9-27-09; CWP 7-2009(Temp), f. & cert. ef. 7-1-09 thru 9-27-09; CWP 12-2009, f. & cert. ef. 9-28-09; CWP 18-2009(Temp), f. & cert. ef. 12-16-09 thru 6-14-10

## 413-070-0919

### Eligibility: Tribe and a Child in the Custody and Care of a Tribe

In addition to the other Guardianship Assistance program criteria under these rules, OAR 413-070-0900 to 413-070-0974, the following requirements apply to a *child* in the care and custody of a tribe:

(1) The tribe must have a Title IV-E agreement with the Department allowing the tribe to participate in the Guardianship Assistance program.

(2) The tribe must agree to each of the following requirements:

(a) Conduct and prepare a written home study, of the Department's design, of the guardian;



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(b) Document how continued placement with the prospective guardian is in the best interests of the child and meets the child's needs for safety and permanency.

(c) Notify the Department's Adoption and Guardianship Program within 30 days if the tribe reestablishes custody of a child in a guardianship placement established under these rules, OAR 413-070-0900 to 413-070-0974; and

(d) When applicable, provide the Department's Adoption and Guardianship Program with a copy of the court order terminating the guardianship within 30 days of the termination.

(3) A child must be placed in a tribal foster home meeting the tribe's certification and licensing standards.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: CWP 18-2009(Temp), f. & cert. ef. 12-16-09 thru 6-14-10

## 413-070-0925

### Eligibility: Prospective Guardian

The Department may approve a prospective guardian for *guardianship assistance* when the prospective guardian:

(1) Currently provides care to the child being considered for *guardianship assistance* and meets one of the following requirements:

(a) Has a current Certificate of Approval from the Department under Child Welfare Policy II-B.1, "Certification Standards for Foster Parents, Relative Caregivers, and Pre-Adoptive Parents" OAR 413-200-0301 to 413-200-0396.

(b) Currently is certified as a foster home by the participating tribe as meeting the tribe's certification and licensing standards; or

(c) Currently is certified or otherwise approved by the state in which the prospective guardian resides and approved as a placement for the child under the Interstate Compact on Placement of Children (ICPC).

(2) Agrees with the Department, and the Department documents in the child's case record, that the child and the prospective guardian can maintain a stable relationship and function effectively without Department supervision.

(3) Has an updated home study documenting how the prospective guardian meets the child's best interests and needs for safety and permanency.

(4) Has adequate means of financial support and connections to community resources.

(5) Agrees to comply with all of the following requirements of the Department of Justice, Division of Child Support (DCS) by:

(a) Submitting an application for child support services in connection with each of the child's parents.

(b) Assigning to the Department the right to receive:

(A) All current support payments; and

(B) Any support payment accruing before the child is placed with the guardian.

(c) Cooperating with DCS and the Department as required by the rules of the Child Support Program.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SOSCF 18-1999(Temp), f. & cert. ef. 9-14-99 thru 3-12-00; SOSCF 7-2000, f. & cert. ef. 2-10-00; SOSCF 43-2001, f. 12-31-01, cert. ef. 1-1-02; CWP 26-2003, f. & cert. ef. 7-31-03; CWP 8-2004, f. & cert. ef. 4-1-04; CWP 5-2009(Temp), f. & cert. ef. 3-31-09 thru 9-27-09; CWP 7-2009(Temp), f. & cert. ef. 7-1-09 thru 9-27-09; CWP 12-2009, f. & cert. ef. 9-28-09; CWP 18-2009(Temp), f. & cert. ef. 12-16-09 thru 6-14-10

## 413-070-0929

### Determination of Permanency Plan: Guardianship

(1) The Department or a participating tribe may consider guardianship as the permanency plan for a child when all of the following conditions are met:

(a) The Department determines that adoption is not an appropriate permanency plan under Child Welfare Policies I-F.2, "Determining the Appropriateness of Adoption as a Permanency Plan for a Child" OAR 413-110-0300 to 413-110-0360 and I-F.3.2.1, "Termination of Parental Rights" OAR 413-110-0200 to 413-110-0252;

(b) The eligibility requirements in OAR 413-070-0915, 413-070-0917, 413-070-0919, and 413-070-0925 have been met.

(c) The Department or participating tribe has consulted with the child, if 14 years of age or older, regarding guardianship as the permanency plan.

(d) The Department and the prospective guardian agree, and the Department documents in the child's case record, that the child and the prospective guardian can maintain a stable relationship and function effectively without Department supervision.

(e) The Department determines through a Permanency Committee review that guardianship is an appropriate permanency plan for the child.

(f) A Department or participating tribe's Permanency Committee formally assesses the prospective guardian and finds that guardianship is in the child's best interests because the prospective guardian meets the safety, permanency, and well-being needs of the child.

(g) The court approves a guardianship permanency plan for the child under Child Welfare Policy I-E.3.6, "Achieving Permanency" OAR 413-070-0500 to 413-070-0517.

(2) Each parent with legal rights or standing consents to the permanency plan of guardianship or has been given adequate notice of the permanency plan under state or tribal law when the Department or tribe requests of the court an order establishing guardianship.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SOSCF 18-1999(Temp), f. & cert. ef. 9-14-99 thru 3-12-00; SOSCF 7-2000, f. & cert. ef. 2-10-00; SOSCF 43-2001, f. 12-31-01, cert. ef. 1-1-02; CWP 14-2003, f. & cert. ef. 1-9-03; CWP 26-2003, f. & cert. ef. 7-31-03; CWP 8-2004, f. & cert. ef. 4-1-04; CWP 5-2009(Temp), f. & cert. ef. 3-31-09 thru 9-27-09; CWP 7-2009(Temp), f. & cert. ef. 7-1-09 thru 9-27-09; CWP 12-2009, f. & cert. ef. 9-28-09; Renumbered from 413-070-0920, CWP 18-2009(Temp), f. & cert. ef. 12-16-09 thru 6-14-10

## 413-070-0934

### Application Requirements

(1) A prospective guardian is not required to apply for guardianship assistance. An applicant may withdraw an application for guardianship assistance at any time before the court establishes the guardianship.

(2) When all program eligibility criteria have been met, a prospective guardian may apply for guardianship assistance by completing and signing a guardianship assistance application and returning it to the local Department office providing case management for review and eligibility determination.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SOSCF 18-1999(Temp), f. & cert. ef. 9-14-99 thru 3-12-00; SOSCF 7-2000, f. & cert. ef. 2-10-00; SOSCF 43-2001, f. 12-31-01, cert. ef. 1-1-02; CWP 26-2003, f. & cert. ef. 7-31-03; CWP 8-2004, f. & cert. ef. 4-1-04; CWP 5-2009(Temp), f. & cert. ef. 3-31-09 thru 9-27-09; Suspended by CWP 7-2009(Temp), f. & cert. ef. 7-1-09 thru 9-27-09; CWP 12-2009, f. & cert. ef. 9-28-09; Renumbered from 413-070-0965, CWP 18-2009(Temp), f. & cert. ef. 12-16-09 thru 6-14-10

## 413-070-0939

### Determination of Guardianship Assistance Payments and Medical Benefits

(1) The guardianship assistance benefits are negotiated when a guardianship assistance application is approved by the Department's Adoption and Guardianship program. The total amount of the guardianship assistance payment may not exceed the amount of the base foster care rate the child is eligible to receive while in foster care and, when applicable, the current level of care payment for enhanced supervision as determined by a CANS screening under Child Welfare Policy I-E.5.1, "Payment for Foster Care Base Rate, Chafee Housing, and Independent Living Housing Subsidy" OAR 413-090-0000 to 413-090-0050.

(2) The base guardianship assistance payment for a child residing outside of the State of Oregon may not exceed the base foster care rate determined by Child Welfare Policy I E.5.1, "Payment for Foster Care Base Rate, Level of Care, Chafee Housing, and Independent Living Housing Subsidy" OAR 413-090-0000 to 413-090-0050.

(3) The base guardianship assistance payment is determined by negotiation between the Adoption and Guardianship program and the prospective guardian prior to the completion of the Guardianship Assistance Agreement. The payment is established and paid as follows:

(a) The monthly guardianship assistance negotiation takes into consideration relevant factors which include, but are not limited to:

(A) The needs of the child;

(B) The services required to meet the needs of the child;

(C) The cost of the services required to meet the needs of the child;

(D) The guardian's ability to provide the services required to meet the needs of the child; and

(E) The community resources available to the child and guardian.

(b) Medicaid coverage, private insurance, public education, and all community resources must be considered as resources for the child and the guardian when determining the amount of the guardianship assistance payment.

(c) The Department considers all sources of income, except child support and tribal dividend payments, available to the child when negotiating the monthly guardianship assistance payment.

(4) The guardianship assistance payment must be reduced by other financial benefits received by the child with the exception of child support and tribal dividend payments.

(5) When the child is receiving a level of care payment, as indicated by a Child and Adolescent Needs and Strengths (CANS) screening under Child Welfare Policy I-E.5.1, "Payment for Foster Care Base Rate, Level of Care, Chafee Housing, and Independent Living Housing Subsidy" OAR 413-090-0000 to 413-090-0050, at the time of negotiation, the full amount of the level of care payment is provided as part of the guardianship assistance payment.

(6) The Department may complete a CANS screening for a child residing outside the State of Oregon as part of the determination of the guardianship assistance payment.

(7) Except for child support and tribal dividend payments, the guardian must be the designated payee for any benefit the child receives, such as social security benefits.

(8) The guardianship assistance payment is contingent upon the guardian's continued compliance with the requirements of the Department of Justice, Division of Child Support under OAR 413-070-0925(4).

(9) The guardianship assistance payment begins when:

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- (a) All parties have signed the Guardianship Assistance Agreement; and
- (b) The court has issued an order of guardianship.

(10) A guardianship assistance payment to a guardian who was a Department certified foster parent for the child prior to becoming a court designated guardian is inalienable, not assignable or transferable, and exempt from execution, levy, attachment, garnishment, and other legal process under the laws of Oregon, as long as the payment can be identified as a Guardianship Assistance program payment and is kept separate from other money in the guardian's possession.

(11) A child eligible for guardianship assistance with a relative caretaker is eligible for medical benefits in the child's state of residence. If a child is eligible for guardianship assistance, resides in a state other than Oregon with a non-relative guardian, and is not able to obtain medical benefits in his or her state of residence the Department provides medical benefits under Child Welfare Policy I-E.6.2, "Title XIX and General Assistance Medical Eligibility" OAR 413-100-0400 to 413-100-0610.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SOSCF 18-1999(Temp), f. & cert. ef. 9-14-99 thru 3-12-00; SOSCF 7-2000, f. & cert. ef. 2-10-00; SOSCF 43-2001, f. 12-31-01, cert. ef. 1-1-02; CWP 14-2003, f. & cert. ef. 1-9-03; CWP 26-2003, f. & cert. ef. 7-31-03; CWP 8-2004, f. & cert. ef. 4-1-04; CWP 5-2009(Temp), f. & cert. ef. 3-31-09 thru 9-27-09; CWP 7-2009(Temp), f. & cert. ef. 7-1-09 thru 9-27-09; CWP 12-2009, f. & cert. ef. 9-28-09; Renumbered from 413-070-0930, CWP 18-2009(Temp), f. & cert. ef. 12-16-09 thru 6-14-10

## 413-070-0944

### Special Payments: Legal Expenses

(1) To the extent the total cost of such expenses does not exceed \$2,000, the Department may pay for some costs incurred by the guardian in the establishment of an assisted guardianship of a child under Child Welfare Policy I-E.5.5, "Payments for Providing Direct Client Legal Services" OAR 413-090-0500 to 413-090-0550.

(2) The Department may not authorize payment for legal services provided:

- (a) In connection with a contested case; or
- (b) To defend or retain guardianship upon challenge by another party once a guardianship is established.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SOSCF 18-1999(Temp), f. & cert. ef. 9-14-99 thru 3-12-00; SOSCF 7-2000, f. & cert. ef. 2-10-00; SOSCF 43-2001, f. 12-31-01, cert. ef. 1-1-02; CWP 26-2003, f. & cert. ef. 7-31-03; CWP 8-2004, f. & cert. ef. 4-1-04; CWP 5-2009(Temp), f. & cert. ef. 3-31-09 thru 9-27-09; CWP 7-2009(Temp), f. & cert. ef. 7-1-09 thru 9-27-09; CWP 12-2009, f. & cert. ef. 9-28-09; Renumbered from 413-070-0960, CWP 18-2009(Temp), f. & cert. ef. 12-16-09 thru 6-14-10

## 413-070-0949

### Guardianship Assistance Agreement Requirements

(1) Before a guardian may receive guardianship assistance, there must be a negotiated written guardianship assistance agreement between the Department and the guardian signed by all parties prior to the court order establishing the legal guardianship.

(2) The guardianship assistance agreement must include the following:

(a) A statement indicating that a guardianship assistance payment remains in effect without regard to the state of residency of the guardian.

(b) The amount of the guardianship assistance and the manner in which it is to be provided.

(c) The basis and requirements for periodic changes in the guardianship assistance payment, in consultation with the guardian, based on the circumstances of the guardian and the needs of the child.

(d) The additional services and assistance for which the child and guardian are eligible under the agreement and the procedure by which the guardian may apply for such services.

(e) The limitation on Department payments for nonrecurring expenses associated with obtaining legal guardianship of the child.

(f) A statement indicating the effective date of the guardianship assistance agreement is the date of the court order of guardianship.

(g) A statement that no retroactive guardianship assistance payment may be authorized except as provided under OAR 413-070-0969.

(h) A statement indicating that the guardian must submit an application for child support enforcement services for each parent of the child.

(i) A statement indicating that the guardian agrees to cooperate with child support enforcement services under OAR 413-070-0925(4).

(j) A statement indicating that the guardian understands a guardianship assistance payment is contingent upon the guardian's cooperation with the requirements under OAR 413-070-0925(4).

(k) A statement indicating that the guardian understands that a guardianship assistance payment may be terminated or suspended under OAR 413-070-0939(8) for failure to comply with OAR 413-070-0925(4) or under 413-070-0974.

(l) A statement indicating that the child for whom the Department is providing the guardianship assistance payment remains eligible for medical assistance once the guardianship is established.

(m) A statement indicating that the guardian understands that ORS 192.520 allows the Department of Human Services' Oregon Health Plan (OHP) and the OHP managed care plans to exchange the following protected

health information without the guardian's authorization for the purpose of treatment activities related to the behavioral or physical health of the child when the child is the recipient of OHP services:

- (A) The child's name and Medicaid recipient number;
- (B) The name of the child's hospital or medical provider;
- (C) The hospital or medical provider's Medicaid number;
- (D) Each diagnosis for the child;
- (E) Each treatment activity's date of service;
- (F) Each treatment activity's procedure or revenue code;
- (G) The quantity of units or services provided; and
- (H) Information about medication prescription and monitoring.

(n) A statement indicating that the guardian agrees to comply with the Guardianship Assistance program reporting requirements under OAR 413-070-0945(4), 413-070-0964, and 413-070-0969(5).

(o) A statement indicating that in the event a legislative or executive branch action affecting the Department's budgeting or spending authority makes it necessary for the Department to implement budget reductions to the Guardianship Assistance program, a guardianship assistance payment on behalf of the child may not be reduced without the agreement of the guardian. However, budget reductions may result in a reduced guardianship assistance payment under any new agreement.

(p) The Department unilaterally may amend, suspend, or terminate the guardianship assistance agreement with notice to the guardian of the intended action when an action by a state or federal court or a law adopted through a state or federal legislative or executive branch action necessitates a suspension, termination, or change in guardianship assistance.

(3) The Department must provide the guardian with a copy of the guardianship assistance agreement.

(4) The Department may review any guardianship assistance agreement at any time.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SOSCF 18-1999(Temp), f. & cert. ef. 9-14-99 thru 3-12-00; SOSCF 7-2000, f. & cert. ef. 2-10-00; SOSCF 43-2001, f. 12-31-01, cert. ef. 1-1-02; CWP 26-2003, f. & cert. ef. 7-31-03; CWP 49-2003(Temp), f. 12-31-03, cert. ef. 1-1-04 thru 4-28-04; CWP 8-2004, f. & cert. ef. 4-1-04; CWP 5-2009(Temp), f. & cert. ef. 3-31-09 thru 9-27-09; CWP 7-2009(Temp), f. & cert. ef. 7-1-09 thru 9-27-09; CWP 12-2009, f. & cert. ef. 9-28-09; Renumbered from 413-070-0935, CWP 18-2009(Temp), f. & cert. ef. 12-16-09 thru 6-14-10

## 413-070-0959

### Court Order of Guardianship

(1) The Department or tribe may not pursue a court order establishing an assisted guardianship until the Department's Adoption and Guardianship Program Office approves a guardian assistance application for the child and a signed guardianship assistance agreement between the Department and the prospective guardian has been completed.

(2) An assisted guardianship may be established under ORS 419B.365 or 419B.366, and as provided under ORS 419B.367 to 419B.369.

(3) The court order must approve guardianship and direct one of the following:

(a) Terminate Department or tribal care, custody, and supervision of the child; or

(b) If the child has been committed permanently to the Department, set aside or modify the order of permanent commitment, relieving the Department of responsibility for the child.

(4) The guardian is not eligible for foster care base rate and enhanced supervision payments under Child Welfare Policy I-E.5.1, "Payment for Foster Care Base Rate, Level of Care, Chafee Housing, and Independent Living Housing Subsidy" OAR 413-090-0000 to 413-090-0050 once the guardianship is effective and the Department's or tribe's custody of the child is terminated by court order.

(5) The Department may not provide guardianship assistance if the court establishes guardianship and orders the Department to continue supervision of the child or guardian.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SOSCF 7-2000, f. & cert. ef. 2-10-00; SOSCF 43-2001, f. 12-31-01, cert. ef. 1-1-02; CWP 26-2003, f. & cert. ef. 7-31-03; CWP 49-2003(Temp), f. 12-31-03, cert. ef. 1-1-04 thru 4-28-04; CWP 8-2004, f. & cert. ef. 4-1-04; CWP 5-2009(Temp), f. & cert. ef. 3-31-09 thru 9-27-09; CWP 7-2009(Temp), f. & cert. ef. 7-1-09 thru 9-27-09; CWP 12-2009, f. & cert. ef. 9-28-09; Renumbered from 413-070-0937, CWP 18-2009(Temp), f. & cert. ef. 12-16-09 thru 6-14-10

## 413-070-0964

### Changes That Must be Reported and Annual Report

(1) A guardian receiving a guardianship assistance payment must report immediately, orally or in writing, to the Department's Adoption and Guardianship Program any of the following:

(a) Any change described in OAR 413-070-0974.

(b) A change of address.

(c) When the guardian is planning to move from his or her state of residency.

(2) The guardian, within 30 days after each annual anniversary of the court appointment of guardianship, must file a written report with the court and submit a copy of the report to the Department's Adoption and Guardianship Program. The report must contain assurances that each child

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receiving a guardianship assistance payment is a full-time elementary or secondary school student or is incapable of attending school due to a documented medical condition.

(3) When the court does not require an annual report as part of the appointment of guardianship, the Department requires the guardian to submit an annual report to the Adoption and Guardianship Program.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SOSCF 18-1999(Temp), f. & cert. ef. 9-14-99 thru 3-12-00; SOSCF 7-2000, f. & cert. ef. 2-10-00; SOSCF 43-2001, f. 12-31-01, cert. ef. 1-1-02; CWP 14-2003, f. & cert. ef. 1-9-03; CWP 19-2003(Temp), f. & cert. ef. 1-23-03 thru 6-20-03; CWP 26-2003, f. & cert. ef. 7-31-03; CWP 8-2004, f. & cert. ef. 4-1-04; CWP 5-2009(Temp), f. & cert. ef. 3-31-09 thru 9-27-09; CWP 7-2009(Temp), f. & cert. ef. 7-1-09 thru 9-27-09; CWP 12-2009, f. & cert. ef. 9-28-09; Renumbered from 413-070-0945 & 413-070-0955, CWP 18-2009(Temp), f. & cert. ef. 12-16-09 thru 6-14-10

## 413-070-0969

### Renegotiation of a Guardianship Assistance Agreement

(1) A guardian may request that the Department consider renegotiation of the guardianship assistance agreement. The request for renegotiation must:

- (a) Be in writing;
- (b) Document the change in the circumstances of the guardian;
- (c) Document the needs of the child; and
- (d) Provide information about the financial expenses of the child.

(2) The Department may complete a CANS screening when requested by a guardian as part of the renegotiation when the Department determines that the child is eligible for the screening.

(3) A new guardianship assistance agreement must be signed by all parties prior to a change in benefits each time a child's guardianship assistance is renegotiated.

(4) The Department may authorize a renegotiated guardianship assistance payment increase for the period commencing the first day of the month in which the Department receives the written request.

(5) The Department may adjust the guardianship assistance benefits if a child's income changes. The guardian is responsible for notifying the Department of any change in the child's income within 30 days of the effective date of any such change. A new guardianship assistance agreement must be signed by all parties prior to a change in benefits being made.

(6) If a child receiving guardianship assistance benefits is placed in substitute care and the plan is for the child to return to the guardian's home, the Department may adjust, continue, or suspend the guardianship assistance benefits to reflect the guardian's continued expenses on behalf of the child. If the child returns to the care of the guardian, the Department reviews the guardianship assistance benefits, adjusts the benefits as appropriate, and provides a new guardianship assistance agreement for the guardian to sign.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: CWP 18-2009(Temp), f. & cert. ef. 12-16-09 thru 6-14-10

## 413-070-0970

### Guardianship Social and Support Services

(1) The guardian or child in an assisted guardianship may request family support services as described in Child Welfare Policy I-B.2.3.1, "Family Support Services" OAR 413-030-0000 to 413-030-0030 from the Department.

(2) A guardian receiving guardianship assistance on behalf of a child has access to the consultation, training, and library services of the Oregon Post Adoption Resource Center.

(3) Upon the establishment of a guardianship, the caseworker must conduct an exit conference with the guardian, guardian's family, and the child and ensure the guardian and guardian's family have contact information for social and support services. The caseworker must advise the guardian family to call Intake Screening to request services in the county in which the family resides. The caseworker must explain that requesting services does not place the guardianship in jeopardy. In the closing casework narrative, the caseworker must document that the guardian and his or her family have been informed of their rights, including the right to access post-guardianship services.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SOSCF 18-1999(Temp), f. & cert. ef. 9-14-99 thru 3-12-00; SOSCF 7-2000, f. & cert. ef. 2-10-00; SOSCF 43-2001, f. 12-31-01, cert. ef. 1-1-02; CWP 26-2003, f. & cert. ef. 7-31-03; CWP 8-2004, f. & cert. ef. 4-1-04; CWP 5-2009(Temp), f. & cert. ef. 3-31-09 thru 9-27-09; Suspend by CWP 7-2009(Temp), f. & cert. ef. 7-1-09 thru 9-27-09; CWP 12-2009, f. & cert. ef. 9-28-09; CWP 18-2009(Temp), f. & cert. ef. 12-16-09 thru 6-14-10

## 413-070-0974

### Suspension or Termination of Guardianship Assistance Benefits

(1) The Department must terminate or suspend guardianship assistance benefits on the day when any of the following occurs:

- (a) The child reaches 18 years of age or is emancipated, whichever comes first.
- (b) Child custody or guardianship is awarded to another individual.
- (c) The child dies.
- (d) The child marries.
- (e) The child is adopted;

(f) The child is placed in substitute care with no plan for the child to return to the care of the guardian.

(g) The guardian dies or terminates the guardianship.

(2) The Department may terminate or suspend a guardianship assistance payment when any of the following occurs:

(a) The child is incarcerated for more than three consecutive months.

(b) The child is out of the guardian's home for more than a 30-day period or is no longer living in the home.

(c) The guardian is no longer legally responsible for the financial support of the child or the child is no longer receiving financial support from the guardian.

(d) The Department determines the guardian has failed to comply with the requirements of the Department of Justice, Division of Child Support as required under OAR 413-070-0925(4).

(3) The Department may terminate a guardianship assistance agreement upon 30 days written notice to the guardian when the guardian is no longer responsible for the child or is no longer providing support to the child, or in the event of legal or legislative action requiring discontinuance of guardianship assistance.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SOSCF 18-1999(Temp), f. & cert. ef. 9-14-99 thru 3-12-00; SOSCF 7-2000, f. & cert. ef. 2-10-00; SOSCF 43-2001, f. 12-31-01, cert. ef. 1-1-02; CWP 14-2003, f. & cert. ef. 1-9-03; CWP 26-2003, f. & cert. ef. 7-31-03; CWP 8-2004, f. & cert. ef. 4-1-04; CWP 5-2009(Temp), f. & cert. ef. 3-31-09 thru 9-27-09; CWP 7-2009(Temp), f. & cert. ef. 7-1-09 thru 9-27-09; CWP 12-2009, f. & cert. ef. 9-28-09; Renumbered from 413-070-0940, CWP 18-2009(Temp), f. & cert. ef. 12-16-09 thru 6-14-10

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

**Adm. Order No.:** CWP 19-2009(Temp)

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**Notice Publication Date:**

**Rules Adopted:** 413-100-0335, 413-100-0345

**Rules Amended:** 413-100-0020

**Subject:** OAR 413-100-0020 about the definitions used in 413-100-0000 to 413-100-0345 (about Title IV-E Foster Care and General Assistance) is being amended to revise the definition of "Department".

OAR 413-100-0335 about how the Department determines if a child is eligible for Title IV-E funded adoption assistance payments is being adopted to state the eligibility requirements a child must meet to receive Title IV-E funded adoption assistance payments.

OAR 413-100-0345 about how the Department determines if a child is eligible for guardianship assistance payments is being adopted to state the definitions for key terms used in this rule and the eligibility requirements a child must meet to receive guardianship assistance payments.

**Rules Coordinator:** Annette Tesch—(503) 945-6067

## 413-100-0020

### Definitions

The following definitions apply to OAR 413-100-0000 to 413-100-0320:

(1) "AFDC No-Adult Standard": The standard applicable to AFDC households that do not include an adult in the grant.

(2) "AFDC": The Aid to Families with Dependent Children Program as it existed on July 16, 1996, excluding changes implemented by the Oregon Options Waiver.

(3) "Amnesty Alien": Any person with proper INS documentation who, because of a well-founded fear of persecution due to race, religion, or political opinion, fled his or her homeland. The term "refugee" applies to all refugees and asylees with proper INS documentation, served by the Department under the Refugee Resettlement Program.

(4) "Assistance Unit": A group of individuals whose needs, income, and resources are considered together to determine their public assistance eligibility and the grant amount.

(5) "Certified Foster Home": For Title IV-E purposes under these rules (OAR 413-100-0000 to 413-100-0320), a foster home that the Department has certified and includes a relative foster home.

(6) "Child Support": Any voluntary or court-ordered contribution by an absent parent. Support includes, but is not limited to, money payments, education, and necessary and proper shelter, food, clothing, and medical attention.

(7) "Citizen or Alien Status": The status of being a U.S. citizen or alien who is a qualified alien or unqualified alien, as defined by section 431 of The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), as amended by The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 and The Balanced Budget Act of 1997.

# ADMINISTRATIVE RULES

(8) "Constructive Removal": The non-physical, paper, or legal removal of a child who is not living with a "specified relative" when the voluntary custody or voluntary placement agreement is signed or the judicial order is entered. Constructive removal is described further in OAR 413-100-0135(3)(b).

(9) "Countable Income": The amount of available income, including earned and unearned income not specifically excluded by OAR 461-140-0040, used to determine eligibility for public assistance.

(10) "Court Order Date": The date a court of competent jurisdiction issues a court order that gives the Department responsibility for the child's placement and care.

(11) "Date a Child is Considered to have Entered Foster Care": The earlier of the following:

(a) The date that the court found the child to be within the jurisdiction of the court under ORS 419B.100; or

(b) 60 days from the date of removal.

(12) "Department": The Department of Human Services, Child Welfare.

(13) "Earned Income": All legal, reportable income resulting from an individual's employment or self-employment.

(14) "Eligibility Month":

(a) The month in which the court was petitioned or court action was initiated that resulted in the child's "constructive" or "physical" removal from the home of his or her specified relative; or

(b) The month a voluntary custody or voluntary placement agreement is signed.

(15) "Entitlement": Any benefit to which an individual has a valid claim, or would have a valid claim upon application, including one related to past employment or service, pension, compensation payment, allotment allowance insurance payment, interest in an estate or fund, or of a similar nature.

(16) "Family": For purposes of determining Title IV-E Foster Care eligibility under these rules, the parent or parents, stepparent, or relative or relatives from whom the child is removed.

(17) "First cousin once-removed": A child of a first cousin.

(18) "Foster Care": 24 hour substitute care for children placed away from their parents or guardians and for whom the Department has placement and care responsibility. This includes but is not limited to placements in foster family homes, foster homes of relatives, group homes, emergency shelters, residential facilities, child care institutions, and pre-adoptive homes. A child is in foster care in accordance with this definition regardless of whether the foster care facility is licensed and payments are made by the Department or local agency for the care of the child, whether adoption subsidy payments are being made prior to the finalization of the adoption, or whether there is Federal matching of any payments that are made.

(19) "Foster Home": As defined in ORS 418.625(3), means any home maintained by a person who has under the care of the person in such home any child under the age of 21 years unattended by the child's parent or guardian, for the purpose of providing such child with care, food, and lodging, but does not include any foster home under the direct supervision of a private child-caring agency or institution certified by the Department, any home under the direct supervision of a custodial parent for the purpose of providing respite care, or any developmental disability child foster home.

(20) "Incapacity": A physical or mental defect, illness, or impairment that reduces substantially or eliminates the individual's ability to support or care for the child and may be expected to last a period of at least 30 days.

(21) "Indian Child": A child verified by a Tribal enrollment committee as enrolled or eligible for enrollment as a member of a federally recognized tribe.

(22) "Initiation of Court Action": The date that the court was petitioned or legal action was taken that resulted in the removal of the child from the specified relative.

(23) "Minor Child": Any person under the age of 18 who has not been emancipated by a court of law, married, or a member of the Armed Forces of the United States.

(24) "Need": Using the Department AFDC standards, the monetary amount by which an individual or family's requirements exceeds all of the income and resources available to the individual or family.

(25) "Non-Indian Child": Any child not verified by a Tribal enrollment committee as enrolled or eligible for enrollment as a member of a federally recognized tribe.

(26) "Nunc Pro Tunc Orders": Under Oregon law, a nunc pro tunc order is an order that restores to the record an action that actually occurred, but was inadvertently or mistakenly omitted from the record.

(27) "Parent": Under the AFDC rules in effect on July 16, 1996, "parent" means the biological or legal (step or adoptive) mother or father of a person.

(a) If the mother lives with a male, who either she or he claims is the father of the child, and no one else claims to be the father, he shall be treated as the father even if paternity has not been legally established.

(b) The Voluntary Acknowledgment Form (HS 45-21) jointly signed by the mother and putative father, is a legal document that establishes paternity and allows the father's name to be added to the birth certificate.

(c) A stepparent relationship exists if:

(A) The person is legally married to the child's biological or adoptive parent; and

(B) The marriage has not been terminated by legal separation, divorce or death.

(d) A legal adoption erases all prior legal and blood relationships and establishes the adoptive parent as the legal parent. However, the biological parent is also considered a parent if both of the following are true:

(A) The child lives with the biological parent; and

(B) The legal parent, the adoptive parent, has given up care, control, and supervision of the child.

(28) "Payment Standard or Needs Standard": The amount set by the Department as the AFDC net income limit. It is used to determine the actual grant amount. This amount refers to the "Payment or Need Standard" in effect on July 16, 1996.

(29) "Personal Property": Everything that a person owns that is not real property, including liquid assets.

(30) "Physical Removal": The removal of a child that occurs when a child is placed in substitute care, who was living with the "specified relative" when the voluntary custody or voluntary placement agreement was signed or court proceedings were initiated.

(31) "Real Property": Land, buildings, and whatever is erected on or affixed to the land or buildings and taxed as real property.

(32) "Relieved of Temporary Commitment": The court ends the Department's responsibility for the child's placement and care.

(33) "Removal Home": The home from which the child was removed as a result of a judicial finding, voluntary custody agreement, or voluntary placement agreement. This term is further described at OAR 413-100-0135(3).

(34) "Resource": Any personal or real property that is or can be made available to meet the need of the assistance unit the Department does not specifically exclude from consideration.

(35) "Shelter In-Kind": Payment by an agency, other than the Department, or someone other than the client, for the client's rent and utility bills at no cost to the client and the client provides no service in exchange for the payment.

(36) "Specified Relative":

(a) A "parent" as defined in this rule;

(b) Any blood relative or half-blood relative, including persons of preceding generations denoted by the prefixes of grand, great, or great-great (persons with one common biological parent are half-blood relatives);

(c) A sibling, aunt, uncle, nephew, niece, first cousin, and first cousin once-removed;

(d) A person who legally adopts a child or the child's parent, other legally adopted children of such persons, and any persons related to the child through the adoption who meet the degree of relationship specified in subsection (b) or (c) of this section;

(e) A stepmother, stepfather, stepbrother, or stepsister; or

(f) A spouse of anyone listed in subsections (b) to (e) of this section, even if the marriage is terminated by death or divorce.

(37) "Standards of Assistance": The consolidated standards for payment specified in OAR 461-155-0030 that were in effect on July 16, 1996. These standards are used to determine income eligibility for AFDC.

(38) "Temporarily Unreimbursable": The status of a child who would otherwise be Title IV-E eligible but for the child's being temporarily placed out of a foster care setting.

(39) "Unearned Income": All income that does not directly result from an individual's employment or self-employment.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 409.050 & 418.005

Stats. Implemented: ORS 409.010, 418.005 & 418.625

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 4-1998, f. 2-5-98, cert. ef. 2-6-98; SOSCF 20-2000(Temp), f. & cert. ef. 8-11-00 thru 2-6-01; SOSCF 4-2001, f. & cert. ef. 2-7-01; SOSCF 44-2001, f. 12-31-01 cert. ef. 1-1-02; CWP 2-2004, f. & cert. ef. 2-10-04; CWP 1-2007(Temp), f. & cert. ef. 2-7-07 thru 8-6-07; CWP 14-2007, f. & cert. ef. 8-1-07; CWP 11-2008(Temp), f. 6-27-08, cert. ef. 6-28-08 thru 12-24-08; CWP 21-2008, f. & cert. ef. 9-2-08; CWP 19-2009(Temp), f. & cert. ef. 12-16-09 thru 6-14-10

## 413-100-0335

### Adoption Assistance Title IV-E Eligibility Determination

(1) For the purposes of this rule, "applicable child" means, as defined in section 473(e) of the Social Security Act, a child who meets the applicable age requirements or has been in foster care for at least 60 months, or the sibling of such a child if both the child and the sibling are in the same adoption placement. The applicable age requirements are set forth in Exhibit 1.

(2) If a child does not qualify under OAR 413-130-0040(2), to be eligible for Title IV-E funded adoption assistance the child must qualify under one of the following subsections:

(a) The child's eligibility for Title IV-E foster care was established at the time of removal.

(b) The child meets all eligibility requirements for Supplemental Security Income (SSI) benefits.

(c) The child's payments in a certified family home or private child caring agency are covered by the foster care maintenance payment being made for his or her minor parent.

# ADMINISTRATIVE RULES

(d) Effective October 1, 2009, the Department determines the child meets the eligibility criteria of an applicable child because of one of the following:

(A) The child's oldest age attained during the federal fiscal year (October 1 through September 30) under section 473(a)(2)(A)(i) of the Social Security Act as set forth in Exhibit 1;

(B) The child has been in foster care under the responsibility of the Title IV-E agency for any 60 consecutive month period prior to finalization of the adoption; or

(C) The child is a sibling of another child the Department has determined is an applicable child and both children are placed in the same adoption arrangement.

(e) A child found to be an applicable child under paragraphs (c)(A) to (C) of this section must meet the applicable child eligibility requirements, inclusive of the special needs criteria, described in section 473(a)(2)(A)(ii) of the Social Security Act to be eligible for Title IV-E adoption assistance.

Stat. Auth.: ORS 418.005, 418.340

Stats. Implemented: ORS 418.330 - 418.340

Hist.: CWP 19-2009(Temp), f. & cert. ef. 12-16-09 thru 6-14-10

## 413-100-0345

### Guardianship Assistance Eligibility

(1) For the purposes of this rule:

(a) "Relative" means:

(A) An individual with one of the following relationships to the child through the child's parent:

(i) Any blood relative or half-blood relative of preceding generations denoted by the prefixes of grand, great, or great-great (persons with one common biological parent are half-blood relatives);

(ii) A sibling; or

(iii) An aunt, uncle, nephew, niece, first cousin, and first cousin once removed.

(B) An individual with one of the following relationships to the child:

(i) A stepparent described in OAR 413-100-0020(27)(c), stepbrother, or stepsister;

(ii) A spouse of anyone listed in subsection (a) of this section, even if the marriage is terminated by death or divorce;

(iii) The adoptive parent of a child's sibling;

(iv) The unrelated legal or biological father or mother of a child's half-sibling;

(v) A person defined as a relative by the law or custom of the child's tribe if the child is an Indian child under the Indian Child Welfare Act;

(vi) A person defined as a relative of a refugee child under OAR 413-070-0300 to 413-070-0380; and

(vii) The registered domestic partner or former registered domestic partner of the child's parent.

(C) An individual identified by the child or the child's family, or an individual who self-identifies, related to the child by blood, adoption, or marriage to a degree other than an individual specified as a child's relative in subsection (a) of this section.

(D) An individual identified by the child or the child's family, not related by blood, marriage or adoption, as an individual with an emotionally significant relationship with the child or the child's family such as, godparents, neighbors, family friends, or a member of the child's Tribe.

(b) "Sibling" means one of two or more children or young adults related:

(A) By blood or adoption through a common legal parent;

(B) Through the marriage of the children's or young adults' legal or biological parents; or

(C) Through a legal or biological parent who is the registered domestic partner of the child's legal or biological parent.

(2) A child otherwise not eligible for Title IV-E is eligible for guardianship assistance if he or she has a sibling who is a Title IV-E eligible child who is or will be in an assisted guardianship with the same guardian.

(3) A child eligible for guardianship assistance may remain eligible, if removed from the guardianship, under the following circumstances:

(a) If a child eligible for guardianship assistance is removed from the guardianship placement and placed in foster care, the Department completes a redetermination under these rules OAR 413-100-0000 to 413-100-0345 to ensure continued eligibility for Title IV-E foster care based on the child's deprivation of parental support and financial circumstances. The guardian's income is not considered during this review, nor is the guardian obligated to pay child support upon the child's return to substitute care. Eligibility for Title IV-E foster care may be reestablished based on the child's original removal from the parental or relative home if the child continues to be deprived of parental support, the child meets personal financial eligibility criteria under OAR 413-100-0270(4) and all court findings related to an initial removal are met.

(b) A child previously determined eligible for guardianship assistance who subsequently is placed in foster care but then is returned to the same guardian, remains eligible for guardianship assistance.

(4) For a child previously determined eligible for guardianship assistance who subsequently is placed in foster care but then is placed with a dif-

ferent guardian, the Department determines eligibility for guardianship assistance through a new eligibility determination.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: CWP 19-2009(Temp), f. & cert. ef. 12-16-09 thru 6-14-10

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**Rule Caption:** Changing OARs affecting Child Welfare programs.  
**Adm. Order No.:** CWP 20-2009

**Filed with Sec. of State:** 12-29-2009

**Certified to be Effective:** 12-29-09

**Notice Publication Date:** 11-1-2009

**Rules Adopted:** 413-010-0505, 413-010-0510, 413-010-0515, 413-010-0520, 413-010-0525, 413-010-0530, 413-010-0535

**Rules Amended:** 413-010-0500

**Subject:** Child Welfare Policy I-A.5.2.1 about contested case hearings, which was not adopted through the rule making process, is being repealed and its terms are being merged and updated into Child Welfare Policy I-A.5.2 (OAR 413-010-0500 to 413-010-0535).

OAR 413-010-0500, which was amended by temporary rule on September 1, 2009, is being amended to make those changes permanent and make further changes. The Department is incorporating policies not previously set out in rules. The amended rule defines certain terms used in the contested case hearing rules, sets out who has a right to a contested case hearing for child welfare programs, identifies other laws that apply in these hearings, explains how the Department and the parties may be represented in these hearings, and who may and may not attend these hearings.

OAR 413-010-0505, which was adopted by temporary rule on August 12, 2009 and concerns contested case hearing requests, is being adopted to make those changes permanent and make further changes. The new rule sets out the requirements to request a hearing, the deadline to request a hearing, the process for allowing late hearing requests, and how the Department responds to hearing requests on issues not allowed under the Child Welfare hearing rules.

OAR 413-010-0510, which was adopted by temporary rule on July 1, 2009 and concerns notices that include the right to a contested case hearing, is being adopted to make those changes permanent and make further changes. The new rule sets out the requirements that apply to Department notices, including content, timing, and effective dates; and when a notice may become a final order.

OAR 413-010-0515, which was adopted by temporary rule on July 1, 2009, amended by temporary rule on August 12, 2009, and concerns continuation of benefits pending a contested case hearing concerning child welfare programs, is being adopted to make those changes permanent and make further changes. The new rule sets out when these benefits are available, the requirements to receive these benefits, the extent to which these benefits are available, and the situations in which the Department may take action to recover these benefits.

OAR 413-010-0520, which was adopted by temporary rule on July 1, 2009 and concerns informal conferences following a request for a contested case hearing, is being adopted to make those changes permanent and make further changes. The new rule describes the topics covered in informal conferences.

OAR 413-010-0525, which was adopted by temporary rule on July 1, 2009 and concerns the burden of proof in a contested case hearing, is being adopted to make these changes permanent. The new rule set out who has the burden of proof in contested case hearings about child welfare programs.

OAR 413-010-0530, which was adopted by temporary rule on July 1, 2009 and concerns withdrawals and dismissals after a request for a contested case hearing, is being adopted to make those changes permanent and make further changes. The new rule describes the requirements when a party withdraws, when and how a withdrawal may be cancelled, when the Department may withdraw a case, and dismissals after a party or party's representative fails to attend a hearing.

OAR 413-010-0535, which was adopted by temporary rule on July 1, 2009 and concerns proposed orders and final orders in contested

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cases, is being adopted to make those changes permanent and make further changes. This rule describes steps that lead to a final order once the Office of Administrative Hearings issues its initial decision, including the deadlines for both parties and the Department once the initial order is issued. This rule also describes situations in which a final order may be amended or withdrawn.

**Rules Coordinator:** Annette Tesch—(503) 945-6067

## 413-010-0500

### Contested Case Generally

(1) The following definitions apply to these rules (OAR 413-010-0500 to 413-010-0535), unless the context indicates otherwise:

(a) "Adoption assistance" means financial and medical coverage granted to an adoptive family to offset the costs of adopting an eligible adoptive child and may include cash payments, medical coverage, an agreement only, or special payments.

(b) "Adoptive family" means a family that includes at least one child who joined the family through a legally finalized adoption.

(c) "Certificate of Approval" means a document that the Department issues to approve the operation of a child-specific relative caregiver home, child-specific foster home, preadoptive home, or a regular foster home.

(d) "Certified family" means an individual or individuals who hold a current Certificate of Approval from the Department to operate a home to provide care, in the home in which they reside, to a child or young adult in the care or custody of the Department.

(e) "Child" means a person under 18 years of age.

(f) "Foster care base rate" means the payment to a foster parent or relative caregiver on behalf of an eligible child for the costs of providing food, clothing, housing, daily supervision, personal incidentals, and transportation.

(g) "Foster parent" means a person who operates a home that has been approved by Child Welfare to provide care for an unrelated child or young adult placed in the home by the Department.

(h) "Guardian" means a person or agency having the powers and responsibilities of a parent to make binding decisions for a child, including the authority to:

(A) Authorize surgery for the child;

(B) Authorize enlistment in the armed forces;

(C) Consent to the child's adoption when the child is in the permanent custody of the agency;

(D) Make other decisions of substantial legal significance concerning the child; but

(E) A guardian is not a conservator of the child's property or estate.

(i) "Guardianship assistance payment" means a monthly cash payment made by the Department to the guardian on behalf of the eligible child.

(j) "Level of care" means the payment for enhanced supervision needs of a child or young adult to a certified family.

(k) "Level of personal care" means the payment to a qualified provider for performing the personal care services for an eligible child or young adult.

(l) "Licensee" means a private child-caring agency or an organization or school that offers a residential program for children (regulated by ORS 418.327) and holds a license issued by the Department.

(m) "Party" means a person entitled to a contested case hearing under section (2) of this rule.

(n) "Personal care services" means the provision of or assistance with those functional activities described in OAR 413-090-0120 consisting of mobility, transfers, repositioning, basic personal hygiene, toileting, bowel and bladder care, nutrition, medication management, and delegated nursing tasks that a child or young adult requires for his or her continued well-being.

(o) "Private child-caring agency" is defined by the definitions in ORS 418.205, and means a "child-caring agency" that is not owned, operated, or administered by any governmental agency or unit.

(A) A "child-caring agency" means an agency or organization providing:

(i) Day treatment for disturbed children;

(ii) Adoption placement services;

(iii) Residential care, including but not limited to foster care or residential treatment for children;

(iv) Outdoor youth programs (defined at OAR 413-215-0911); or

(v) Other similar services for children.

(B) A child-caring agency does not include residential facilities or foster care homes certified or licensed by the Department under ORS 443.400 to 443.455, 443.830, and 443.835 for children receiving developmental disability services.

(p) "Relative caregiver" means a person who operates a home that has been approved by Child Welfare to provide care for a related child or young adult who is placed in the home by the Department.

(q) "Young adult" means a person aged 18 through 20 years, who remains in the care and custody of the Department, and lives in substitute care or lives independently through the Department's Independent Living Subsidy Program.

(2) The following persons have the right to a contested case hearing under ORS 183 when the Department receives a timely and completed hearing request:

(a) A child or young adult placed in substitute care by the Department when the Department takes action to:

(A) Reduce or terminate payment for the foster care base rate;

(B) Deny, reduce or terminate a level of care payment for enhanced supervision;

(C) Deny, reduce or terminate personal care services or a level of care payment for personal care services;

(D) Deny eligibility for benefits under Title IV-E of the Social Security Act;

(E) Deny eligibility for medical assistance under Title XIX of the Social Security Act; or

(F) Deny, reduce or terminate payment for the foster care base rate on behalf of the child's or young adult's child when that child lives with the child or young adult.

(b) A prospective adoptive family, an adoptive family, and a child when the Department takes action under Child Welfare Policy I-G.3.1, "Adoption Assistance," (OAR 413-130-0000 to 413-130-0125) to deny Title IV-E adoption assistance benefits, deny adoption assistance from state funds, reduce adoption assistance payments or terminate adoption assistance before the child's 18th birthday or when the Department cannot reach agreement with the family about the amount or type of adoption assistance;

(c) A prospective guardian, a guardian, and a child when the Department takes action under Child Welfare Policy I-E.3.6.2, "Guardianship Assistance," (OAR 413-070-0900 to 413-070-0982) to deny Title IV-E guardianship assistance benefits, deny guardianship assistance from state funds, reduce guardianship assistance payments, or terminate guardianship assistance before the child's 18th birthday or when the Department cannot reach agreement with the family about the amount or type of guardianship assistance;

(d) An applicant for a Certificate of Approval or a certified family when the Department takes action to deny the application or revoke a certificate under Child Welfare Policy II-B.1, "Certification Standards for Foster Parents, Relative Caregivers, and Pre-Adoptive Parents," (OAR 413-200-0301 to 413-200-0396);

(e) An applicant for a license to operate a private child-caring agency or a licensee when the Department takes action to deny, suspend, or revoke a license or to impose a civil penalty under Child Welfare Policy II-C.1, "Licensing Umbrella Rules," (OAR 413-215-0000 to 413-215-0131);

(f) An organization or school that operates a residential care program for children and is not also a private child-caring agency when the Department takes action to order the organization or school to alter the conditions under which a child lives or receives schooling or to deny, suspend or revoke a license under Child Welfare Policy II-C.1, "Licensing Umbrella Rules," (OAR 413-215-0000 to 413-215-0131);

(g) An applicant to adopt or an applicant for a Certificate of Approval when the Department determines that the applicant is unfit based on the criminal offender information or a false statement regarding criminal offender information of the applicant or another person in the household of the applicant under Child Welfare Policy I-G.1.4, "Oregon Computerized Criminal History Checks and Nationwide Criminal History Checks through the FBI for Relative Caregivers, Foster Parents, Other Persons in the Household and Adoptive Parents for Children in the Care or Custody of DHS," (OAR 413-120-0400 to 413-120-0470);

(h) An individual whose allegation that the Department delayed or denied the placement of a child for adoption when a family with an approved home study was available outside the state of Oregon was denied or not acted upon within a reasonable time under Child Welfare Policy I-G.1.5, "Adoption Placement Selection," (OAR 413-120-0000 to 413-120-0080); and

(i) A person when that person has the right to a contested case hearing under a statute concerning Child Welfare Programs or a rule in Chapter 413.

(3) These rules describe the policies that apply to the contested cases described in section (2) of this rule.

(a) OAR 137-003-0501 to 137-003-0700 apply to these contested cases, except to the extent that rules in Chapter 413 are permitted to and provide otherwise.

(b) Rules in Chapter 461 do not apply to these contested cases unless a rule in Chapter 413 expressly refers to them.

(c) The method described in OAR 137-003-0520(10) is used in computing any period of time prescribed in these rules.

(4) Representation.

(a) When a child has the right to a hearing because the Department takes an action under subsection (2)(a) of this rule, the foster parent or relative caregiver may:

(A) Request a hearing on behalf of the child; and

(B) Participate in the hearing on behalf of the child.

(b) When the Department takes an action to deny, reduce, or terminate a benefit or service that is provided under Title IV-E or Title XIX of the Social Security Act, a party may be represented by a relative, a friend, or other spokesman as authorized by federal law.

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(c) In all other cases, a party may be represented as provided in OAR 137-003-0555.

(d) The Department, subject to the approval of the Attorney General, has authorized its employees to represent the Department in cases involving the actions described in OAR 413-010-0500(1)(a)-(c).

(e) A Department employee acting as the Department's representative may not make legal argument on behalf of the Department.

(A) "Legal argument" includes argument on:

(i) The jurisdiction of the Department to hear the contested case;

(ii) The constitutionality of a statute or administrative rule or the application of a constitutional requirement to the Department; and

(iii) The application of court precedent to the facts of the particular contested case proceeding.

(B) "Legal argument" does not include presentation of a motion, evidence, examination and cross-examination of a witness, or presentation of a factual argument on:

(i) The application of a statute or administrative rule to the facts in the contested case;

(ii) Comparison of a prior Department action when handling a similar situation;

(iii) The literal meaning of a statute or administrative rule directly applicable to an issue in the contested case;

(iv) The admissibility of evidence; and

(v) The correctness of a procedure being followed in the contested case hearing.

(f) The Department may be represented in any contested case proceeding by the Attorney General.

(5) Contested cases under these rules are not open to the public and are closed to nonparticipants, except nonparticipants may attend subject to the consent of each party and the Department.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 183.411 - 183.685, 411.095, 418.005

Hist.: SOSCF 32-2001, f. 6-29-01 cert. ef. 7-1-01; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 10-2009(Temp), f. & cert. ef. 9-1-09 thru 12-28-09; CWP 20-2009, f. & cert. ef. 12-29-09

## 413-010-0505

### Hearing Requests

(1) To request a hearing under OAR 413-010-0500(2)(a)-(c):

(a) The party or the party's representative must complete and sign the Department's Administrative Hearing Request form; and

(b) The form must be received by the Department not later than 30 days following the mailing date or date of personal delivery of the notice.

(2) Requests for a hearing under OAR 413-010-0500(2)(d)-(i) must be in writing and must be received by the Department by the date specified in the Department's notice.

(3) In the event a request for a hearing is not timely, OAR 137-003-0528 applies, except to the extent provided otherwise in section (5) of this rule.

(4) If a contested case notice was sent by regular mail, and the party or party's representative indicates that neither the party nor the party's representative received or had actual knowledge of the contested case notice, the Department must advise the party or party's representative of the right to request a hearing under section (5) of this rule.

(5) When the Department receives a hearing request that is not filed within the timeframe required by section (1) or section (2) of this rule but is filed no later than 60 days after a notice becomes a final order under OAR 413-010-0510(3):

(a) If the Department finds that the party and party's representative did not receive the written notice and did not have actual knowledge of the notice, the Department refers the request for a hearing to the Office of Administrative Hearings (OAH) for a contested case hearing on the merits of the Department's action described in the notice.

(b) The Department may refer the request for a hearing to the OAH for a contested case proceeding to determine whether the party or party's representative received the written notice or had actual knowledge of the notice. At the hearing, the Department must show that the party or party's representative had actual knowledge of the notice or that the Department mailed the notice to the correct address of the party or party's representative.

(6) Upon receipt of a hearing request that is not described in OAR 413-010-0500(2), the Department may enter an order that the hearing request is not eligible for referral to the Office of Administrative Hearings. Alternately, the Department may refer a hearing request to the Office of Administrative Hearings for a decision on the question of whether there is a right to a contested case hearing.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 183.411 - 183.685, 411.095, 418.005, 2009 OL ch. 126

Hist.: CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 9-2009(Temp), f. & cert. ef. 8-12-09 thru 12-28-09; CWP 20-2009, f. & cert. ef. 12-29-09

## 413-010-0510

### Notice

(1) When the Department takes any of the actions described in OAR 413-010-0500(2), the Department issues a written notice as described in OAR 137-003-0505 to the person that has the right to a contested case hearing.

(2) In addition to the information required by OAR 137-003-0505, when the Department takes any of the actions described in OAR 413-010-0500(2)(a)-(c), the written notice also must:

(a) Specify the date the notice is mailed or personally delivered;

(b) Specify the action the Department intends to take and the effective date of the action. If benefits are reduced or closed to reflect cost-of-living adjustments in benefits or other mass change under a program operated by a federal agency or to reflect a mass change to payments in another program operated by the Department, it is sufficient to meet this requirement that the notice state all of the following:

(A) The general nature of the change.

(B) Examples of how the change affects the benefits of the group of affected clients.

(C) The month in which the change will take place.

(c) Specify the circumstances under which payments or benefits are continued if a hearing is requested and whether continued benefits may be subject to recovery by the Department if the Department's action is upheld; and

(d) If the Department intends to terminate benefits or payments because the individual is ineligible for the benefits or payments or the program is terminated, state that the individual may reapply for assistance if circumstances affecting the eligibility of the individual change.

(3) Department notices indicate that the Department designates the record of the proceeding, including information in the Department's file or files and materials added by a party, as the record upon default. The Department's notice becomes a final order:

(a) The day after the date prescribed in the notice as the deadline for requesting the hearing if the party fails to request a hearing; or

(b) The day the Department or OAH mails an order dismissing the hearing request because the party withdraws the request or fails to appear on the date and at the time set for the hearing.

(4) When the Department terminates or reduces benefits or services under subsections (2)(a) to (2)(c) of OAR 413-010-0500, the Department must send the notice:

(a) At least 10 calendar days before the effective date of the action, except as provided in subsection (b) of this section.

(b) When the Department changes a benefit standard that results in the reduction, suspension or closure of a grant of public assistance:

(A) At least 30 days before the effective date of the action; or

(B) At least 10 working days before the effective date of the action when the Department has fewer than 60 days before the effective date to implement the proposed change.

(c) For purposes of this rule, the term "changes a benefit standard" means a change to the applicable inflation-adjusted contribution, income, or payment standard. It does not include the annual adjustment to a standard based on a federal or state inflation rate.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 183.411 - 183.685, 411.095, 418.005

Hist.: CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 20-2009, f. & cert. ef. 12-29-09

## 413-010-0515

### Continuation of Benefits

(1) When the Department terminates or reduces benefits or services under subsections (2)(a) to (2)(c) of OAR 413-010-0500, the party may receive continuing benefits to the extent provided in this rule while the contested case is pending until a final order is issued in the case. Continuing benefits are not available to maintain benefits or services at a level for which the only issues in the contested case hearing are issues of state or federal law or policy or change in state or federal law or policy.

(2) To be entitled to continuing benefits under section (1) of this rule:

(a) When a Department hearing request form gives a party choice of whether or not to receive continuing benefits, the party must indicate that the party wants continuing benefits on the hearing request form received by the Department; and

(b) If the notice indicates that the Department is setting as the deadline to request continuing benefits the date the Department intends to terminate or reduce services, the Department must receive the completed hearing request by that deadline.

(3) To the extent the Department's action is sustained by the final order, a dismissal of the hearing request, or the withdrawal of a hearing request by the party, the Department may institute recovery procedures to recoup the cost of any continuing or reinstated benefits to the extent they were furnished solely by reason of this rule.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 183.411 - 183.685, 411.095, 418.005

Hist.: CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 9-2009(Temp), f. & cert. ef. 8-12-09 thru 12-28-09; CWP 20-2009, f. & cert. ef. 12-29-09

## 413-010-0520

### Informal Conference

(1) The Department representative and the party or party's representative may have an informal conference to discuss any of the matters listed in OAR 137-003-0575(4). The informal conference also may be used to:

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- (a) Provide an opportunity for the Department and the party to settle the matter;
  - (b) Ensure the party understands the reason for the action that is the subject of the hearing request;
  - (c) Give the party an opportunity to review the documents that are the basis for that action;
  - (d) Give the party an opportunity to review the rules that support the Department's action;
  - (e) Give the party and the Department the chance to correct any misunderstanding of the facts; and
  - (f) Give the Department an opportunity to review its action.
- (2) The party may, at any time prior to the hearing date, request an additional informal conference with the Department representative.
- Stat. Auth.: ORS 418.005  
Stats. Implemented: ORS 183.411 - 183.685, 411.095, 418.005  
Hist.: CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 20-2009, f. & cert. ef. 12-29-09

## 413-010-0525

### Burden of Proof

In any contested case covered by these rules (OAR 413-010-0500 to 413-010-0535), the party has the burden of proof.

Stat. Auth.: ORS 418.005  
Stats. Implemented: ORS 183.411 - 183.685, 411.095, 418.005  
Hist.: CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 20-2009, f. & cert. ef. 12-29-09

## 413-010-0530

### Withdrawals and Dismissals

- (1) Withdrawals.
    - (a) A party or party's representative may withdraw a request for a hearing orally or in writing at any time before a final order has been issued on the contested case.
    - (b) Following a withdrawal under subsection (a) of this section, the Department or the Office of Administrative Hearings sends an order dismissing the hearing request to the party's last known address. The party may cancel the withdrawal if a request to cancel the withdrawal is received by the Department representative up to the tenth work day following the date such an order is sent. If the party withdrew the hearing request in writing, the Department must receive a timely written request to cancel the withdrawal.
    - (c) The Department may withdraw any pending referral from the Office of Administrative Hearings at any time before a final order is served:
      - (A) When the Department provides to the party the relief sought; or
      - (B) The Department and the party reach an agreement under ORS 183.417(3).
    - (2) An order dismissing a hearing request is issued when the party or the party's representative does not appear at the time and place specified for the hearing.
      - (a) The dismissal by order is effective on the date the order is issued.
      - (b) The Department may reconsider and cancel the dismissal under OAR 137-003-0675 on request of the party on a timely showing that the party was unable to attend the hearing and unable to request a postponement for reasons beyond party's reasonable control. The Department may refer the reconsideration decision to the Office of Administrative Hearings.
- Stat. Auth.: ORS 418.005  
Stats. Implemented: ORS 183.411 - 183.685, 411.095, 418.005  
Hist.: CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 20-2009, f. & cert. ef. 12-29-09

## 413-010-0535

### Proposed and Final Orders

- (1) When the Department refers a contested case under these rules (OAR 413-010-0500 to 413-010-0535) to the Office of Administrative Hearings (OAH), the Department indicates on the referral whether the Department is authorizing a proposed order, a proposed and final order (OAR 137-003-0645(4)), or a final order.
- (2) During or after a contested case hearing, when it is determined that the correct application of OAR 413-020-0230, 413-090-0133, or 413-090-0150 requires the consideration of facts that differ from the facts on which the Department made a decision to deny, reduce, or terminate either a level of care payment for enhanced supervision or personal care services or a level of care payment for personal care services, the Department will reapply OAR 413-020-0230, 413-090-0133, or 413-090-0150 based on new or different facts.
  - (3) When the Department authorizes either a proposed order or a proposed and final order:
    - (a) The party may file written exceptions and written argument to be considered by the Assistant Director for Children, Adults, and Families Division or the Assistant Director's designee. The exceptions and argument must be received at the location indicated in the order not later than the tenth day after service of the proposed order or proposed and final order.
    - (b) If the party does not submit timely exceptions or argument following a proposed and final order, the proposed and final order becomes a final order not later than the tenth day after service of the proposed and final order unless the Department has issued a revised order or has notified the parties

- and the administrative law judge that the Department will issue the final order.
  - (c) When the Department receives timely exceptions or argument, the Department issues the final order, unless the Department requests that OAH issue the final order under OAR 137-003-0655.
  - (4) A request by a party for reconsideration or rehearing must be filed with the person who signed the final order within the time limits of OAR 137-003-0675.
  - (5) A final order should be issued or the case otherwise resolved no later than 90 days following the receipt of the request for a hearing.
  - (6) A final order is effective immediately upon being signed or as otherwise provided in the order.
  - (7) The Department reserves the right to withdraw or amend any final order issued by the Office of Administrative Hearings or the Department at any time permitted by law.
- Stat. Auth.: ORS 418.005  
Stats. Implemented: ORS 183.411 - 183.685, 411.095, 418.005  
Hist.: CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 20-2009, f. & cert. ef. 12-29-09

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**Rule Caption:** Changing OARs affecting Child Welfare programs.  
**Adm. Order No.:** CWP 21-2009  
**Filed with Sec. of State:** 12-29-2009  
**Certified to be Effective:** 12-29-09  
**Notice Publication Date:** 11-1-2009  
**Rules Adopted:** 413-090-0021, 413-090-0133, 413-090-0135, 413-090-0136  
**Rules Amended:** 413-020-0200, 413-020-0210, 413-020-0230, 413-020-0233, 413-020-0236, 413-020-0240, 413-020-0245, 413-020-0255, 413-040-0000, 413-040-0005, 413-040-0006, 413-040-0008, 413-040-0009, 413-040-0010, 413-040-0011, 413-040-0013, 413-040-0016, 413-040-0017, 413-040-0024, 413-040-0032, 413-070-0600, 413-070-0620, 413-070-0625, 413-070-0630, 413-070-0640, 413-070-0645, 413-080-0040, 413-080-0050, 413-080-0052, 413-080-0055, 413-080-0059, 413-080-0063, 413-080-0067, 413-090-0000, 413-090-0005, 413-090-0010, 413-090-0030, 413-090-0040, 413-090-0050, 413-090-0100, 413-090-0110, 413-090-0120, 413-090-0130, 413-090-0140, 413-090-0150, 413-090-0210  
**Rules Repealed:** 413-080-0000, 413-080-0010, 413-080-0020, 413-080-0030, 413-090-0160, 413-090-0170, 413-090-0180, 413-090-0190, 413-090-0200

**Subject:** These rules about payments to foster parents and relative caregivers eligible to receive assistance on behalf of an eligible child and eligible young adults for housing assistance are being adopted, amended, and repealed because the Department is redesigning the rates and structures for these payments (rate redesign). These rules set the requirements and responsibilities for the Department and foster parents and relative caregivers of an eligible child or young adult around assistance payments, payment structure, eligibility requirements for enhanced supervision and personal care services payments, and housing subsidy payments. These rules also are being amended, adopted, and repealed so that the Department will be in compliance with federal requirements and timelines in response to a federal audit, to clarify the use of Title XIX personal care services payments, to comply with federal requirements regarding case planning and length of time a child can be away from a substitute care placement while the payment continues, and to implement the new payment structure for foster care maintenance payments when a child is in a home certified by the Department. These rules also clarify Department responsibilities for monitoring the safety of a child who needs enhanced supervision. These rule changes make permanent rule changes made through the temporary rulemaking process on July 1, 2009, August 12, 2009, and September 1, 2009.

OAR 413-020-0200, 413-020-0210, 413-020-0230, 413-020-0233, 413-020-0236, 413-020-0240, 413-020-0245, and 413-020-0255 about the Department's responsibilities in monitoring and managing the enhanced supervision needs of a child or young adult in substitute care are being amended to reflect current Department terminology, policy, and practices. OAR 413-020-0210 about the definitions used in OAR 413-020-0200 to 413-020-0255 also is being amended to add current and remove outdated definitions of terms used throughout these rules. OAR 413-020-0230 also is being



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amended to state under which circumstances the Department must complete and how the Department reviews a CANS (Child and Adolescent Needs and Strengths) screening. OAR 413-020-0233 also is being amended to describe the requirements of the Department in developing a supervision plan for a child or young adult in substitute care. OAR 413-020-0236 also is being amended to state the Department methodology and considerations when developing a supervision plan. OAR 413-020-0240 also is being amended to state when a physical restraint may be used even if the certified family has not attended Behavior Crisis Management Training or the child or young adult does not have a supervision plan. OAR 413-020-0245 also is being amended to explain the Department's responsibilities when monitoring a child or young adult's enhanced supervision needs. OAR 413-020-0255 also is being amended to explain the training required of a certified family when a supervision plan includes the use of physical restraint as a supervision action or activity.

OAR 413-040-0000, 413-040-0005, 413-040-0006, 413-040-0008, 413-040-0009, 413-040-0010, 413-040-0011, 413-040-0013, 413-040-0016, 413-040-0017, 413-040-0024, and 413-040-0032 about the development and management of a case plan for a child who has been removed from the care and custody of his or her parents or legal guardians by the Department are being amended to reflect current Department terminology, policy, and practices. OAR 413-040-0005 about the definitions used in OAR 413-040-0000 to 413-040-0032 also is being amended to add current and remove outdated definitions of terms used throughout these rules. OAR 413-040-0010 about the requirements for a substitute care case plan is being amended to include referrals for services based on a CANS screening or other screening or assessment and remove an exception process for the requirement that a caseworker develop a case plan within 60 days of a child's removal from a home or completion of a Child Protective Services assessment. OAR 413-040-0013 about the Department's case plan monitoring requirements also is being amended to state a caseworker must make reasonable efforts to reduce the time the child or young adult spends in substitute care, monitor the case plan, and terminate Department intervention services in a timely manner, and is responsible for a timely response to the child or young adult's needs identified in the CANS screening or other screening or assessment. OAR 413-040-0024 about the Department's requirements when developing an in-home ongoing safety plan also is being amended to clarify when the in-home ongoing safety plan must be revised prior to returning a child to his or her parents.

OAR 413-070-0600, 413-070-0620, 413-070-0625, 413-070-0630, 413-070-0640, and 413-070-0645 about how the Department assesses a child or young adult's needs, identifies the appropriate placement, and assesses the placement for the safety, permanency, and well-being when the child or young adult has been placed in substitute care are being amended to reflect current Department terminology, policy, and practices. OAR 413-070-0620 about the definitions used in these rules also is being amended to add current and remove outdated definitions of terms used throughout these rules. 413-070-0625 about the Department's responsibilities to assess a child's needs prior to placement also is being amended to clarify language, add young adult to these rules, and state how the Department selects a substitute care placement for a child or young adult. OAR 413-070-0630 about Department monitoring of the ongoing substitute care placement needs of a child or young adult also is being amended to state a caseworker must determine if the foster parent, relative caregiver, or provider manages the child or young adult's supervision needs as identified by the CANS screening and provides the personal care services outlined in the personal care services plan. OAR 413-070-0645 about involving a substitute caregiver in a child or young adult's permanent placement planning also is being amend-

ed to state how the Department involves substitute caregivers in the development of a child or young adult's permanency plan.

OAR 413-080-0000, 413-080-0010, 413-080-0020, and 413-080-0030 about how the Department determines when and what type of shelter care is appropriate for a child in substitute care are being repealed as their relevant provisions have been incorporated into OAR 413-090-0000 to 413-090-0050.

OAR 413-080-0050 about the definitions used in the Department's rules about monitoring child safety, OAR 413-080-0059 about Department responsibility for monitoring the safety and well-being of a child or young adult placed in substitute care, and OAR 413-080-0063 about the additional documentation required when a child or young adult is placed in Oregon through the Interstate Compact for the Placement of Children (ICPC) are being amended to add current and remove outdated definitions of terms used throughout the Department's rules about monitoring child safety, ensure a child or young adult's personal care services supervision needs are met, and place definitions in the correct rule. OAR 413-080-0040 about the purpose of the monitoring child safety rules (OAR 413-070-0040 to 413-080-0067), OAR 413-080-0052 about mandatory reporting of new safety threats on an open child safety case, OAR 413-080-0055 about in-home ongoing safety plans, and OAR 413-080-0067 about the required face-to-face contacts between Department caseworkers and children, young adults, parents, legal guardians, certified families, and providers are being amended to update terminology.

OAR 413-090-0000, 413-090-0005, 413-090-0010, 413-090-0030, 413-090-0040, and 413-090-0050 about the Department's responsibilities in determining and providing the foster care base rate, shelter care, enhanced shelter care, level of care, Chafee housing, and independent living housing subsidy payments for a child or young adult in substitute care are being amended to reflect current Department terminology, policy, and practices. OAR 413-090-0000 about the purpose of the Department's payment for foster care base rate, shelter care, enhanced shelter care, level of care, Chafee housing, and independent living housing subsidy payments (OAR 413-090-0000 to 413-090-0130) also is being amended to state accurately the purpose of these rules and to remove references to family group home care and residential treatment service providers as payments for those services are not covered by these rules (OAR 413-090-0000 to 413-090-0050). OAR 413-090-0005 about the definitions used in these rules also is being amended to add current and remove outdated definitions of terms used throughout these rules. OAR 413-090-0010 about the eligibility for payments for family foster care, shelter care, enhanced shelter care, level of care, dependent parent, Chafee housing and independent living housing subsidy also is being amended to state when the Department makes these payments, the eligibility requirements that must be met for the Department to make these payments, what expenses, each type of payment is intended to cover, when payment is prohibited, to explain how the Department determines the level of care and the payment to a foster parent or relative caregiver for each level of care when an eligible child or young adult requires enhanced supervision, and state that the shelter care rate for a child or young adult age 13 through 20 years old is a daily rate, state the daily rates for enhanced shelter care, and set forth the limitations of Chafee housing and independent living housing subsidy payments. OAR 413-090-0021 is being adopted to state when the Department conducts periodic review of a child or young adult's continued eligibility for a level of care payment. OAR 413-090-0030 about payments during a child or young adult's temporary absence from the placement home is being amended to state that family foster care payments may be continued for no longer than 14 days during a child or young adult's absence and that district manger approval is required for payment for more than seven but less than 14 days and to remove language permitting payment or utilization credits for residential treatment stays for a child or young adult in substitute care. OAR 413-090-0040 about payments made during adoptive supervision is being amended to allow base rate and enhanced supervision payments to foster parents who plan to adopt the child until adoption

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assistance payments commence. OAR 413-090-0050 about when the Department may continue current foster care payments to a foster parent or relative caregiver moving out of Oregon beyond 180 days when the licensure or certification process in a receiving state has not been completed when the delay is due to circumstances beyond the Department's control and to remove language allowing the payments to continue when the delay is due to circumstances beyond the control of the foster parent or relative caregiver.

OAR 413-090-0100 about the purpose of the Department's personal care services rules (OAR 413-090-0100 to 413-090-0210), OAR 413-090-0110 about the definitions used in these rules, OAR 413-090-0120 about the scope of personal care services, OAR 413-090-0130 about the eligibility requirements for personal care services, OAR 413-090-0140 about the periodic review of a client's eligibility for personal care services, OAR 413-090-0150 about payment determinations, and OAR 413-090-0210 about the termination of personal care services and payments are being amended; OAR 413-090-0133 about how the Department conducts a personal care services assessment, OAR 413-090-0135 about provider eligibility to provide personal care services, and 413-090-0136 about developing a personal care services plan are being adopted; and OAR 413-090-0160 about personal care services costs the Department will reimburse, OAR 413-090-0170 about personal care services costs the Department will not reimburse, OAR 413-090-0180 about the requirements for special rate payments, OAR 413-090-0190 about the authorization of payments, and OAR 413-090-0200 about exceptions and variances costs are being repealed to clarify the Department's policy for this program, include definitions used throughout the personal care services rules, OAR 413-090-0100 to 413-090-0210, reflect current Department terminology, state the payment rates, and bring the personal care services program into compliance with federal requirements.

**Rules Coordinator:** Annette Tesch—(503) 945-6067

## 413-020-0200

### Purpose

The purpose of these rules (OAR 413-020-0200 to 413-020-0255), is to describe the responsibilities of the Department to --

- (1) Identify the supervision needs of a child or young adult in substitute care with a *certified family*;
- (2) Assess whether a certified family is managing the enhanced supervision needs of a child or young adult;
- (3) Describe the responsibilities of the certified family and the Department when physical restraint is used; and
- (4) Provide training and support services to a certified family who is having difficulty managing the supervision needs of a child or young adult.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SCF 4-1996, f. & cert. ef. 9-11-96; CWP 3-2003, f. & cert. ef. 1-7-03; CWP 6-2007, f. & cert. ef. 5-1-07; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 11-2009(Temp), f. & cert. ef. 9-25-09 thru 12-28-09; CWP 21-2009, f. & cert. ef. 12-29-09

## 413-020-0210

### Definitions

The following definitions apply to OAR 413-020-0200 to 413-020-0255:

(1) "BRS" means Behavior Rehabilitation Services, a Medicaid funded program that provides behavioral intervention, counseling, or skill building services in a professional, shelter, or residential (including therapeutic foster care formerly referred to as proctor care) placement setting.

(2) "CANS screener" means an individual, who performs CANS screenings under the supervision of or under a contract with the Department, and who has completed successfully the training in the use of the Oregon CANS Comprehensive Screening Tool with a documented reliability score of 0.70 or greater.

(3) "CANS screening" means Child and Adolescent Needs and Strengths screening, a process of integrating information on a child or young adult's needs and strengths for the purposes of case planning, service planning, and determining the supervision needs of the child or young adult. The Department uses two versions of the CANS Comprehensive Screening Tool, one version for an individual birth through five years old and another version for an individual six through twenty years old.

(4) "Certified family" means an individual or individuals who hold a current Certificate of Approval from the Department to operate a home to provide care, in the home in which he or she resides, to a child or young adult in the care or custody of the Department.

(5) "Certifier" means a Child Welfare employee who conducts assessments of applicants interested in providing relative or foster care to a child or young adult in the care or custody of the Department, determines whether or not to recommend approval of the operation of a relative care or foster home, and monitors the compliance of a relative care or foster care home with Child Welfare certification rules.

(6) "Child" means a person under 18 years of age.

(7) "Department" means Department of Human Services, Child Welfare.

(8) "Enhanced supervision" means the additional support, direction, observation, and guidance provided by a certified family to a child or young adult to promote and ensure the safety and well-being of the child or young adult, beyond the level of supervision that typically is required for a child or young adult of the same age.

(9) "Foster parent" means a person who operates a home that has been approved by the Department to provide care for an unrelated child or young adult placed in the home by the Department.

(10) "Level of care" means the payment for enhanced supervision needs of a child or young adult to a certified family.

(11) "Physical restraint" means the act of restricting a child or young adult's voluntary movement as an emergency measure to manage and protect the child or young adult or others from injury when no alternate actions are sufficient to manage the child or young adult's behavior. Physical restraint does not include temporarily holding a child or young adult to assist him or her or assure his or her safety, such as preventing a child from running onto a busy street.

(12) "Physical Restraint Incident Report" means a written description of an event involving a child or young adult that requires the relative caregiver or foster parent to use physical restraint.

(13) "Relative caregiver" means a person who operates a home that has been approved by the Department to provide care for a related child or young adult placed in the home by the Department.

(14) "Supervision plan" means a documented set of strategies that is developed to assist a relative caregiver or foster parent in providing the additional support, observation, direction, and guidance necessary to promote and ensure a child or young adult's safety and well-being.

(15) "Young adult" means a person aged 18 through 20 years who remains in the care and custody of the Department, and lives in substitute care or lives independently through the Department's Independent Living Subsidy Program.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SCF 4-1996, f. & cert. ef. 9-11-96; SCF 8-1997, f. 8-12-97, cert. ef. 8-25-97; CWP 3-2002, f. & cert. ef. 1-7-03; CWP 6-2007, f. & cert. ef. 5-1-07; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 11-2009(Temp), f. & cert. ef. 9-25-09 thru 12-28-09; CWP 21-2009, f. & cert. ef. 12-29-09

## 413-020-0230

### Referral for and Review of the CANS Screening

(1) The caseworker of the child or young adult must complete a CANS screening referral:

(a) Effective January 1, 2010, within the first 20 days of a child's entry into substitute care when the child is living with a certified family;

(b) Within twelve months from the date of the initial CANS screening when the screening results indicated a level of care and the child or young adult is living with a certified family; and

(c) When a child or young adult whose initial placement in substitute care was a BRS placement and the child or young adult moves to the home of a certified family.

(2) The Level of Care Manager may approve a second CANS screening within twelve months from the date of the initial CANS screening when:

(a) The child or young adult's caseworker and the caseworker's supervisor concur there has been an observed, documented, ongoing change in a child or young adult's behavior or functioning which:

(A) Has not improved through a revision of the supervision plan or services provided by the Department or other agencies;

(B) Endangers the child or young adult's safety or the safety of others; or

(C) Is an enduring consistent change in behavior that persists over time and places the child or young adult or other members of the household or community in danger.

(b) A caseworker requests a CANS screening after a child or young adult returns to placement with a certified family after a BRS placement of six months or longer.

(c) New or different information relevant to the correct application of the CANS screening has been presented during an informal conference under OAR 413-010-0520 or in the findings of fact in a proposed order under OAR 413-010-0535.

(3) The CANS screening is:

(a) Conducted by a CANS screener; and

(b) Submitted to the Level of Care Manager who reviews the ratings submitted by the CANS screener and determines the level of care.

(4) The CANS screening results form documents:

(a) The rating on each element of the CANS screening tool; and

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(b) The child or young adult's presenting behaviors and functioning, the supervision necessary to promote the safety and well-being of the child or young adult, and recommendations for services based on the needs identified.

(5) A copy of the CANS screening results form is sent to the caseworker and to the certified family.

(6) When the caseworker receives the CANS screening results form, the caseworker must:

(a) Contact the certified family to review the supervision recommendations;

(b) When the CANS screening results form indicates the child or young adult currently has suicidal ideation or intent, the caseworker must review the supervision plan developed during the screening process within 24 hours of receipt of the CANS screening results and modify the plan, if appropriate;

(c) Gather information regarding the child or young adult's strengths and supervision needs; and

(d) Incorporate the needs and strengths identified in the CANS screening results and any services arranged for the child or young adult in the case plan.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SCF 4-1996, f. & cert. ef. 9-11-96; CWP 3-2002, f. & cert. ef. 1-7-03; CWP 6-2007, f. & cert. ef. 5-1-07; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 11-2009(Temp), f. & cert. ef. 9-25-09 thru 12-28-09; CWP 21-2009, f. & cert. ef. 12-29-09

## 413-020-0233

### When a Supervision Plan is Required

The caseworker must develop a supervision plan with the certified family with whom the child or young adult lives within 30 days of:

(1) The receipt of a CANS screening results form that indicates a level of care and enhanced supervision is necessary to maintain the safety and support the well-being of the child or young adult; or

(2) A placement move when a child or young adult who is receiving a level of care moves from one certified family to another certified family.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: CWP 6-2007, f. & cert. ef. 5-1-07; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 11-2009(Temp), f. & cert. ef. 9-25-09 thru 12-28-09; CWP 21-2009, f. & cert. ef. 12-29-09

## 413-020-0236

### Developing a Supervision Plan

(1) After the caseworker has reviewed a CANS screening results form that indicates a level of care, the caseworker must:

(a) Contact the certified family to explain the identified needs and the supervision requirements necessary to maintain the safety and support the well-being of the child or young adult; and

(b) During a meeting with the certified family, the child or young adult, as appropriate, and others who may participate in a supervision plan, develop a supervision plan that meets the supervision needs of the child or young adult when the results of the CANS screening indicate a level of care.

(A) Level 1 (moderate needs) means the certified family must provide an environment with the additional support, direction, observation, and guidance from the certified family to ensure a child or young adult's safety and well-being, beyond the level of supervision that typically is required for a child or young adult of the same age.

(B) Level 2 (intermediate needs) means the certified family must provide a structured environment, additional support, direction, observation, and guidance to ensure a child or young adult's safety and well-being, beyond the level of supervision that typically is required for a child or young adult of the same age.

(C) Level 3 (advanced needs) means the certified family must provide a highly structured environment, additional support, direction, observation, and guidance to ensure a child or young adult's safety and well-being, beyond the level of supervision that typically is required for a child or young adult of the same age.

(2) The supervision plan must include:

(a) The supervision actions or activities that are to be provided by the certified family and other individuals to meet the child or young adult's identified needs, such as proactive use of space, routine, structure of the environment, positive reinforcement, and de-escalation techniques;

(b) The actions and assistance the Department is to provide to support the certified family in addressing the needs of the child or young adult and maintaining the child or young adult in the home;

(c) The actions the child or young adult is to take to support the supervision plan;

(d) The persons responsible for monitoring the child or young adult's supervision needs and supervision actions and activities;

(e) How the persons responsible for monitoring the supervision plan are to communicate with each other; and

(f) When the supervision plan is to be reviewed, which must be at the next face-to-face contact with the certified family described in OAR 413-080-0059(1)(c) after the date the supervision plan is signed by the caseworker and the certified family.

(3) The supervision plan must be signed by:

(a) The caseworker and the certified family; and

(b) The child or young adult, if able, and other individuals who are to provide specific actions or activities in the supervision plan.

(4) The supervision plan must be approved by the caseworker's supervisor.

(5) Before a supervision plan may include physical restraint as a supervision action or activity:

(a) The certified family must have completed the physical restraint training requirements described in OAR 413-020-0255;

(b) The certified family must agree to document each use of physical restraint in writing on a Physical Restraint Incident Report as soon as reasonably possible after each use; and

(c) The certified family must agree to orally report the circumstances of each physical restraint to the caseworker or the caseworker's supervisor within one business day and submit the Physical Restraint Incident Report to the caseworker within two business days.

(6) A supervision plan that includes the use of physical restraint as a supervision action and activity must:

(a) Focus on intervention strategies designed to modify a child or young adult's behavior without the need for physical restraint;

(b) Explain that a physical restraint is to be used only when the child or young adult's behavior poses an imminent danger to self or others, and when no alternate actions are sufficient to stop a child or young adult's behavior; and

(c) Be approved by the Child Welfare program manager.

(7) The caseworker must provide a copy of the signed supervision plan to the certified family, provide a copy to the certified family's certifier, and file a copy in the child or young adult's case file.

(8) The caseworker must summarize the supervision plan in the Department's information system in the child or young adult's case notes and in the provider notes.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: CWP 6-2007, f. & cert. ef. 5-1-07; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 11-2009(Temp), f. & cert. ef. 9-25-09 thru 12-28-09; CWP 21-2009, f. & cert. ef. 12-29-09

## 413-020-0240

### Use of Physical Restraint

(1) A physical restraint may only be used if the behavior of a child or young adult places the child or young adult or others in imminent risk of harm, and only if good judgment indicates that a physical restraint may safely be implemented.

(a) The certified family may use a physical restraint under the circumstances described in this section even if:

(A) The certified family has not attended Behavior and Crisis Management Training; or

(B) The child or young adult does not have a supervision plan.

(b) Physical restraint must be implemented with the least force necessary to prevent the risk of harm to self or others and should end as soon as the risk of harm no longer exists.

(2) Any time a physical restraint is used, the certified family must:

(a) Document the use of the physical restraint in writing on a Physical Restraint Incident Report as soon as reasonably possible after the incident;

(b) Report the circumstances of the physical restraint to the caseworker or the caseworker's supervisor within one business day; and

(c) Submit the written documentation of the circumstances of each physical restraint to the caseworker within two business days.

(3) If the behavior of a child or young adult places the child or young adult or others in imminent risk of harm, and good judgment indicates that a physical restraint cannot be implemented, the certified family must call the local law enforcement agency to request intervention. The certified family must:

(a) Orally report the incident to the caseworker and the caseworker's supervisor as soon as reasonably possible; and

(b) Document the incident in writing on a Physical Restraint Incident Report and submit written documentation to the caseworker within two business days.

(4) If the child or young adult is injured during the incident, whether or not a physical restraint is used, the certified family immediately must notify the Department's emergency 24-hour contact.

(5) Mechanical restraint or seclusion of a child or young adult is prohibited in an emergency or at any other time. For the purposes of this rule:

(a) "Mechanical restraint" means the use of any physical device to involuntarily restrain the movement of all or a portion of a child's body as a means of controlling his or her physical activities in order to protect the child or other persons from injury. Mechanical restraint does not apply to movement restrictions stemming from medicinal, dental, diagnostic, or surgical procedures which are based on widely accepted, clinically appropriate methods of treatment by qualified professionals operating within the scope of their licensure.

(b) "Seclusion" means the involuntary confinement of a child alone in a specifically designed room from which the child is physically prevented from leaving.

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Stat. Auth.: ORS 418.005  
Stats. Implemented: ORS 418.005  
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SCF 4-1996, f. & cert. ef. 9-11-96; SOSCF 8-2001, f. 6-29-01, cert. ef. 7-1-01; CWP 3-2002, f. & cert. ef. 1-7-03; CWP 6-2007, f. & cert. ef. 5-1-07; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 11-2009(Temp), f. & cert. ef. 9-25-09 thru 12-28-09; CWP 21-2009, f. & cert. ef. 12-29-09

## 413-020-0245

### Responsibilities in Monitoring a Child or Young Adult's Supervision Needs

(1) During each face-to-face contact described in OAR 413-080-0059, the caseworker must determine:

(a) Whether the certified family is meeting the supervision needs of the child or young adult;

(b) Whether the supervision needs of the child or young adult have changed.

(2) If the supervision needs of the child or young adult are not being met, the caseworker must assess the safety of the child or young adult as required by OAR 413-080-0059(2)(b).

(3) If, after assessing the safety of the child or young adult, the caseworker determines that the child or young adult currently is safe in the home but his or her supervision needs are not being met, the caseworker must:

(a) Consult with the certifier or the certifier's supervisor to determine if available resources or training are able to provide the additional support the certified family may need to meet the child or young adult's supervision needs;

(b) Review the supervision plan to determine whether the plan needs to be revised or, if a supervision plan is not in place, determine whether a supervision plan needs to be developed as outlined in OAR 413-020-0233; and

(c) Meet with the certified family to revise or develop a supervision plan according to OAR 413-020-0236 or, if the caseworker determines that a supervision plan is not necessary, to discuss the supervision requirements necessary to meet the child or young adult's needs or additional resources available to the certified family.

(4) When there is a current supervision plan, the caseworker must:

(a) Review the supervision plan within the timeline agreed to in the plan;

(b) Assess the effectiveness of the supervision actions and activities provided by the certified family in meeting the child or young adult's supervision needs; and

(c) Continue, end, or revise the supervision plan as appropriate.

(A) The supervision plan may end when the plan successfully has reduced or eliminated the need for enhanced supervision and the child or young adult is no longer exhibiting the supervision needs identified in the CANS screening results.

(B) The supervision plan must be revised when additional supervision actions or activities are needed to meet the child or young adult's supervision needs. The caseworker must follow OAR 413-020-0236 when revising a supervision plan.

(5) If the supervision needs of the child or young adult have changed, the caseworker must determine whether a new CANS screening is required, as provided in OAR 413-020-0230(2).

Stat. Auth.: ORS 418.005  
Stats. Implemented: ORS 418.005  
Hist.: CWP 6-2007, f. & cert. ef. 5-1-07; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 11-2009(Temp), f. & cert. ef. 9-25-09 thru 12-28-09; CWP 21-2009, f. & cert. ef. 12-29-09

## 413-020-0255

### Training and the Planned Use of Physical Restraint

(1) The Department has approved Behavior and Crisis Management Training as the standard training curriculum for any certified family who requires training on crisis management and the use of physical restraint. The training curriculum focuses on strengthening a certified family's supervision skills and instructs the certified family in the use of a physical restraint as a supervision action.

(2) When a supervision plan includes the planned use of physical restraint the caseworker must consult with the certifier to confirm that the certified family has completed Behavior and Crisis Management Training prior to the implementation of a supervision plan that includes the use of physical restraint as a supervision action or activity.

(3) A foster care coordinator or designee may approve comparable behavior and crisis management training obtained by a certified family for a specific child or young adult in place of Behavior and Crisis Management Training if:

(a) The training was selected by a school district and used in the school; or

(b) The training was approved by the Department of Human Services, Addictions and Mental Health Division and used in a Children's Intensive Mental Health Treatment Services program.

Stat. Auth.: ORS 418.005  
Stats. Implemented: ORS 418.005  
Hist.: CWP 6-2007, f. & cert. ef. 5-1-07; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 11-2009(Temp), f. & cert. ef. 9-25-09 thru 12-28-09; CWP 21-2009, f. & cert. ef. 12-29-09

## 413-040-0000

### Purpose

These rules, OAR 413-040-0000 to 413-040-0032, describe the activities required to:

- (1) Complete a protective capacity assessment;
- (2) Use the Family Decision-making Meeting;
- (3) Develop a case plan;
- (4) Develop an action agreement;
- (5) Monitor the case plan;
- (6) Review and revise the case plan;
- (7) Determine when conditions for return have been met; and
- (8) Close the ongoing safety plan and close the case.

Stat. Auth.: ORS 418.005  
Stats. Implemented: ORS 418.005  
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 15-1998, f. & cert. ef. 7-27-98; CWP 31-2003, f. & cert. ef. 10-1-03; CWP 4-2007, f. & cert. ef. 3-20-07; CWP 21-2009, f. & cert. ef. 12-29-09

## 413-040-0005

### Definitions

The following definitions apply to OAR 413-040-0000 to 413-040-0032:

(1) "Action agreement" means a written document between the Department and a parent or legal guardian that identifies one or more of the services or activities provided by the Department or other community partners, in which the parent or legal guardian will participate to achieve an expected outcome.

(2) "CANS screening" means Child and Adolescent Needs and Strengths screening, a process of integrating information on a child or young adult's needs and strengths for the purposes of case planning, service planning, and determining the supervision needs of the child or young adult. The Department uses two versions of the CANS Comprehensive Screening Tool, one version for an individual birth through five years old and another version for an individual six through twenty years old.

(3) "Case plan" means a written goal oriented, time limited individualized plan for the child and the child's family, developed by the Department and the parents or legal guardians, to achieve the child's safety, permanency, and well-being.

(4) "Child" means a person under 18 years of age.

(5) "Concurrent permanent plan" means the alternate permanency plan whenever the child has been placed in substitute care when the goal of the permanency plan is to return the child to the parents. The concurrent permanent plan is developed simultaneously with the plan to return the child to the parents or legal guardians.

(6) "Conditions for return" mean a written statement of the specific behaviors, conditions, or circumstances that must exist within a child's home before a child can safely return and remain in the home with an in-home ongoing safety plan.

(7) "Department" means the Department of Human Services, Child Welfare.

(8) "Expected outcome" means an observable, sustained change in a parent or legal guardian's behavior, condition, or circumstance that, when accomplished, will increase a parent or legal guardian's protective capacity and reduce or eliminate an identified safety threat, and which, when accomplished, will no longer require Child Welfare intervention to manage a child's safety. It is a desired end result and takes effort to achieve.

(9) "Expert evaluation" means a written assessment prepared by a professional with specialized knowledge of a particular subject matter such as physical health, psychological health, mental health, sexual deviancy, substance abuse, and domestic violence. The assessment provides information regarding an individual's functioning in the area of the professional's specialized knowledge, and when the expert is evaluating a parent or legal guardian, whether the individual's functioning impacts his or her protective capacity.

(10) "Family member" means any person related to the child by blood, marriage, or adoption, including, but not limited to the parents, grandparents, stepparents, aunts, uncles, sisters, brothers, cousins, or great-grandparents. Family member also includes the registered domestic partner of a person related to the child, a child 12 years of age or older, and when appropriate, a child younger than 12 years of age. In a case involving an Indian child under the Indian Child Welfare Act (ICWA), a "family member" is defined by the law or custom of the child's tribe.

(11) "Family plan" means a written document developed at the OFDM that includes family recommendations on planning for the child and may include a permanency plan, concurrent permanent plan, placement recommendations, or service recommendations. The family plan also includes expectations of the parents of the child and other family members; services the Department will provide; time lines for implementation of the plan; benefits of compliance with the plan; consequences of noncompliance with the plan; and a schedule of future meetings if appropriate. The family plan described in ORS 417.375(1) is incorporated into the case plan to the extent that it protects the child, builds on family strengths, and is focused on achieving permanency for the child within a reasonable time.

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(12) "Ongoing safety plan" means a documented set of actions or interventions that manage a child's safety after the Department has identified one or more safety threats to which the child is vulnerable and determined the parent or caregiver is unable or unwilling to protect the child. An ongoing safety plan can be in-home or out-of-home and is adjusted when necessary to provide the least intrusive interventions.

(13) "Parent" means the biological or adoptive mother or the legal father of the child. A legal father is a man who has adopted the child or whose paternity has been established or declared under ORS 109.070, ORS 416.400 to 416.465, or by a juvenile court. In cases involving an Indian child under the Indian Child Welfare Act (ICWA), a legal father includes a man who is a father under applicable tribal law. "Parent" also includes a putative father who has demonstrated a direct and significant commitment to the child by assuming or attempting to assume responsibilities normally associated with parenthood unless a court finds that the putative father is not the legal father.

(14) "Permanency plan" means a written course of action for achieving safe and lasting family resources for the child. Although the plan may change as more information becomes available, the goal is to develop safe and permanent family resources with the parents, relatives, or other people who will assume legal responsibility for the child during the remaining years of dependency and be accessible and supportive to the child in adulthood.

(15) "Personal care services" means the provision of or assistance with those functional activities described in OAR 413-090-0120 consisting of mobility, transfers, repositioning, basic personal hygiene, toileting, bowel and bladder care, nutrition, medication management, and delegated nursing tasks that a child or young adult requires for his or her continued well-being.

(16) "Protective capacity" means behavioral, cognitive, and emotional characteristics that can specifically and directly be associated with a person's ability and willingness to care for and keep a child safe.

(17) "Registered domestic partner" means an individual joined in a domestic partnership that has been registered by a county clerk in accordance with the Oregon Family Fairness Act.

(18) "Reunification" means placement with a parent or legal guardian.

(19) "Substitute care" means the out-of-home placement of a child or young adult who is in the legal or physical custody and care of the Department.

(20) "Young adult" means a person aged 18 through 20 years who remains in the care and custody of the Department, and lives in substitute care or lives independently through the Department's Independent Living Subsidy Program.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SCF 8-1996(Temp), f. 11-27-96, cert. ef. 12-1-96; SCF 4-1997, f. 6-19-97, cert. ef. 6-28-97; SOSCF 15-1998, f. & cert. ef. 7-27-98; CWP 31-2003, f. & cert. ef. 10-1-03; CWP 4-2007, f. & cert. ef. 3-20-07; CWP 18-2008, f. & cert. ef. 8-1-08; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 21-2009, f. & cert. ef. 12-29-09

## 413-040-0006

### Requirements for the Protective Capacity Assessment

(1) The Department uses the protective capacity assessment to engage the child's parents or legal guardians in a collaborative process to:

(a) Examine and understand the behaviors, conditions, or circumstances that made the child unsafe and the parent or legal guardian's strengths that build protective capacity;

(b) Examine and understand how the behavioral, cognitive and emotional characteristics of the parents or legal guardians impact their ability to care for and keep the child safe;

(c) Determine the changes (expected outcomes) in the behaviors, conditions, or circumstances of the parents or legal guardians that will increase protective capacity and reduce or eliminate the identified safety threat; and

(d) Identify services or activities that are likely to achieve the expected outcomes.

(2) Whenever possible, the Department and the parents or legal guardians come to agreement on expected outcomes and the actions, services, and activities to achieve the expected outcomes.

(3) The caseworker must:

(a) Complete the following activities within five days of receipt of the case from the CPS worker:

(A) Review the Child Welfare case history, case documentation, and the actions and decisions of the most recent CPS assessment.

(B) Review the ongoing safety plan by contacting all participants in the safety plan to determine whether the ongoing safety plan assures the safety of the child.

(C) Document the review of the ongoing safety plan in the Department's information system.

(b) Complete the following activities:

(A) Conduct reasonable inquiries for the purpose of identifying individuals who may contribute to the caseworker's understanding of the protective capacity of the parents or legal guardians and the safety of the child. Such individuals may include parents or legal guardians, grandparents, extended family, an Indian child's tribe, and any other family members, persons with significant attachments to the child, other professionals, substitute caregivers, neighbors, and friends of the family. Reasonable inquiries mean, as defined in ORS 417.371(4)(b), efforts that include reviewing the case file for relevant

information, contacting the parents or guardians, and contacting additional sources of information for the purpose of ascertaining the whereabouts of family members, if necessary.

(B) Gather information from these individuals through individual interviews or meetings for the purpose of identifying and understanding the needs, concerns, strengths, and limitations associated with the protective capacity of parents or legal guardians and assessing the impact on the child's safety.

(C) Evaluate the relationship between:

(i) The existing protective capacities of parents or legal guardians that contribute to child safety;

(ii) The diminished protective capacities of parents or legal guardians that must change for the parents or legal guardians to care for and keep the child safe; and

(iii) The parents' or legal guardians' readiness to change.

(D) Whenever possible, collaboratively identify with the parents or legal guardians:

(i) Other family members, persons with significant attachments to the child, community members, and members of an Indian child's tribe who will contribute to and actively participate in the ongoing safety plan or enhancing the protective capacity of the parents or legal guardians; and

(ii) Actions and services that will reduce or eliminate identified safety threats or enhance the protective capacity of the parents or legal guardians.

(E) Inform the parents or legal guardians of the Department's actions and decisions regarding identified safety threats, protective capacity, and the ongoing safety plan.

(F) Enter the findings of the protective capacity assessment, the information obtained by conducting the activities required in paragraphs (A) to (D) of this subsection, in the Department's information system.

(4) The caseworker must include the findings of the protective capacity assessment in the case plan.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: CWP 4-2007, f. & cert. ef. 3-20-07; CWP 18-2008, f. & cert. ef. 8-1-08; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 21-2009, f. & cert. ef. 12-29-09

## 413-040-0008

### Requirements for a Family Decision-making Meeting

(1) "OFDM" as used in this rule means the family decision-making meeting as defined in ORS 417.365, and is a family-focused intervention facilitated by professional staff that is designed to build and strengthen the natural care giving system for the child. These meetings may include family group conferences, family unity meetings, family mediation, or other professionally recognized interventions that include extended family and rely upon the family to make decisions about planning for its children. The purpose of the family decision-making meeting is to establish a plan that provides for the safety, attachment, and permanency needs of the child. The role of the OFDM is described in ORS 417.365 to 417.375.

(2) When the child has been placed in substitute care for more than 30 days, the Department must consider scheduling an OFDM. When considered appropriate, the meeting is scheduled, whenever possible, between the 30th and 60th day of the out-of-home care placement.

(3) When a decision has been made by the Department and the family to use the OFDM, the Department will conduct and document reasonable inquiries to promptly locate and notify the parents, grandparents, an Indian child's tribe, and any other family member who has had significant, direct contact with the child in the year prior to the substitute care placement. Other participants in the meeting may include the child, if the child is 12 years of age or older, or it is otherwise appropriate to include the child, other professionals, foster parents, neighbors, and friends of the family as appropriate.

(4) Family members or an Indian child's tribe who are located after reasonable inquiries will be notified by the Department of the OFDM in a timely manner to allow them the opportunity to prepare for and attend the meeting.

(5) Other participants will be jointly identified by the parents, legal guardians, Indian custodian of the child, and the Department, and the Department will notify identified participants in a timely manner to allow them the opportunity to prepare for and attend the meeting.

(6) To assist the family in developing the family's plan for the child, the Department must provide participants with information regarding the federal timeline for determining permanency for the child and the Oregon Administrative Rules that govern the sufficiency of a safety plan, conditions for return, and reunification.

(7) The located family members may attend the OFDM unless the other participants determine that a family member may threaten or place other participants at risk. The Department may exclude family members it determines are violent, unpredictable, or abusive or an alleged perpetrator of sexual abuse, domestic violence, or severe physical assault.

(8) Family members who are not invited or allowed to participate may submit written information and recommendations to the caseworker prior to the scheduled meeting concerning the subjects of the OFDM, including concerns regarding the placement of the child, permanency plan, concurrent permanent plan, and services.

(9) During the OFDM, family members will develop a family plan for the child.

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(10) Any family member or tribal representative participating in an OFDM must sign a written acknowledgment of the content of the family plan developed at the meeting and of his or her attendance at the meeting.

(11) The Department will send a copy of the family plan developed at the OFDM within 21 days after the date of the meeting to family participants, including those who participated by submitting written information and recommendations.

(12) The Department will incorporate the family plan developed at the OFDM into the Department's case plan to the extent that the family plan protects the child, builds on family strengths, and focuses on achieving permanency for the child within a reasonable time. If the family's plan developed at the meeting cannot be incorporated into the Department's case plan, the reasons shall be documented in the Department's case plan.

(13) The Department is responsible for confirming that any family plan developed at an OFDM is sufficient to ensure the safety or permanency of the child before implementing a family plan developed at an OFDM.

Stat. Auth.: ORS 418.005  
Stats. Implemented: ORS 418.005  
Hist.: CWP 31-2003, f. & cert. ef. 10-1-03; Renumbered from 413-040-0031, CWP 4-2007, f. & cert. ef. 3-20-07; CWP 21-2009, f. & cert. ef. 12-29-09

## 413-040-0009

### Requirements for Conditions for Return

(1) The caseworker must determine the conditions that must exist prior to the return of the child to a parent or legal guardian.

(2) The conditions for return are documented in the case plan and must describe:

(a) The specific behaviors, conditions, or circumstances that must exist before the Department may develop an in-home ongoing safety plan that assures a child's safety, as described in OAR 413-015-0450(2)(b)(A)(i)-(iii); and

(b) The actions, services, and time requirements of all participants in the in-home ongoing safety plan.

Stat. Auth.: ORS 418.005  
Stats. Implemented: ORS 418.005  
Hist.: CWP 4-2007, f. & cert. ef. 3-20-07; CWP 18-2008, f. & cert. ef. 8-1-08; CWP 21-2009, f. & cert. ef. 12-29-09

## 413-040-0010

### Requirements for the Case Plan

(1) The caseworker must analyze the information gathered during the protective capacity assessment to develop a case plan. The case plan must include all of the following information:

(a) Family composition, which includes the information identifying each child, each young adult, and each parent or legal guardian.

(b) Safety threats identified in the CPS assessment as described in OAR 413-015-0420(1)(f)(A)(i) and (ii).

(c) The ongoing safety plan as described in OAR 413-015-0450 and recorded in the Department's information system.

(d) The findings of the protective capacity assessment.

(e) Expected outcomes and actions that each parent or legal guardian is taking to achieve them.

(f) Services (if applicable) to the child or young adult that include:

(A) The identified needs of and services provided to any child or young adult placed in substitute care, including the results of the CANS screening, the personal care services provided to an eligible child or young adult per Child Welfare Policy I-E.5.1.2, "Personal Care Services" OAR 413-090-0100 to 413-090-0210, and other current assessments or evaluations of the child or young adult, and the reasons the substitute care placement is the least restrictive placement to meet the child or young adult's identified needs;

(B) The child or young adult's health information, which documents the child's routine and specialized medical, dental, and mental health services;

(C) The child or young adult's education services, the school or educational placement history of the child or young adult, high school credits earned for a child over 14 years of age or a young adult, and any special educational needs; and

(D) Services to transition the child or young adult to independent living in all cases when the child is 16 years or older, and if provided to the child who is 14 or 15 years old.

(g) Services the Department will provide including:

(A) Case oversight and routine contact with the parents or legal guardians and the child or young adult;

(B) Appropriate and timely referrals to services and service providers suitable to address identified safety threats or strengthen parental protective capacity;

(C) Appropriate and timely referrals to services and service providers suitable to address the needs of the child or young adult as identified through the CANS screening and other current assessments or evaluations of the child or young adult; and

(D) Timely preparation of reports to the court or other service providers.

(h) The date that the progress of the parents or legal guardians in achieving expected outcomes will be reviewed. The case plan must be reviewed with the parents or legal guardians every 90 days; however, the

caseworker and parents or legal guardians may agree on a review date at any time within the 90-day period.

(i) When the child or young adult is in substitute care, the case plan must also include:

(A) Current placement information including:

(i) The location of the child or young adult and the substitute caregiver of the child or young adult, except when doing so would jeopardize the safety of the child, young adult, or the substitute caregiver, or the substitute caregiver will not authorize release of the address; and

(ii) Documentation that shows that the child or young adult is receiving safe and appropriate care in the least restrictive environment able to provide safety and well-being for the child or young adult.

(B) The child or young adult's record of visits with his or her parents and siblings.

(C) The permanency plan.

(D) The conditions for return.

(E) The concurrent permanent plan and the progress the Department has made in implementing the concurrent permanent plan.

(2) As applicable, the caseworker must also include in the case plan:

(a) The goals and activities required for an Indian child under the Indian Child Welfare Act (see Child Welfare Policy I-E.2.1, "Placement of Indian Children" OAR 413-010-0100 to 413-010-0260) or for a refugee child under the Refugee Act (see Child Welfare Policy I-E.2.2, "Placement of Refugee Children" OAR 413-070-0300 to 413-070-0380 and see ORS 418.925 to 418.945).

(b) Recommendations of expert evaluations requested by the Department whenever the recommendations may impact parental protective capacities or treatment services for the child or young adult. If the recommendations are not included in the case plan, the rationale must be documented in the Department's information system.

(c) Diligent efforts to place the child or young adult with relatives and with siblings who are also in substitute care, sibling connections, and the Department's efforts to keep siblings together.

(d) Orders of the court.

(3) The persons involved with the Department in the development of the case plan include the parents or legal guardians, unless their participation threatens or places other participants at risk; and may include the child, young adult, adoptive parents, an Indian custodian when applicable, other relatives, persons with significant attachments to the child or young adult, the substitute caregiver, and other professionals when appropriate.

(4) The case plan must include the signature of the caseworker and each parent or legal guardian, unless subsections (6)(a) or (6)(b) of this rule apply.

(5) Approval and distribution of the case plan.

(a) The Child Welfare supervisor must approve and sign the case plan.

(b) The caseworker must give a copy of the case plan to the parents or legal guardians of the child or young adult, and the Indian child's tribe when applicable, as soon as possible but no later than seven working days after the case plan is approved by the supervisor, except when doing so would provide information that places another person at risk.

(6) Exceptions and exemptions to the required case plan.

(a) A court may authorize an exception to the involvement of the parents or legal guardians when it determines that reasonable efforts to return the child home are not required, as described in Child Welfare Policy I-E.3.6, "Achieving Permanency" OAR 413-070-0515.

(b) When the Department has custody of a child or young adult in substitute care and is unable to obtain the signature of a parent or legal guardian, the caseworker must prepare and send a letter of expectations and a copy of the case plan to the parent or legal guardian within seven working days after the supervisor has approved and signed the case plan. A letter of expectations means an individualized written statement for the family of the child or young adult that identifies family behaviors, conditions, or circumstances that resulted in an unsafe child; the expected outcomes; and what the Department expects each parent or legal guardian will do to achieve safety, permanency, and well-being of the child or young adult in the parental home.

(c) A case plan as described in sections (1) to (5) of this rule is not required if a family, child, or young adult is eligible for Family Support Services as described in Child Welfare Policy I-B.2.3.1, "Family Support Services" OAR 413-030-0000 to 413-030-0030.

(7) Timeline for case plan development. The caseworker must develop the case plan within 60 days of a child's removal from home or within 60 days of the completion of the CPS assessment, in cases where the child remains in the home of a parent or legal guardian.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 418.005  
Stats. Implemented: ORS 418.005  
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SCF 8-1996(Temp), f. 11-27-96, cert. ef. 12-1-96; SCF 4-1997, f. 6-19-97, cert. ef. 6-28-97; SOSCF 15-1998, f. & cert. ef. 7-27-98; SOSCF 4-2000(Temp), f. & cert. ef. 1-31-00 thru 7-28-00; SOSCF 19-2000, f. & cert. ef. 8-8-00; CWP 31-2003, f. & cert. ef. 10-1-03; CWP 4-2007, f. & cert. ef. 3-20-07; CWP 18-2008, f. & cert. ef. 8-1-08; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 21-2009, f. & cert. ef. 12-29-09

# ADMINISTRATIVE RULES

## 413-040-0011

### Requirements of Action Agreements

(1) The Department develops a time-limited action agreement in conjunction with the case plan. If sufficient resources are available, the action agreement must use culturally appropriate services and service providers whose interventions are focused on the achievement by the parents or legal guardians of the expected outcomes identified in the case plan.

(2) The caseworker must ensure the action agreement includes all of the following:

- (a) A minimum of one of the expected outcomes in the case plan.
- (b) The specific activities or services required to achieve the expected outcome.
- (c) Participants and the responsibilities of each participant.
- (d) Anticipated start and completion dates.
- (e) If appropriate, identification of an order of the court that relates to the expected outcome or specified activities or services.
- (f) The method of measuring progress.
- (g) A timeline for review.

(3) A caseworker may develop sequential action agreements with a parent or legal guardian, and each action agreement must include the information required in section (2) of this rule.

Stat. Auth.: ORS 418.005  
Stats. Implemented: ORS 418.005  
Hist.: CWP 4-2007, f. & cert. ef. 3-20-07; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 21-2009, f. & cert. ef. 12-29-09

## 413-040-0013

### Requirements for Monitoring the Case Plan

- (1) The caseworker must:
  - (a) Make reasonable efforts to:
    - (A) Reduce the stay of a child or young adult in substitute care; and
    - (B) Reunify the child or young adult with the parents or legal guardians.
  - (b) Monitor the case plan; and
  - (c) Terminate Department intervention services in a timely manner.
- (2) The caseworker is responsible for all of the following actions:

(a) Contacting and communicating with each parent or legal guardian at regular 30-day face-to-face intervals about progress toward achieving the conditions for return and the expected outcomes.

(b) Contacting and communicating with the child, young adult, and, when applicable, the individual providing substitute care, at regular 30-day face-to-face intervals to monitor the safety of the child or young adult.

(c) Monitoring the services provided through the case plan through contact with each service provider a minimum of once every 90 days.

- (d) Monitoring the ongoing safety plan.
- (e) Monitoring action agreements.
- (f) Monitoring the visitation and contact plan when a child or young adult is in substitute care.

(g) Monitoring the parent or legal guardian's progress toward meeting the conditions for return when a child or young adult is in substitute care.

(h) Monitoring the parent or legal guardian's progress toward meeting the expected outcomes of the case plan.

(i) Ensuring completion of the actions and activities that are the responsibility of the Department.

(j) Reviewing the progress the parent or legal guardian has made in reducing or eliminating identified safety threats and enhancing parental protective capacity during each 30-day review of the ongoing safety plan.

(k) Arranging for supervision or other services to address the child or young adult's strengths and needs identified through the most recent CANS screening as required by Child Welfare Policy I-B.1.6, "Enhanced Supervision" OAR 413-020-0200 to 413-020-0255.

(l) Responding immediately to issues that may impact the safety of the child or young adult which become known to the caseworker.

Stat. Auth.: ORS 418.005  
Stats. Implemented: ORS 418.005  
Hist.: CWP 4-2007, f. & cert. ef. 3-20-07; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 21-2009, f. & cert. ef. 12-29-09

## 413-040-0016

### Requirements for Review of the Case Plan

(1) The case plan is reviewed a minimum of every 90 days. This review must take place in a face-to-face meeting with the parents or legal guardians, unless excluded under section (3) of this rule. The meeting may include the child, young adult, service providers, safety plan participants, substitute caregivers, attorneys, a child or young adult's CASA, persons with significant attachments to the child or young adult, and family members.

(2) During the case plan review, the caseworker assesses and determines the progress that has been made in achieving the expected outcomes of the case plan, and, when the child or young adult is in substitute care, the progress toward meeting the conditions of return.

(3) Exceptions to the face-to-face case plan review. If a parent or legal guardian is not available for the review, the caseworker must document the reason the parent or legal guardian was unavailable and the efforts that were made to involve the parent or legal guardian in the review.

(4) During a case plan review, the caseworker must consider input received from the child or young adult, the service providers, safety plan par-

ticipants, substitute caregivers, attorneys, a child or young adult's CASA, persons with significant attachments to the child or young adult, and family members.

(5) Subsequent to the face-to-face meeting, the caseworker documents all of the following in the Department's information system:

(a) The services provided and the progress of the parents or legal guardians in achieving expected outcomes or, when a child is in substitute care, meeting the conditions for return.

(b) Observations of improved parent or legal guardian protective capacity based on specific behaviors, conditions, or circumstances that have measurably changed.

(c) Input received from service providers, substitute caregivers, attorneys, the child or young adult's CASA, persons with significant attachments to the child or young adult, and family members.

(d) The reduction or elimination of the identified safety threats.

(e) The actions the Department has taken to develop and implement the concurrent permanent plan for the child or young adult in substitute care if a parent or legal guardian has not demonstrated progress in achieving the conditions for return in a timely manner including:

(A) A review of the child or young adult's education, health, and mental health services to ensure the needs of the child or young adult are being met;

(B) A review of other services provided to address the identified needs of the child or young adult, including those identified through the CANS screening;

(C) An assessment of the need of the child or young adult for a safe and permanent home; and

(D) An assessment of the capacity of the substitute caregiver to meet the identified needs of the child or young adult as described in OAR 413-070-0640.

(6) Within 30 days of receiving an expert evaluation requested by the Department, the caseworker must consider revising the case plan to include recommendations that will improve parent or legal guardian protective capacity related to the identified safety threats. If the recommendations are not included in the case plan, the rationale must be documented in the Department's information system.

(7) The Child Welfare supervisor must review the caseworker's documentation of the case plan review, and document completion of the review in the Department's information system every 90 days. The supervisor must review, approve, and sign the six-month case plan review submitted for required administrative review.

Stat. Auth.: ORS 418.005  
Stats. Implemented: ORS 418.005  
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SCF 8-1996(Temp), f. 11-27-96, cert. ef. 12-1-96; SCF 4-1997, f. 6-19-97, cert. ef. 6-28-97; SOSCF 15-1998, f. & cert. ef. 7-27-98, Renumbered from 413-040-0030; CWP 31-2003, f. & cert. ef. 10-1-03, Renumbered from 413-040-0045; Renumbered from 413-040-0063, CWP 4-2007, f. & cert. ef. 3-20-07; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 21-2009, f. & cert. ef. 12-29-09

## 413-040-0017

### Requirements for Return and Reunification

(1) The caseworker recommends returning the child or young adult to a parent or legal guardian after the caseworker has reviewed the safety threats identified in the CPS assessment that required an out-of-home ongoing safety plan and verified that:

- (a) The conditions for return in the case plan have been met;
- (b) The identified safety threats can be managed with an ongoing safety plan;

(c) The parents or legal guardians are willing and able to accept responsibility for the care of the child or young adult with an ongoing safety plan;

(d) The parents or legal guardians are willing and able to continue participating in case plan services;

(e) Service providers who are currently working with the child, young adult, parents or legal guardians, and other involved persons including the child or young adult's CASA and attorneys have been informed, in writing, of the plan to return the child or young adult with an in-home ongoing safety plan; and

(f) No safety concerns for the child or young adult are raised in the caseworker's review of the criminal history records and child welfare protective service records of all persons currently residing in a parent or legal guardian's home.

(2) When the child or young adult is returning to a parent living in a residential treatment facility, an alcohol and drug free housing program, or a residential domestic violence program, the Department does not review the criminal history records and child welfare protective service records of persons living in the state funded facilities and programs.

(3) If the caseworker cannot confirm that identified safety threats can be managed if the child or young adult is returned to a parent or legal guardian with an in-home ongoing safety plan, the child or young adult must remain in substitute care.

(4) The caseworker's supervisor must review and concur that conditions for return have been met, and that any disagreement with the plan to return the child or young adult has been reviewed and considered in the development of the in-home ongoing safety plan prior to the caseworker recom-

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mending to the court that a child or young adult be returned to a parent or legal guardian.

(5) The in-home ongoing safety plan must specifically document the planned caseworker and safety service provider contacts with the child or young adult and the parent or legal guardian, when the child or young adult is returned to the parent or legal guardian.

(6) The caseworker must revise, as necessary, and confirm the sufficiency of an in-home ongoing safety plan that will manage safety threats as they are uniquely occurring within a particular family prior to the child or young adult's physical return.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: CWP 31-2003, f. & cert. ef. 10-1-03; CWP 4-2007, f. & cert. ef. 3-20-07; CWP 18-2008, f. & cert. ef. 8-1-08; CWP 21-2009, f. & cert. ef. 12-29-09

## 413-040-0024

### Requirements for an In-home Ongoing Safety Plan Prior to Return and Next Day Contact

(1) When the caseworker determines the conditions for return have been achieved and identified safety threats can be managed when a child or young adult is returned to a parent or legal guardian (see OAR 413-040-0017), the caseworker must develop an in-home ongoing safety plan as described in OAR 413-015-0450. The caseworker's supervisor must:

(a) Approve the proposed in-home ongoing safety plan during the five working days prior to the return of a child or young adult to the home of a parent or legal guardian of the child or young adult; and

(b) Document the approval in the Department's information system.

(2) After a proposed in-home ongoing safety plan returning a child or young adult to the parent or legal guardian's home is approved by the caseworker's supervisor, the caseworker must complete all of the following activities:

(a) Visit the child or young adult, outside the presence of a parent or legal guardian, at least once during the five days prior to the return of the child or young adult to the home to confirm the readiness of and prepare the child or young adult for the return home.

(b) Visit the parent or legal guardian in the home of the parent or legal guardian, at least once during the five days prior to the return of the child or young adult to the home, to verify:

(A) The behaviors, conditions, and circumstances in the home are safe for the return of the child or young adult;

(B) Confirmation of all persons living in the household;

(C) The parent or legal guardian is ready for the return of the child or young adult;

(D) The parent or legal guardian is willing and able to participate in the ongoing safety plan; and

(E) The parent or legal guardian is willing and able to continue in case plan services.

(c) If necessary, revise the proposed in-home ongoing safety plan to ensure that it is able to manage safety threats as they are uniquely occurring within the family prior to the child or young adult's physical return.

(d) Confirm the in-home ongoing safety plan with the parent or legal guardian, and obtain the signature of the parent or legal guardian.

(e) Document the revised in-home ongoing safety plan in the Department's information system.

(3) After a proposed in-home ongoing safety plan returning a child or young adult to the parent or legal guardian's residential treatment facility, an alcohol and drug free housing program, or residential domestic violence program is approved by the caseworker's supervisor, the caseworker must complete all of the following activities:

(a) Visit the child or young adult, outside the presence of a parent or legal guardian, at least once during the five days prior to the return of the child or young adult to the home to confirm the readiness of and prepare the child or young adult for the return.

(b) Contact the parent or legal guardian at least once during the five days prior to the return of the child or young adult to the home, to verify:

(A) The parent or legal guardian is ready for the return of the child or young adult;

(B) The parent or legal guardian is willing and able to participate in the ongoing safety plan;

(C) The parent or legal guardian is willing and able to continue to participate in case plan services.

(c) Verify that the residential treatment facility, an alcohol and drug free housing program, or residential domestic violence program is a safe environment for the child or young adult.

(d) If necessary, revise the proposed in-home ongoing safety plan to ensure that it is able to manage the safety threats as they are uniquely occurring prior to the child or young adult's physical return.

(e) Confirm the in-home ongoing safety plan with the parent or legal guardian and obtain the signature of the parent or legal guardian.

(f) Document the revised ongoing safety plan in the Department's information system.

(4) In the event a court orders the return of a child or young adult to a parent or legal guardian of the child or young adult before an in-home ongoing

safety plan can be developed and approved (in accordance with the criteria in OAR 413-015-0450 and this rule):

(a) The caseworker must complete the activities described in this rule as soon as practicable, but not later than seven working days following the court order; and

(b) If the caseworker disagrees with the order of the court, the caseworker must immediately consult with his or her supervisor.

(5) The caseworker must visit the child or young adult in the residence of the parent or legal guardian the day following the return home of the child or young adult. The caseworker must:

(a) Monitor the safety of the child or young adult by completing the activities required by OAR 413-080-0055(2);

(b) Follow the requirements of OAR 413-080-0055(4)-(6), as appropriate; and

(c) Document observations and the conditions of the residence in the Department's information system within seven business days of the visit.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: CWP 4-2007, f. & cert. ef. 3-20-07; CWP 18-2008, f. & cert. ef. 8-1-08; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 21-2009, f. & cert. ef. 12-29-09

## 413-040-0032

### Requirements for Closing the In-Home Ongoing Safety Plan and Closing the Case

(1) When a child or young adult is in the home of the parent or legal guardian and the parent or legal guardian can sustain the safety of the child or young adult, the caseworker must assess when the in-home ongoing safety plan should close.

(2) When assessing whether the in-home ongoing safety plan can be closed, the caseworker must determine whether:

(a) The parent or legal guardian has demonstrated capacity to sustain the safety of the child or young adult based upon:

(A) Observations of the child or young adult and the parent or legal guardian in the home;

(B) Expert evaluations and reports from service providers;

(C) Reports from participants in the in-home ongoing safety plan;

(D) The extent to which the achievement of expected outcomes supports the ability of the parent or legal guardian to sustain the safety of the child or young adult; and

(E) Consultation with other individuals participating with the parent or legal guardian to sustain the safety of the child or young adult.

(b) The child or young adult is safe in the home based upon:

(A) The elimination of the identified safety threats or the protective capacity of the parent or legal guardian is sufficient to manage identified safety threats;

(B) The willingness and ability of the parent or legal guardian to protect the child or young adult; and

(C) Caseworker confidence in the ability of the parent or legal guardian to sustain the safety of the child or young adult over time.

(3) The caseworker must document the determination that the in-home ongoing safety plan can be closed and the facts supporting the ability of the parent or legal guardian to provide safety for the child or young adult and to sustain the safety of the child or young adult.

(4) The caseworker's supervisor must review the caseworker's documentation to ensure the criteria in section (2) of this rule are met, and concur that the in-home ongoing safety plan can be closed prior to approving the closure of the safety plan.

(5) The caseworker closes the in-home ongoing safety plan and the case when the court dismisses the commitment of the child or young adult to the Department or the court's wardship over the child terminates.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: CWP 4-2007, f. & cert. ef. 3-20-07; CWP 21-2009, f. & cert. ef. 12-29-09

## 413-070-0600

### Purpose

The purpose of these rules, OAR 413-070-0600 to 413-070-0645, is:

(1) To describe the requirements for assessing the child or young adult's needs when the Department places the child or young adult in substitute care to assure the child's safety;

(2) To identify the most appropriate available substitute care provider who can meet the child or young adult's needs; and

(3) To describe the requirements for assessing the substitute care placement's ability to meet the child or young adult's need for safety, permanency, and well-being.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005 & 419B.192

Hist.: SOSCF 13-1999, f. 7-8-99, cert. ef. 7-12-99; CWP 4-2007, f. & cert. ef. 3-20-07; CWP 26-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08; CWP 8-2008, f. 6-27-08, cert. ef. 6-28-08; CWP 21-2009, f. & cert. ef. 12-29-09

## 413-070-0620

### Definitions

The following definitions apply to OAR 413-070-0600 to 413-070-0645:



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(1) "CANS screening" means Child and Adolescent Needs and Strengths screening, a process of integrating information on a child or young adult's needs and strengths for the purposes of case planning, service planning, and determining the supervision needs of the child or young adult. The Department uses two versions of the CANS Comprehensive Screening Tool, one version for an individual birth through five years old and another version for an individual six through twenty years old.

(2) "Caregiver relationship" means a relationship between a person and a child---that has existed for the 12 months immediately preceding the initiation of a dependency proceeding, for at least six months during a dependency proceeding, or for half of the child's life if the child is less than six months of age---and the person had physical custody of the child or resided in the same household as the child; the person provided the child on a daily basis with the love, nurturing and other necessities required to meet the child's psychological and physical needs; and the child depended on the relationship to meet the child's needs. "Caregiver relationship" does not include a relationship between a child and a person who is an unrelated foster parent of the child unless the relationship continued for a period of at least twelve consecutive months.

(3) "Child" means a person under 18 years of age.

(4) "Department" means the Department of Human Services, Child Welfare.

(5) "Face-to-face" means an in-person interaction between individuals.

(6) "Foster parent" means a person who operates a home that has been approved by the Department to provide care for an unrelated child or young adult placed in the home by the Department.

(7) "Parent" means the biological or adoptive mother or the legal father of the child. A legal father is a man who has adopted the child or whose paternity has been established or declared under ORS 109.070, ORS 416.400 to 416.465, or by a juvenile court. In cases involving an Indian child under the Indian Child Welfare Act (ICWA), a legal father includes a man who is a father under applicable tribal law. "Parent" also includes a putative father who has demonstrated a direct and significant commitment to the child by assuming or attempting to assume responsibilities normally associated with parenthood, unless a court finds that the putative father is not the legal father.

(8) "Provider" means a person approved by a licensed private child-caring agency to provide care for a child or young adult, or an employee of a licensed private child-caring agency approved to provide care for a child or young adult.

(9) "Relative Caregiver" means a person who operates a home that has been approved by the Department to provide care for a related child or young adult who is placed in the home by the Department.

(10) "Sibling" means one of two or more children or young adults related:

(a) By blood or adoption through a common legal parent;

(b) Through the marriage of the children's or young adults' legal or biological parents; or

(c) Through a legal or biological parent who is the registered domestic partner of the child or young adult's legal or biological parent.

(11) "Substitute care" means an out-of-home placement of a child or young adult who is in the legal or physical custody and care of the Department.

(12) "Substitute caregiver" means a relative caregiver, foster parent, or provider who is authorized to provide care to a child or young adult who is in the legal or physical custody of the Department.

(13) "Young adult" means a person aged 18 through 20 years who remains in the care and custody of the Department, and lives in substitute care or lives independently through the Department's Independent Living Subsidy Program.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005, 419A.004 & 419B.192

Hist.: SOSCF 13-1999, f. 7-8-99, cert. ef. 7-12-99; CWP 4-2007, f. & cert. ef. 3-20-07; CWP 26-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08; CWP 8-2008, f. 6-27-08, cert. ef. 6-28-08; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 21-2009, f. & cert. ef. 12-29-09

## 413-070-0625

### Identifying and Assessing the Child or Young Adult's Needs when Placement in Substitute Care is Required

(1) To select a substitute care placement that will meet a child or young adult's safety, permanency, and well-being needs, the caseworker must:

(a) Involve the child or young adult's parent or legal guardian in identifying substitute care placement resources whenever possible.

(b) Assess the ability of each potential substitute caregiver to provide safety for the child or young adult.

(c) Assess the potential substitute care placements in the order of preference under OAR 413-070-0220 and 413-070-0320, when the child or young adult is an Indian or refugee child.

(d) Except as provided in subsection (c) of this section, assess the potential substitute care placements in the following order of preference:

(A) A relative of the child or young adult who can be certified by the Department;

(B) A person who has a caregiver relationship with the child or young adult and can be certified by the Department;

(C) An unrelated person to whom the child or young adult has significant attachment or who has significant attachment to the child or young adult, and can be certified by the Department; or

(D) A foster parent who is certified by the Department, or a provider who is certified through a licensed child-caring agency.

(e) Consider the use of a family meeting to seek the family's placement preferences if more than one person requests to have the child placed with them; and

(f) Consider whether the potential substitute care placement --

(A) Has the ability to provide safety for the child or young adult and the siblings when consideration is being given to placing siblings together;

(B) Is willing to cooperate with any restrictions placed on contact between the child or young adult, and others;

(C) Has the ability to prevent anyone from influencing the child or young adult in regard to the allegations of the case;

(D) Has the ability to support the efforts of the Department to implement the permanent plan for the child or young adult; and

(E) Has the ability to meet the child or young adult's physical, emotional, and educational needs, including the child or young adult's need to continue in the same school or educational placement.

(g) Ensure that the substitute care placement is the most home-like, least restrictive available to meet the child or young adult's needs.

(h) Assure that the race, color, or national origin of the child, young adult, or substitute care placement is not a consideration when assessing a substitute care placement.

(2) When a child or young adult is placed in substitute care and has a sibling who is currently in or also needs substitute care, the caseworker must make diligent efforts to place siblings together unless placing the siblings together is not in the best interests of the child or young adult or the child or young adult's sibling and, if the child or young adult is under the jurisdiction of the juvenile court, the juvenile court makes such a finding.

(3) Within 30 days of the child or young adult's placement in a substitute care setting, the caseworker must reconsider whether the substitute caregiver is able to meet the considerations in subsection (1)(f) of this rule and assess whether the substitute caregiver meets the following placement preferences:

(a) Is in close proximity to the child or young adult's parents or legal guardians;

(b) Is in close proximity to the child or young adult's community;

(c) Can keep siblings together; and

(d) Can support the child or young adult's culture and family identity.

(4) When the caseworker determines the substitute care placement does not meet one or more of the placement considerations in subsection (1)(f) or section (3) of this rule, the caseworker must determine whether remaining in the substitute care placement is in the best interests of the child or young adult.

(a) If the caseworker determines that remaining in the current substitute care placement is in the best interests of the child or young adult, the child or young adult should remain in the placement.

(b) If the caseworker determines that remaining in the current substitute care placement is not in the best interests of the child or young adult, the caseworker must work with Department staff to secure another substitute care placement for the child or young adult.

(5) The caseworker must document the section (4) determination in the Department's information system and explain the basis for the determination as it relates to the best interests of the child or young adult.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005 & 419B.192

Hist.: CWP 4-2007, f. & cert. ef. 3-20-07; CWP 26-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08; CWP 8-2008, f. 6-27-08, cert. ef. 6-28-08; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 21-2009, f. & cert. ef. 12-29-09

## 413-070-0630

### Monitoring the Ongoing Substitute Care Placement Needs of the Child or Young Adult

(1) The caseworker must monitor the substitute care placement of the child or young adult and determine whether the foster parent, relative caregiver, or provider:

(a) Meets the placement considerations of OAR 413-070-0625; and

(b) Manages the child or young adult's supervision needs as identified in the CANS screening and other current assessments or evaluations of the child or young adult.

(2) The caseworker must assess the ongoing and permanency needs of the child or young adult:

(a) For physical and emotional safety;

(b) To preserve existing attachments to family;

(c) For continuity and familiarity;

(d) For appropriate educational, developmental, emotional, and physical support;

(e) For stability; and

(f) For maintaining his or her identity and cultural and religious heritage.

(3) During the required face-to-face contacts with the child or young adult, the caseworker must:

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(a) Confirm that the substitute caregiver can maintain the safety and well-being of the child or young adult, as described in Child Welfare Policy I-B.1, "Monitoring Child Safety"; OAR 413-080-0059(2)(a)(F)(i)-(xii) when the child or young adult is with a relative caregiver or foster home or OAR 413-080-0059(3)(b)(D)(i)-(xi) when the child or young adult is with a provider;

(b) Develop and maintain a good working relationship with the child or young adult;

(c) Observe the child or young adult in an age-appropriate and comfortable setting;

(d) Gather updated information on the child or young adult's physical and mental health as well as educational, behavioral, and developmental progress;

(e) Share updated information about the case plan or the child or young adult with the child or young adult's certified family or provider and as permitted by state or federal law; and

(f) Document the date, time, location, observations, and updated information in the Department's information system.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005, 419B.192

Hist.: SOSCF 13-1999, f. 7-8-99, cert. ef. 7-12-99; CWP 4-2007, f. & cert. ef. 3-20-07; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 21-2009, f. & cert. ef. 12-29-09

## 413-070-0640

### Review of the Substitute Care Placement During Case Plan Review

(1) When the child or young adult is in substitute care at the time of each 90 day case plan review, the caseworker must include in the review written documentation of the extent to which the child or young adult's substitute care placement meets the child or young adult's ongoing need for safety, permanency, and well-being.

(a) To determine the extent to which the placement meets the child or young adult's needs for physical and emotional safety, the caseworker must determine whether the following conditions exist in the home.

(A) The substitute caregiver has the skill level or willingness to acquire the skills necessary to meet the physical, emotional and supervisory needs for each child or young adult in the placement;

(B) The substitute caregiver has the skill level to care for the age, number, and gender of the children or young adults currently in the placement;

(C) The behavioral characteristics of children or young adults currently in the placement are such that the substitute caregiver protects the child or young adult from further victimization and from harming self or others;

(D) The substitute caregiver has the ability to protect the child or young adult from inappropriate contact with those who may harm the child or young adult; and

(E) The physical layout of the home permits the substitute caregiver to safely supervise the children or young adults in the home.

(b) To determine the extent to which the placement meets the need of the child or young adult to preserve existing attachment to his or her family, the caseworker must consider whether:

(A) The child or young adult's family has expressed a preference in placement;

(B) The child or young adult has requested a particular placement;

(C) The relative caregiver, foster parent, or provider has demonstrated the ability --

(i) To support the attachment of the child or young adult through visitation and other types of contact with the child or young adult's family;

(ii) To accommodate the placement of the child or young adult's siblings in the substitute caregiver's home;

(iii) To accommodate regular contact between the child or young adult and his or her siblings when the child or young adult is not placed with his or her siblings and regular contact is in the best interests of the child or young adult; and

(iv) To provide mutual care when both the child and parent require placement. As used in this rule, "mutual care" means the out-of-home placement of a parent and child together where one or both are in the legal custody of the Department.

(c) To determine the extent that the placement meets the need of the child or young adult for continuity and familiarity, the caseworker must consider:

(A) The extent of the child or young adult's pre-existing relationship with the relative caregiver, foster parent, or provider;

(B) The proximity of the placement to the child or young adult's neighborhood, school or educational placement, and parent or legal guardian; and

(C) Whether the relative caregiver, foster parent, or provider can provide a permanent home or facilitate transition to a permanent home for the child or young adult.

(d) To determine the extent that a particular placement meets the need of the child or young adult for appropriate educational, developmental, emotional, and physical support, the caseworker must consider:

(A) Whether the relative caregiver, foster parent, or provider demonstrates competency in meeting the child or young adult's specific and unique needs or is acquiring the skills necessary to meet the child or young adult's specific and unique needs;

(B) Whether the ability of the relative caregiver, foster parent, or provider to meet the child or young adult's specific and unique needs is influenced by the number and type of children in the placement; and

(C) Whether the relative caregiver, foster parent, or provider is willing and able to assist with, participate in, and act as an advocate for the child or young adult in his or her education and treatment plan.

(e) To determine the extent to which the placement meets the need of the child or young adult for stability, the caseworker must consider:

(A) Whether the relative caregiver, foster parent, or provider has expressed a desire to provide permanency for a particular child or young adult;

(B) Whether the ability of the relative caregiver, foster parent, or provider to provide support and to nurture the child or young adult is influenced by the number of children or young adults in placement;

(C) Whether the capacity of the relative caregiver, foster parent, or provider to recognize the child or young adult's needs and build on the child or young adult's strengths is sufficient to meet the long-term placement needs of the child or young adult.

(f) To determine whether the placement can support the child or young adult's identity, development, and cultural and religious background, the caseworker must consider:

(A) Whether the relative caregiver, foster parent, or provider has the ability to appreciate, nurture, support, and reinforce the identity and cultural and religious background of the child or young adult;

(B) Whether the relative caregiver, foster parent, or provider has the ability to support the development of the child or young adult, and help the child or young adult with problems that the child or young adult may encounter. (Refer to Child Welfare Policies I-E.2, "Multiethnic Placements" OAR 413-070-0000 to 413-070-0033 and I-E.2.1, "Placement of Indian Children" 413-070-0100 to 413-070-0260);

(C) Whether the relative caregiver, foster parent, or provider has the ability to communicate effectively with the child or young adult; and

(D) Whether the child or young adult has adjusted to the placement.

(2) After making the determinations in section (1) of this rule, the caseworker must document the extent to which the child or young adult's relative caregiver, foster parent, or provider meets the child or young adult's need for safety and well-being and the actions taken when the child or young adult's placement does not meet one or more of the child or young adult's needs:

(a) In the Department's information system at the 90-day case plan review; or

(b) In the case plan (0333a), Child Description, Their Needs and Well Being section, at the six-month case plan review.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005 & 419B.192

Hist.: SOSCF 13-1999, f. 7-8-99, cert. ef. 7-12-99; CWP 4-2007, f. & cert. ef. 3-20-07; CWP 26-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08; CWP 8-2008, f. 6-27-08, cert. ef. 6-28-08; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 21-2009, f. & cert. ef. 12-29-09

## 413-070-0645

### Involving the Substitute Caregiver in the Concurrent Permanency Plan

The caseworker must:

(1) Determine whether the relative caregiver, foster parent, or provider is willing to continue as the placement resource, has the skills and abilities to meet the child or young adult's need for safety and well-being, and is willing to work with the Department while the concurrent permanency plan for the child or young adult is implemented by the Department; and

(2) Provide the relative caregiver, foster parent, or provider with the opportunity to have input into a permanency plan.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005, 419B.192

Hist.: CWP 4-2007, f. & cert. ef. 3-20-07; CWP 21-2009, f. & cert. ef. 12-29-09

## 413-080-0040

### Monitoring Child Safety

The purpose of these rules, OAR 413-080-0040 to 413-080-0067, is to describe the responsibilities of the Department in monitoring child and young adult safety and well-being.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: CWP 3-2004(Temp), f. & cert. ef. 3-1-04 thru 8-27-04; CWP 15-2004, f. & cert. ef. 8-25-04; CWP 4-2007, f. & cert. ef. 3-20-07; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 21-2009, f. & cert. ef. 12-29-09

## 413-080-0050

### Definitions

The following definitions apply to OAR 413-080-0040 to 413-080-0067:

(1) "CANS screening" means Child and Adolescent Needs and Strengths screening, a process of integrating information on a child or young adult's needs and strengths for the purposes of case planning, service planning, and determining the supervision needs of the child or young adult. The Department uses two versions of the CANS Comprehensive Screening Tool, one version for an individual birth through five years old and another version for an individual six through twenty years old.

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(2) "Certified family" means an individual or individuals who hold a current Certificate of Approval from the Department to operate a home to provide care, in the home in which they reside, to a child or young adult in the care or custody of the Department.

(3) "Certifier" means a Child Welfare employee who conducts assessments of applicants interested in providing relative or foster care to a child in the care or custody of the Department, determines whether or not to recommend approval of the operation of a relative care or foster home, and monitors the compliance of a relative care or foster care home with Child Welfare certification rules.

(4) "Child" means a person under 18 years of age.

(5) "Contact" means any communication between a Child Welfare caseworker and a child, parent or legal guardian, foster parent or relative caregiver, provider, or other individual involved in a Child Welfare safety plan or case. Contact includes, but is not limited to, communication in person, by telephone, by video-conferencing, or in writing. Contact may occur, for instance, during a face-to-face visit; a treatment review meeting for a child, young adult, parent, or legal guardian; a court or Citizen Review Board hearing; or a family meeting.

(6) "Department" means the Department of Human Services, Child Welfare.

(7) "Face-to-face" means an in-person interaction between individuals.

(8) "Foster parent" means a person who operates a home that has been approved by the Department to provide care for an unrelated child or young adult placed in the home by the Department.

(9) "ICPC" means the Interstate Compact for the Placement of Children (see ORS 417.200).

(10) "Ongoing safety plan" means a documented set of actions or interventions that manage a child's safety after the Department has identified one or more safety threats to which the child is vulnerable and determined the parent or caregiver is unable or unwilling to protect the child. An ongoing safety plan can be in-home or out-of-home and is adjusted when necessary to provide the least intrusive interventions.

(11) "Parent" means the biological or adoptive mother or the legal father of the child. A legal father is a man who has adopted the child or whose paternity has been established or declared under ORS 109.070, ORS 416.400 to 416.465, or by a juvenile court. In cases involving an Indian child under the Indian Child Welfare Act (ICWA), a legal father includes a man who is a father under applicable tribal law. "Parent" also includes a putative father who has demonstrated a direct and significant commitment to the child by assuming or attempting to assume responsibilities normally associated with parenthood, unless a court finds that the putative father is not the legal father.

(12) "Personal care services" means the provision of or assistance with those functional activities described in OAR 413-090-0120 consisting of mobility, transfers, repositioning, basic personal hygiene, toileting, bowel and bladder care, nutrition, medication management, and delegated nursing tasks that a child or young adult requires for his or her continued well-being.

(13) "Personal care services plan" means a written plan to provide personal care services for the child or young adult documenting:

- (a) The determination that the individual is a qualified provider;
- (b) The frequency or intensity of each personal care service to be provided; and

(c) The date the personal care services begin.

(14) "Protective capacity" means behavioral, cognitive, and emotional characteristics that can specifically and directly be associated with a person's ability and willingness to care for and keep a child safe.

(15) "Provider" means a person approved by a licensed private child-caring agency to provide care for a child or young adult, or an employee of a licensed private child-caring agency approved to provide care for a child or young adult.

(16) "Relative caregiver" means a person who operates a home that has been approved by the Department to provide care for a related child or young adult who is placed in the home by the Department.

(17) "Safety service provider" means a participant in a protective action or ongoing safety plan whose actions, assistance, or supervision help a family in managing a child's safety.

(18) "Safety services" means the actions, assistance, and supervision provided by safety service providers to manage the identified safety threats to a child.

(19) "Safety threat" means family behavior, conditions, or circumstances that may result in harm to a child.

(20) "Screener" means a Child Welfare employee with training required to provide screening services.

(21) "Substitute care" means the out-of-home placement of a child or young adult who is in the legal or physical custody and care of the Department.

(22) "Young adult" means a person aged 18 through 20 years who remains in the care and custody of the Department, and lives in substitute care or lives independently through the Department's Independent Living Subsidy Program.

Stat. Auth.: ORS 418.005  
Stats. Implemented: ORS 418.005

Hist.: CWP 3-2004(Temp), f. & cert. ef. 3-1-04 thru 8-27-04; CWP 15-2004, f. & cert. ef. 8-25-04; CWP 4-2007, f. & cert. ef. 3-20-07; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 21-2009, f. & cert. ef. 12-29-09

## 413-080-0052

### Mandatory Reporting of a New Safety Threat on an Open Case

When a caseworker identifies a new or unscreened safety threat in an open case, the caseworker must:

(1) Immediately report the information regarding the safety threat to a screener; and

(2) Consult with the caseworker's supervisor to determine any immediate protective action required to assure the safety of the child.

Stat. Auth.: ORS 418.005  
Stats. Implemented: ORS 418.005

Hist.: CWP 4-2007, f. & cert. ef. 3-20-07; CWP 21-2009, f. & cert. ef. 12-29-09

## 413-080-0055

### Monitoring Child Safety with an In-home Ongoing Safety Plan

(1) To manage an in-home ongoing safety plan and monitor the child's safety when the child is in the home of the parent or legal guardian, the assigned caseworker must contact the following individuals, as described below:

(a) The caseworker must have contact with the following individuals a minimum of once every 30 days:

(A) Face-to-face contact with the child;

(B) Face-to-face contact with the child's parents or legal guardians in the home of the parents or legal guardians; and

(C) Contact with each participant in the ongoing safety plan.

(b) The caseworker must also have face-to-face contact with the child and the child's parents or legal guardians within five working days of learning any of the following:

(A) A parent or legal guardian has violated a condition of the ongoing safety plan.

(B) A change in the protective capacity of a parent or legal guardian may negatively impact the ongoing safety plan.

(C) A change in the family circumstances may negatively impact the ongoing safety plan.

(D) A change in the composition of the household may negatively impact the ongoing safety plan.

(E) The caseworker is assigned a case that had been assigned to another caseworker (case transfer).

(2) To monitor the safety of the child, during each contact with a child, parent, or legal guardian required by section (1) of this rule, the caseworker must complete each of the following:

(a) Look for and assess any changes in the protective capacity of parents or legal guardians and changes in the ability or willingness of a parent or legal guardian to keep the child safe.

(b) Have a conversation with a verbal child or young adult.

(c) Assess whether the ongoing safety plan keeps the child safe by determining:

(A) Whether the home environment is stable enough for safety service providers to be in the home and be safe; and

(B) Whether the parent or legal guardian states that he or she is:

(i) Agreeable to the services in the ongoing safety plan;

(ii) Cooperating in services provided as prescribed by the ongoing safety plan;

(iii) Cooperating with all participants in the ongoing safety plan;

(iv) Participating in the actions and the time requirements of the ongoing safety plan; and

(v) Meeting the expectations detailed in the ongoing safety plan.

(d) Determine whether:

(A) The condition of the child is satisfactory; and

(B) Safety threats to the child are managed.

(e) Immediately notify his or her supervisor if he or she determines, during a contact with the child, parent, or legal guardian, that the in-home ongoing safety plan is insufficient to assure the safety of the child, to determine if any immediate protective action is necessary to assure the child's safety.

(3) Through contact with the participants in the ongoing safety plan, required by section (1) of this rule, the caseworker must determine whether:

(a) Participants in the ongoing safety plan are engaged and active in the safety activities;

(b) The parents or legal guardians are cooperating with the safety services prescribed by the ongoing safety plan;

(c) The safety service providers are engaged with the parents or legal guardians;

(d) The safety service providers have fulfilled their established responsibilities in the ongoing safety plan;

(e) The level of intervention assures the ongoing safety of the child; and

(f) The services are the least intrusive available to assure the child's safety.

(4) Whenever a participant in the ongoing safety plan or a safety service provider reports information indicating that there is a new safety threat,

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the caseworker must determine whether the information has been reported to a screener. If the information has not been reported, the caseworker must:

- (a) Immediately report the information to a screener; and
  - (b) Consult with his or her supervisor to determine whether an immediate protective action is required to assure the child's safety.
- (5) The caseworker must determine whether:
- (a) Behaviors, conditions, or circumstances within the family require an increase in the level of safety intervention;
  - (b) A less intrusive ongoing safety plan can assure the safety of the child; or
  - (c) The ongoing safety plan is keeping the child safe and provides the appropriate level of safety intervention.
- (6) If the caseworker determines the level of intervention of the in-home ongoing safety plan must be revised, the caseworker must:
- (a) Reduce the level of intervention whenever --
  - (A) The improved protective capacity of the parent or legal guardian is sufficient to impact his or her ability to control safety threats as they are occurring within the family; and
  - (B) A safety threat can be managed with less intrusive actions or services.

- (b) Increase the level of intervention whenever --
- (A) A parent or legal guardian is unable or unwilling to control the safety threats to the child as they are occurring within the family with the ongoing safety plan; or

- (B) Any identified safety threat cannot be managed with the current ongoing safety plan.

- (c) When the assessment of the behaviors, conditions, or circumstances occurring within the family results in a determination to revise the ongoing safety plan, the revised ongoing safety plan must comply with the criteria of OAR 413-015-0450(2)(d)(A) - (H).

- (d) The revised ongoing safety plan must be approved by the caseworker's supervisor.

- (7) The caseworker must document in the Department's information system:

- (a) The date, type, and location of each contact with the child, parents, or legal guardians;

- (b) The date and type of each contact with each participant in the in-home ongoing safety plan;

- (c) Observations and condition of the child during the home visit;

- (d) Observations and condition of each parent or legal guardian during the home visit;

- (e) Changes in the ability of each parent or legal guardian to parent and provide protective care;

- (f) Observations or reports from ongoing safety plan participants and service providers;

- (g) How the ongoing safety plan continues to manage the safety threats as they are occurring within the family, or any revised ongoing safety plan and the facts supporting that revision;

- (h) How any revision in the ongoing safety plan is the most suitable, least intrusive action available; and

- (i) Any immediate protective action if required to assure the safety of the child.

Stat. Auth.: ORS 418.005  
Stats. Implemented: ORS 418.005

Hist.: CWP 3-2004(Temp), f. & cert. ef. 3-1-04 thru 8-27-04; CWP 15-2004, f. & cert. ef. 8-25-04; CWP 4-2007, f. & cert. ef. 3-20-07; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 21-2009, f. & cert. ef. 12-29-09

## 413-080-0059

### Monitoring the Safety and Well-Being of the Child or Young Adult in Substitute Care

(1) To monitor the safety and well-being of the child or young adult in substitute care, the caseworker must make the following contacts:

- (a) Face-to-face contact with the child or young adult every 30 days;
- (b) Contact with the certified family or provider every 30 days; and

- (c) Face-to-face contact with the certified family or provider in the home or facility a minimum of once every 60 days. The face-to-face contact must include at least one of the certified adults or providers who provide direct care for the child or young adult.

(2) The caseworker must monitor and assess the child or young adult's safety and well-being while in substitute care with a certified family.

- (a) Within each 30-day period, the caseworker must complete all of the following activities:

- (A) Assess the child or young adult's perceptions of safety and well-being through a conversation with a verbal child or young adult.

- (B) Assess the child or young adult's progress in and adjustment to the placement.

- (C) Ensure the certified family is meeting the child or young adult's supervision needs, and, when the child or young adult is receiving a level of care, ensure the supervision described in the supervision plan is meeting the child or young adult's supervision needs identified in the CANS screening.

- (D) Ensure the child or young adult is receiving the personal care services described in the personal care services plan, and, when the child or young adult has a personal care services plan, ensure the services described

in the personal care services plan are meeting the child or young adult's identified need for personal care services.

- (E) Ask the certified family about the child or young adult's safety and well-being.

- (F) Assess the safety and well-being of the child or young adult in the home by determining whether:

- (i) The child or young adult is comfortable and the environment of the home is supportive and safe.

- (ii) Adults in the home take an active role in caring for and supervising the child or young adult in the home.

- (iii) Adult members of the certified family possess the physical, emotional, and cognitive capacity to sufficiently care for the child or young adult.

- (iv) Members of the certified family and the child or young adult have formal and informal contact with others in the community.

- (v) The child or young adult is accepted as part of the household.

- (vi) The certified family understands and is attentive to the vulnerability and need to protect the child or young adult.

- (vii) The certified family is amenable to Department oversight and willing to partner with the Department.

- (viii) When the child or young adult is placed with a relative caregiver, the child or young adult's parents and other family members understand the role of the relative caregiver in managing the child or young adult's safety.

- (ix) The child has a sufficiently positive relationship with the certified family's own children who live in the home.

- (x) The certified family is caring for children matching the preferences and experience of the family.

- (xi) The interactions between the child or young adult and other children placed in the home are sufficient to assure safety.

- (xii) The present demands of the home do not exceed the ability of the certified family to provide safe and protective care.

- (G) Document the date, time, location, and observations of the conditions that exist in the home in the Department's information system.

- (b) If one or more of the conditions described in paragraph (a)(F) of this section do not exist in the home, and the caseworker cannot confirm safety and well-being of the child or young adult in the home of the certified family, the caseworker must--

- (A) Assess child safety immediately and determine if there is a safety threat as described in OAR 413-015-0420(1)(f)(A)(i) and (ii).

- (B) If a safety threat is identified, immediately:

- (i) Consult with the caseworker's supervisor to determine if an immediate protective action is required to assure the child's safety or if any action is required to assure the safety of the young adult; and

- (ii) Contact a CPS screener and report the identified safety threat to the child.

- (C) Document the behaviors, conditions, or circumstances observed in the home and any immediate protective actions in the Department's information system.

- (c) When the child or young adult is currently safe in the home, but the conditions described in this rule or Child Welfare Policy II-B.1, "Certification Standards for Foster Parents, Relative Caregivers, and Pre-Adoptive Parents" OAR 413-200-0301 to 413-200-0396 are not fully met, the caseworker must:

- (A) Notify the certifier or certifier's supervisor of the behaviors, conditions, or circumstances observed in the home and document the information in the Department's information system within one business day.

- (B) The caseworker must have face-to-face contact with the certified family within the next 30 days and the visit must occur in the home. The caseworker must observe the behaviors, conditions, or circumstances of the certified family, the child or young adult, and other children or young adults in the home, and conditions in the home.

- (i) When the caseworker can confirm that current conditions in the home provide safety and well-being for the child or young adult, the caseworker must:

- (I) Notify the certifier of the improved behaviors, conditions, or circumstances in the home; and

- (II) Document the date, time, location, and observations of the condition of the environment in the Department's information system.

- (ii) When the caseworker cannot confirm that current conditions in the home provide safety and well-being for the child or young adult, but after completing the actions required in subsection (2)(b) decides not to remove the child or young adult from the home, the caseworker must consult with the supervisor to determine whether to recommend to the certifier additional services or supports to assist the certified family.

- (3) The caseworker must monitor and assess the child or young adult's safety and well-being in a provider placement.

- (a) Every 30 days the caseworker must:

- (A) Assess the child or young adult's progress in and adjustment to the placement;

- (B) Assess the child or young adult's perception of safety and well-being through a conversation with a verbal child or young adult;

- (C) Ask the provider about the child or young adult's safety and well-being;

- (D) Assess the safety of the child or young adult in the home or facility by determining whether:

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(i) The child or young adult is comfortable and the environment is supportive and safe.

(ii) Providers take an active role in caring for and supervising the child or young adult.

(iii) Providers possess the physical, emotional, and cognitive capacity to sufficiently care for the child or young adult.

(iv) The child or young adult has formal and informal contact with others in the community.

(v) The child or young adult is accepted as part of the household or facility.

(vi) The provider understands and is attentive to the vulnerability of the child or young adult and need to protect the child or young adult.

(vii) The provider is amenable to Department oversight and willing to partner with the Department.

(viii) The child or young adult has a sufficiently positive relationship with other children in the home or facility of the provider.

(ix) The provider is caring for children matching the preferences and experience of the provider.

(x) The interactions between the child or young adult and other children placed in the home or facility are sufficient to assure safety.

(xi) The present demands of the home or facility do not exceed the ability of the provider to provide safe and protective care.

(E) Document the date, time, location, and observations of the condition of the environment in the Department's information system.

(b) If one or more of the conditions described in paragraph (a)(D) of this section do not exist in the home or facility, and the caseworker cannot confirm safety and well-being of the child or young adult, the caseworker must:

(A) Assess child safety immediately and determine if there is a safety threat as described in OAR 413-015-0420(1)(f)(A)(i) and (ii).

(B) If a safety threat is identified, immediately:

(i) Consult with the caseworker's supervisor to determine if an immediate protective action is required to assure the child's safety or if any action is required to assure the safety of the young adult; and

(ii) Contact a CPS screener and report the identified safety threat to the child.

(C) Document the behaviors, conditions, or circumstances observed in the home or facility and any immediate actions in the Department's information system.

(c) If the caseworker does not identify a safety threat but the conditions described in paragraph (a)(D) of this section are not fully met, the caseworker must complete the following activities:

(A) Contact the child-caring agency's management and the Department's Child Caring Agency Licensing Program to report the conditions in the home or facility and request additional supportive resources for the provider.

(B) Document the contact required in paragraph (A) of this subsection in the Department's information system.

(C) Have face-to-face contact with the provider within the next 30 days in the home or facility of the provider, and:

(i) Observe the actions and behaviors of the provider, the child or young adult, and other children in the home or facility, and conditions in the home or facility.

(ii) Confirm that current conditions in the home or facility provide safety and well-being for the child or young adult.

(iii) Contact the child-caring agency's management and the Residential Treatment and Licensing Unit to report how the behaviors, conditions, or circumstances in the home or facility provide safety and well-being for the child or young adult.

(D) After the contact required in paragraph (C) of this subsection, when the caseworker cannot confirm that current behaviors, conditions, or circumstances in the home or facility provide safety and well-being for the child or young adult, the caseworker must consult with the supervisor to determine:

(i) Whether an immediate protective action is required to assure the child's safety or any other action is required to assure the safety of the young adult; or

(ii) Whether consultation with the child-caring agency's management is necessary to determine what additional support is necessary to assure the safety of the child or young adult in the home or facility of the provider.

(E) After the actions required in paragraph (D) of this subsection, the caseworker or caseworker's supervisor must contact the Residential Treatment and Licensing Unit. The caseworker must report the date, time, location, observations of the conditions of the home or facility, and any actions taken by the caseworker during or after the visit.

(F) Document the date, time, location, observations of the condition of the home or facility, and any actions in the Department's information system.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: CWP 4-2007, f. & cert. ef. 3-20-07; CWP 10-2007(Temp), f. 5-14-07, cert. ef. 5-15-07 thru 11-9-07; CWP 18-2007, f. & cert. ef. 11-1-07; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 21-2009, f. & cert. ef. 12-29-09

## 413-080-0063

### Additional Documentation Required when a Child or Young Adult is Placed in Oregon through ICPC

(1) When the child or young adult is placed in Oregon from another state through the ICPC, the caseworker must:

(a) Monitor the safety and well-being of the child or young adult as required by OAR 413-080-0058 and 413-080-0059; and

(b) Submit a written report to Oregon's central office ICPC staff every 90 days that must include:

(A) Dates, times, and locations of all contacts in the previous 90 day period; and

(B) The caseworker's observations of the child or young adult, the parent or legal guardian, the certified family or provider, and the conditions in the home or facility; and

(C) The caseworker's assessment of the safety and well-being of the child or young adult.

(2) If the caseworker determines that one or more of the conditions identified in OAR 413-080-0058 or 413-080-0059 to assess safety and well-being have not been met, the caseworker must submit a written report to Oregon's central office ICPC staff. The report must include:

(a) Dates, times, and locations of all contacts that have occurred since the previous 90-day report was submitted;

(b) The caseworker's observations of the child or young adult, the parent or legal guardian, the certified family or provider, and the conditions in the home or facility; and

(c) The caseworker's assessment of the safety and well-being of the child or young adult and any actions taken as a result of that assessment.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: CWP 4-2007, f. & cert. ef. 3-20-07; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 21-2009, f. & cert. ef. 12-29-09

## 413-080-0067

### Contact Requirements and Exceptions; Required Face-to-Face Contact

(1) The caseworker may make scheduled or unscheduled face-to-face contacts with the child or young adult, parent, legal guardian, certified family or provider.

(2) The caseworker's supervisor may approve and designate a Child Welfare supervisor, the Child Welfare program manager, or another caseworker to make the contact required by these rules (OAR 413-080-0040 to 413-080-0067) when a caseworker's schedule or special circumstances prevent the caseworker from making the contact.

(a) Prior to arranging the required face-to-face contact, the designee must have information regarding the ongoing safety plan, the parents or legal guardians, and the child or young adult, including any special needs of the child or young adult.

(b) The staff person making the contact is responsible for assessing the safety of the child or young adult and completing the contact requirements set forth in these rules (OAR 413-080-0040 to 413-080-0067).

(3) The caseworker's supervisor or the Child Welfare program manager may approve an exception to the requirement of caseworker face-to-face contact with the child or young adult, parent, legal guardian, foster parent, relative caregiver, or provider when:

(a) The safety and well-being of the child or young adult has been confirmed by another responsible adult who has face-to-face contact with the child or young adult and confirms the child or young adult is safe, without a face-to-face contact by the caseworker.

(b) Approval for the exception is documented in the case file, including:

(A) The reason for approval of the exception;

(B) The length of time the exception is in effect, which shall be no longer than 90 days unless the caseworker obtains the approval of the Child Welfare program manager or designee (for purposes of this section, "designee" means a person under the direct and immediate supervision, or a person equal or higher in management position and responsibility to the designator); and

(C) The supervisor or Child Welfare program manager's determination that the child or young adult is safe without the required face-to-face contact.

(c) Reasons for granting an exception to the face-to-face contact requirements include but are not limited to:

(A) The child or young adult is unavailable.

(B) The child or young adult has been placed in a planned permanent living arrangement that has been approved by the court (an exception may be allowed, if appropriate, for face-to-face caseworker contact every 90 days with the child or young adult and the relative caregiver, foster parent, or provider).

(C) The child or young adult has been placed in residential care (an exception may be allowed, if appropriate, for face-to-face caseworker contact with the child or young adult every 60 days).

(D) The parent or legal guardian of the child or young adult is unavailable.

(E) A parent or legal guardian of the child or young adult presents a safety risk to the caseworker or Department staff, which has been documented in the case file.

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(F) A young adult is receiving only Independent Living Services. (An exception may be allowed, when appropriate, for face-to-face contact every 60 days. Face-to-face contact with a young adult confirms the appropriateness of services, not safety.)

(G) A child or young adult is placed in another state through the ICPC. The child or young adult's caseworker must request that officials from the receiving state have face-to-face contact with the child a minimum of once every 30 days to monitor child safety and well-being. If the receiving state declines the caseworker's request for 30 day face-to-face contact, the caseworker must document in the case file the type and level of contact the receiving state will provide and how the contact is sufficient to confirm the child or young adult's safety and well-being. To meet federal standards face-to-face contact must be made at a minimum of once every six months. If the receiving state is unwilling or unable to have face-to-face contact with the child or young adult at least once every six months, a plan must be developed to meet this requirement.

Stat. Auth.: ORS 418.005  
Stats. Implemented: ORS 418.005  
Hist.: CWP 3-2004(Temp), f. & cert. ef. 3-1-04 thru 8-27-04; CWP 15-2004, f. & cert. ef. 8-25-04; Renumbered from 413-080-0060, CWP 4-2007, f. & cert. ef. 3-20-07; CWP 19-2008, f. & cert. ef. 8-1-08; CWP 21-2009, f. & cert. ef. 12-29-09

## 413-090-0000

### Purpose

These rules, OAR 413-090-0000 to 413-090-0050, describe the responsibilities of the Department for payment of costs on behalf of an eligible child or young adult placed with a substitute caregiver, including payment to:

(1) A foster parent or relative caregiver for:

- (a) The foster care base rate;
- (b) The level of care, if any;
- (c) Shelter care or enhanced shelter care; and
- (d) The cost of housing the child of a dependent parent, unless the dependent parent receives cash benefits under a program administered by the Department of Human Services under chapter 461 of the Oregon Administrative Rules.

(2) An eligible child or young adult who is in the legal custody of the Department, living independently, and receiving an independent living housing subsidy.

(3) An individual eligible for a Chafee housing payment.

Stat. Auth.: ORS 418.005  
Stats. Implemented: ORS 418.005  
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; CWP 9-2003, f. & cert. ef. 1-7-03; CWP 20-2006(Temp), f. & cert. ef. 10-13-06 thru 4-10-07; CWP 5-2007, f. 3-30-07, cert. ef. 4-1-07; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 9-2009(Temp), f. & cert. ef. 8-12-09 thru 12-28-09; CWP 10-2009(Temp), f. & cert. ef. 9-1-09 thru 12-28-09; CWP 11-2009(Temp), f. & cert. ef. 9-25-09 thru 12-28-09; CWP 21-2009, f. & cert. ef. 12-29-09

## 413-090-0005

### Definitions

The following definitions apply to OAR 413-090-0000 to 413-090-0050:

(1) "Adoption assistance" means financial assistance and medical coverage granted to an adoptive family or pre-adoptive family, on behalf of an eligible adoptive child, to offset the costs associated with adopting and meeting the on-going needs of the child. Adoption assistance may include cash payments, medical coverage, an Agreement Only, reimbursement of non-recurring expenses, or special payments.

(2) "CANS screening" means Child and Adolescent Needs and Strengths screening, a process of integrating information on a child or young adult's needs and strengths for the purposes of case planning, service planning, and determining the supervision needs of the child or young adult. The Department uses two versions of the CANS Comprehensive Screening Tool, one version or an individual birth through five years old and another version for an individual six through twenty years old.

(3) "Certified family" means an individual or individuals who hold a current Certificate of Approval from the Department to operate a home to provide care, in the home in which they reside, to a child or young adult in the care or custody of the Department.

(4) "Chafee housing" means a payment to assist in covering the costs of room and board made to an eligible individual between 18 and 20 years of age who was discharged from the care and custody of the Department or one of the federally recognized tribes on or after reaching 18 years of age.

(5) "Child" means a person under 18 years of age.

(6) "Department" means the Department of Human Services, Child Welfare.

(7) "Dependent parent" means a child or young adult in the legal custody of the Department who is the parent of a child.

(8) "Eligible child" means a child or young adult in the legal or physical custody of the Department who is receiving a substitute care service.

(9) "Enhanced shelter care" means care provided to a child or young adult when his or her placement in a Behavior Rehabilitation Service is no longer needed.

(10) "Enhanced supervision" means the additional support, direction, observation, and guidance provided by a certified family to a child or young adult to promote and ensure the safety and well-being of a child or young

adult, beyond the level of supervision that typically is required for a child or young adult of the same age.

(11) "Foster parent" means a person who operates a home that has been approved by Child Welfare to provide care for an unrelated child or young adult placed in the home by the Department.

(12) "Independent living housing subsidy" means a payment to assist in covering the costs of room, board, or other monthly expenses made to an eligible individual who is in the care and custody of the Department and living independently.

(13) "Level of care" means the payment for enhanced supervision needs of a child or young adult to a certified family.

(14) "Relative caregiver" means a person who operates a home that has been approved by Child Welfare to provide care for a related child or young adult who is placed in the home by the Department.

(15) "Shelter care" means care provided to a child or young adult during the first 20 days of his or her placement in substitute care.

(16) "Young adult" means a person aged 18 through 20 years, who remains in the care and custody of the Department, and lives in substitute care or lives independently through the Department's Independent Living Subsidy Program.

Stat. Auth.: ORS 418.005  
Stats. Implemented: ORS 418.005  
Hist.: SOSCF 20-1999, f. 9-15-99, cert. ef. 9-20-99; CWP 9-2003, f. & cert. ef. 1-7-03; CWP 20-2006(Temp), f. & cert. ef. 10-13-06 thru 4-10-07; CWP 5-2007, f. 3-30-07, cert. ef. 4-1-07; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 10-2009(Temp), f. & cert. ef. 9-1-09 thru 12-28-09; CWP 11-2009(Temp), f. & cert. ef. 9-25-09 thru 12-28-09; CWP 21-2009, f. & cert. ef. 12-29-09

## 413-090-0010

### Eligibility for Payments

(1) Family Foster Care.

(a) The Department reimburses a foster parent or relative caregiver a base rate on behalf of an eligible child or young adult in the Department's physical or legal custody and placed in the foster parent or relative caregiver's home. Payment for the base rate is made on a monthly basis, or prorated for a portion of a month, after the month in which the care has been provided. The reimbursement period includes the day the child or young adult enters the home, but excludes the day the child or young adult leaves the home.

(b) The base rate payment is:

- (A) \$639 per month for a child five years or younger;
- (B) \$728 per month for a child 6 through 12 years of age; and
- (C) \$823 per month for a child or young adult 13 through 20 years of age.

(c) The base rate is designed to reimburse the foster parent or relative caregiver for the costs of providing the child or young adult with the following:

(A) Food — including the cost to cover a child or young adult's special or unique nutritional needs;

(B) Clothing — including purchase and replacement;

(C) Housing — including maintenance of household utilities, furnishings, and equipment;

(D) Daily supervision — including teaching and directing to ensure safety and well-being at a level which is appropriate based on the child or young adult's chronological age;

(E) Personal incidentals — including personal care items, entertainment, reading materials, and miscellaneous items; and

(F) The cost of providing transportation — including local travel associated with expenditure for gas and oil, and vehicle maintenance and repair associated with transportation to and from extracurricular, child care, recreational, and cultural activities.

(2) Shelter care. The Department reimburses a foster parent or relative caregiver a shelter care rate on behalf of an eligible child or young adult during the first 20 days of substitute care after the Department has obtained physical or legal custody of the child or young adult. The daily shelter care payment is:

(a) \$24.60 for a child five years or younger;

(b) \$28.00 for a child 6 through 12 years of age; and

(c) \$31.60 for a child or young adult 13 through 20 years of age.

(3) Enhanced shelter care. The Department reimburses a foster parent or relative caregiver an enhanced shelter care rate on behalf of an eligible child or young adult during the first 20 days of substitute care in the first foster care or relative caregiver home after a child or young adult has resided in a residential treatment placement unless an enhanced supervision level of care has been determined. The daily enhanced shelter care payment is:

(a) \$29.40 for a child five years or younger;

(b) \$33.50 for a child 6 through 12 years of age; and

(c) \$37.90 for a child or young adult 13 through 20 years of age.

(4) Level of care. The Department reimburses a foster parent or relative caregiver on behalf of an eligible child or young adult when the CANS screening results indicate the child or young adult needs enhanced supervision. A CANS screener rates each element of a child or young adult's behavior and functioning through the CANS screening on a scale of zero to three and the ratings determine whether a child or young adult meets the criteria for one of three levels of care. The levels of care are set forth as Exhibit 1. The

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CANS manuals used to conduct the CANS screening are maintained by the Department. The Department maintains the current manuals, DHS 9601 and 9602, on the Department's website: <http://dhsforms.hr.state.or.us/forms/databases/FMPRO>, or, for a hard copy, contact the Office of Safety and Permanency for Children.

- (a) The payment for Level 1 (moderate needs) is \$212 per month.
- (b) The payment for Level 2 (intermediate needs) \$414 per month.
- (c) The payment for Level 3 (advanced needs) is \$850 per month.

(5) The Department reimburses a foster parent or relative caregiver for room and board at the applicable base rate in subsection (1)(b) of this rule for the child of a dependent parent unless the dependent parent receives benefits under programs administered by the Department of Human Services under chapter 461 of the Oregon Administrative Rules or has other means of financial support.

(6) The Department reimburses an eligible individual a Chafee housing or an independent living housing subsidy payment up to a maximum of \$600 per month of eligibility.

(7) Payments prohibited. The Department may not authorize payment for the care of a child or young adult to more than one certified family per day.

(8) A payment by the Department under this rule is inalienable by any assignment or transfer and exempt from execution, levy, attachment, and garnishment under the laws of the state of Oregon.

[Publications: Publications referenced are available from the agency.]

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

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005, 418.470, 418.625

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 2-1999, f. & cert. ef. 3-5-99; SOSCF 20-1999, f. 9-15-99, cert. ef. 9-20-99; CWP 9-2003, f. & cert. ef. 1-7-03; CWP 20-2003(Temp), f. 1-31-03 thru 7-30-03; CWP 27-2003, f. & cert. ef. 7-31-03; CWP 34-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 4-28-04; CWP 7-2004, f. & cert. ef. 4-1-04; CWP 20-2006(Temp), f. & cert. ef. 10-13-06 thru 4-10-07; CWP 5-2007, f. 3-30-07, cert. ef. 4-1-07; CWP 28-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08; CWP 10-2008, f. 6-27-08, cert. ef. 6-28-08; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 9-2009(Temp), f. & cert. ef. 8-12-09 thru 12-28-09; CWP 10-2009(Temp), f. & cert. ef. 9-1-09 thru 12-28-09; CWP 11-2009(Temp), f. & cert. ef. 9-25-09 thru 12-28-09; CWP 21-2009, f. & cert. ef. 12-29-09

## 413-090-0021

### Periodic Review of Eligibility for Level of Care Payments

(1) When the Department conducts a new CANS screening under Child Welfare Policy I-B.1.6, "Enhanced Supervision" OAR 413-020-0200 to OAR 413-020-0255 and the results indicate the child or young adult's level of care has changed, the Department adjusts the child or young adult's level of care payment accordingly.

(2) If the adjustment decreases or terminates the level of care payment, the Department follows Child Welfare Policy I-A.5.2, "Contested Case Hearings" OAR 413-010-0500 to 413-010-0535.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 11-2009(Temp), f. & cert. ef. 9-25-09 thru 12-28-09; CWP 21-2009, f. & cert. ef. 12-29-09

## 413-090-0030

### Payment for Temporary Absences from Family Foster Care

(1) The Department may continue the base rate and any level of care payments to the foster parent or relative caregiver during a child or young adult's temporary absence from the home for 14 days or less, when:

(a) The plan is for the child or young adult to return to the care of the same foster parent or relative caregiver; and

(b) No other foster parent or relative caregiver is receiving a base rate or level of care payment for the child or young adult during the period of the absence.

(2) The caseworker may authorize continuation of the base rate or level of care payment for up to seven days for a child or young adult's temporary absence from the home of the foster parent or relative caregiver for a home visit, vacation, or special activity or when the child or young adult is on run-away.

(3) The caseworker must obtain authorization for continuation of the base rate or level of care payment from the District Manager or designee if the child or young adult's temporary absence from the home of the foster parent or relative caregiver is more than seven days but less than the maximum of fourteen days.

(4) Hospitalization. The Department may continue the base rate and any level of care payments to the foster parent or relative caregiver when the child or young adult requires hospitalization for medical treatment and the foster parent or relative caregiver continues to exercise caregiving responsibilities in anticipation of the return of the child or young adult. Hospitalization for medical treatment is not considered a substitute care placement with a duplicate payment.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 20-1999, f. 9-15-99, cert. ef. 9-20-99; CWP 9-2003, f. & cert. ef. 1-7-03; CWP 20-2006(Temp), f. & cert. ef. 10-13-06 thru 4-10-07; CWP 5-2007, f. 3-30-07, cert. ef. 4-1-07; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 9-2009(Temp), f. & cert. ef. 8-12-09 thru 12-28-09; CWP 11-2009(Temp), f. & cert. ef. 9-25-09 thru 12-28-09; CWP 21-2009, f. & cert. ef. 12-29-09

## 413-090-0040

### Payments During Adoptive Supervision

The Department provides a payment for family foster care base rate and any enhanced supervision payment to a foster parent or relative caregiver after a child is free for adoption and placed in a home designated by the Department's Adoption Program Manager as the child's adoptive placement until adoption assistance benefits commence. See Child Welfare Policy I-G.3.1, "Adoption Assistance" OAR 413-130-0000 to 413-130-0130 for the eligibility requirements of the Adoption Assistance Program.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 20-1999, f. 9-15-99, cert. ef. 9-20-99; CWP 9-2003, f. & cert. ef. 1-7-03; CWP 5-2007, f. 3-30-07, cert. ef. 4-1-07; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 11-2009(Temp), f. & cert. ef. 9-25-09 thru 12-28-09; CWP 21-2009, f. & cert. ef. 12-29-09

## 413-090-0050

### Family Foster Care and Relative Caregiver Out-of-State Payment Rates

(1) A foster parent or relative caregiver who receives Department approval to move out-of-state with a child that the Department has placed in the home may continue to receive current foster care payments for that child for up to 180 days or until licensed or certified in the receiving state, whichever is earlier.

(2) The Administrator of the Office of Permanency and Safety for Children or the Foster Care Program Manager may extend the 180 day limit for continuing to receive current foster care payments when the licensure or certification process in the receiving state has not been completed due to circumstances beyond the control of the Department.

(3) Once the home is licensed or certified in the receiving state, the Department authorizes payment at Oregon's established foster care payment rates.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 20-1999, f. 9-15-99, cert. ef. 9-20-99; CWP 9-2003, f. & cert. ef. 1-7-03; CWP 20-2006(Temp), f. & cert. ef. 10-13-06 thru 4-10-07; CWP 5-2007, f. 3-30-07, cert. ef. 4-1-07; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 11-2009(Temp), f. & cert. ef. 9-25-09 thru 12-28-09; CWP 21-2009, f. & cert. ef. 12-29-09

## 413-090-0100

### Purpose

The purpose of these rules, OAR 413-090-0100 to 413-090-0210, is to describe the requirements for eligibility and receipt of personal care services when a child or young adult is placed with a foster parent or relative caregiver by the Department.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; CWP 20-2006(Temp), f. & cert. ef. 10-13-06 thru 4-10-07; CWP 5-2007, f. 3-30-07, cert. ef. 4-1-07; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 21-2009, f. & cert. ef. 12-29-09

## 413-090-0110

### Definitions

The following definitions apply to OAR 413-090-0100 to 413-090-0210:

(1) "Certified family" means an individual or individuals who hold a current Certificate of Approval from the Department to operate a home to provide care, in the home in which they reside, to a child or young adult in the care or custody of the Department.

(2) "Child" means a person under 18 years of age.

(3) "Contract Registered Nurse" means a licensed registered nurse under a contract with the Department of Human Services who provides nursing assessment, consultation, teaching, delegation, or on-going nursing services to a child or young adult in the care or custody of the Department.

(4) "Delegated nursing task" means a task, normally requiring the education and license of a registered nurse (RN) and within the RN scope of practice to perform, that an RN authorizes an unlicensed person to perform.

(5) "Department" means the Department of Human Services, Child Welfare.

(6) "Foster parent" means an individual who operates a home that has been approved by the Department to provide care for an unrelated child or young adult placed in the home by the Department.

(7) "Legally responsible relative" means the parent or stepparent of a child or young adult or a person related to the child or young adult by blood or marriage who has legal custody or legal guardianship of the child or young adult.

(8) "Level of personal care" means the payment to a qualified provider for performing the personal care services for an eligible child or young adult.

(9) "Personal Care RN Manager" means a registered nurse (RN) who is a licensed registered nurse employed by the Department of Human Services to provide oversight of Contract Registered Nurses and personal care services authorized through the Children, Adults, and Families Division of the Department of Human Services.

(10) "Personal care services" means the provision of or assistance with those functional activities described in OAR 413-090-0120 consisting of mobility, transfers, repositioning, basic personal hygiene, toileting, bowel and

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bladder care, nutrition, medication management, and delegated nursing tasks that a child or young adult requires for his or her continued well-being.

(11) "Personal care services assessment" means an evaluation by a registered nurse of a child or young adult's ability to perform the functional activities required to meet the child or young adult's daily needs.

(12) "Personal care services plan" means a written plan to provide personal care services for the child or young adult documenting:

- (a) The determination that the individual is a qualified provider;
- (b) The frequency or intensity of each personal care service to be provided; and

(c) The date personal care services begin.

(13) "Qualified provider" means an individual who:

(a) Is authorized by the Department through the Contract Registered Nurse or Personal Care RN Manager;

(b) Demonstrates by background, skills, and abilities the capability to safely and adequately provide the authorized personal care services;

(c) Maintains a drug-free household;

(d) Has been approved through the background check process described in Child Welfare Policy I-G.1.4, "Oregon Computerized Criminal History Checks and Nationwide Criminal History Checks through the FBI for Relative Caregivers, Foster Parents, Other Persons in Household and Adoptive Parents for Children in the Care or Custody of DHS" OAR 413-120-0400 to 413-120-0470 or under OAR 407-007-0200 to 407-007-0370; and

(e) Is not the parent, step-parent, or legally responsible relative of the child or young adult eligible for personal care services.

(14) "Registered nurse" means an individual licensed and registered to practice nursing.

(15) "Relative caregiver" means an individual who operates a home that has been approved by the Department to provide care for a related child or young adult who is placed in the home by the Department.

(16) "Young adult" means a person aged 18 through 20 years who remains in the care and custody of the Department, and lives in substitute care or lives independently through the Department's Independent Living Subsidy Program.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 19-1999, f. 9-15-99, cert. ef. 9-20-99; SOSCF 6-2002, f. 3-28-02, cert. ef. 4-1-02; CWP 20-2006(Temp), f. & cert. ef. 10-13-06 thru 4-10-07; CWP 5-2007, f. 3-30-07, cert. ef. 4-1-07; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 11-2009(Temp), f. & cert. ef. 9-25-09 thru 12-28-09; CWP 21-2009, f. & cert. ef. 12-29-09

## 413-090-0120

### Scope of Services

(1) Personal care services are provided directly to the eligible child or young adult and do not include respite or other services, nor are they implemented for the purpose of benefiting others in the household or the household in general.

(2) Personal care services include:

(a) Mobility, transfers, repositioning — assisting a child or young adult with ambulation or transfers with or without an assistive device, turning the individual or adjusting padding for physical comfort or pressure relief, or encouraging or assisting with range-of-motion exercises;

(b) Basic personal hygiene — providing or assisting a child or young adult with needs such as bathing (tub, bed bath, shower), washing hair, grooming, shaving, nail care, foot care, dressing, skin care, mouth care, and oral hygiene;

(c) Toileting, bowel and bladder care — assisting a child or young adult to and from bathroom, on and off a toilet, commode, bedpan, urinal or other assistive device used for toileting, changing incontinence supplies, following a toileting schedule, cleansing the individual or adjusting clothing related to toileting, emptying catheter drainage bag or assistive device, ostomy care or bowel care;

(d) Nutrition — preparing meals and special diets, assisting with adequate fluid intake or adequate nutrition, assisting with food intake (feeding), monitoring to prevent choking or aspiration, assisting with special utensils, cutting food, and placing food, dishes and utensils within reach for eating;

(e) Medication management — assisting with ordering, organizing and administering prescribed medications (including pills, drops, ointments, creams, injections, inhalers, and suppositories), monitoring for choking while taking medications; and

(f) A delegated nursing task.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 19-1999, f. 9-15-99, cert. ef. 9-20-99; CWP 20-2006(Temp), f. & cert. ef. 10-13-06 thru 4-10-07; CWP 5-2007, f. 3-30-07, cert. ef. 4-1-07; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 11-2009(Temp), f. & cert. ef. 9-25-09 thru 12-28-09; CWP 21-2009, f. & cert. ef. 12-29-09

## 413-090-0130

### Personal Care Services Eligibility

To receive personal care services while living with a certified family, a child or young adult in the care or custody of the Department must:

(1) Be eligible to receive medical services funded through either Title XIX of the Social Security Act or the state general fund;

(2) Have no available resources from the natural support system of friends, neighbors, or other community resources to provide personal care services; and

(3) Have a documented diagnosed physical or mental impairment and require personal care services as determined by a personal care services assessment.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 19-1999, f. 9-15-99, cert. ef. 9-20-99; SOSCF 6-2002, f. 3-28-02, cert. ef. 4-1-02; CWP 20-2006(Temp), f. & cert. ef. 10-13-06 thru 4-10-07; CWP 5-2007, f. 3-30-07, cert. ef. 4-1-07; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 9-2009(Temp), f. & cert. ef. 8-12-09 thru 12-28-09; CWP 21-2009, f. & cert. ef. 12-29-09

## 413-090-0133

### Conducting a Personal Care Services Assessment

(1) When a child or young adult with a diagnosed physical or mental impairment appears to require personal care services and the caseworker becomes aware of the apparent need for personal care services, the caseworker must refer the child or young adult to the Contract Registered Nurse for an assessment.

(2) Upon receipt of a referral, the Contract Registered Nurse or the Personal Care RN Manager conducts the assessment.

(3) To conduct the personal care services assessment, the Contract Registered Nurse or the Personal Care RN Manager:

(a) Reviews available medical records of the child or young adult;

(b) Meets with the child or young adult and the foster parent or relative caregiver;

(c) Gathers information about the child or young adult's condition and functioning;

(d) Assesses the child or young adult's ability to perform functional activities necessary to meet his or her daily needs at a level appropriate for the child or young adult's chronological age;

(e) Documents the findings of the personal care services assessment; and

(f) Submits the findings of the personal care services assessment to the Personal Care RN Manager.

(4) The Personal Care RN Manager must:

(a) Review the findings of the personal care services assessment;

(b) Apply the rating scale to the personal care services assessment;

(c) Determine whether the child or young adult meets the threshold for a level of personal care;

(d) Determine the level of personal care; and

(e) When the personal care services assessment scores a child or young adult's level of personal care needs at Level 4, convene a meeting with the foster parent or relative caregiver and others involved in the child or young adult's care in determining the additional payment and the intensive personal care services required to meet the child or young adult's identified needs.

(5) The responsibilities set forth in section (4) of this rule may be conducted by another medical professional employed by or under contract with the Department when the Personal Care RN Manager is unavailable.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: CWP 11-2009(Temp), f. & cert. ef. 9-25-09 thru 12-28-09; CWP 21-2009, f. & cert. ef. 12-29-09

## 413-090-0135

### Provider Eligibility

(1) Personal care services may be provided only by a qualified provider under OAR 413-090-0110(13); and

(2) The Contract Registered Nurse or the Personal Care RN Manager may authorize a qualified provider to provide personal care services to a child or young adult in the care or custody of the Department if:

(a) The Contract Registered Nurse or Personal Care RN Manager determines that the provider meets the definition of a qualified provider in OAR 413-090-0110(13); and

(b) The qualified provider signs the personal care services plan with the Department and agrees to provide the personal care services to the child or young adult described in the personal care services plan.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 9-2009(Temp), f. & cert. ef. 8-12-09 thru 12-28-09; CWP 11-2009(Temp), f. & cert. ef. 9-25-09 thru 12-28-09; CWP 21-2009, f. & cert. ef. 12-29-09

## 413-090-0136

### Developing the Personal Care Services Plan

(1) After conducting the personal care services assessment when it has been determined that a child or young adult is eligible for personal care serv-



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ices, the Contract Registered Nurse or Personal Care RN Manager must develop a personal care services plan.

(2) The personal care services plan must:

- (a) Specify the frequency or intensity of each personal care service;
- (b) Identify the qualified provider to provide the personal care service;
- (c) If the plan includes a delegated nursing task, the personal care services plan must include:

(A) The written authorization of the registered nurse permitting the qualified provider to perform the delegated nursing task;

(B) The written instructions on how to perform the delegated nursing task;

(C) How frequently the child or young adult is to be reassessed with respect to the delegated nursing task;

(D) How the qualified provider is to be supervised; and

(E) How frequently the qualified provider is to be reevaluated.

(d) Identify the date that the personal care services are to begin and the date that the personal care services plan ends; and

(e) Be signed by the Contract Registered Nurse or Personal Care RN Manager and each qualified provider providing services under the personal care services plan.

(3) If the Contract Registered Nurse or Personal Care RN Manager determines that the child or young adult requires a delegated nursing task, the Contract Registered Nurse or Personal Care RN Manager must follow the requirements in OAR 851-047-0000 to 851-047-0040.

(a) An authorization permitting a qualified provider to perform a nursing task does not permit the qualified provider to perform the task for a different child or young adult and the authorization may not be transferred.

(b) The skill of the qualified provider and the condition of the child or young adult must be reevaluated as appropriate.

(c) The registered nurse may rescind the delegation, as provided in OAR 851-047-0030(7), and revise the personal care services plan accordingly.

Stat. Auth. ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: CWP 11-2009(Temp), f. & cert. ef. 9-25-09 thru 12-28-09; CWP 21-2009, f. & cert. ef. 12-29-09

## 413-090-0140

### Periodic Review of Personal Care Services Eligibility

(1) A child or young adult's eligibility for personal care services must be reviewed annually from the initial date of the personal care services plan, unless an earlier date for reassessment has been approved in the personal care services plan.

(2) The child or young adult's caseworker may refer the child or young adult for a personal care services reassessment earlier than the date approved in the personal care services plan if the child or young adult's need for personal care services has changed. The Personal Care RN Manager must approve the referral.

(3) The Department must send a notice to the foster parent or relative caregiver, on behalf of the child or young adult, at least 14 days prior to conducting a personal care services reassessment. The notice must include:

(a) A description and explanation of the personal care services assessment process;

(b) An explanation of the process for appealing the results of the personal care services assessment; and

(c) A description of the foster parent or relative caregiver's right, on behalf of the eligible child or young adult, to set the date, time and place of the personal care services assessment at a location that is convenient for him or her and to invite other persons to participate in the personal care services assessment.

(4) The Contract Registered Nurse or Personal Care RN Manager follows the process set forth in OAR 413-090-0133 when conducting a personal care services reassessment.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 19-1999, f. 9-15-99, cert. ef. 9-20-99; CWP 20-2006(Temp), f. & cert. ef. 10-13-06 thru 4-10-07; CWP 5-2007, f. 3-30-07, cert. ef. 4-1-07; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 11-2009(Temp), f. & cert. ef. 9-25-09 thru 12-28-09; CWP 21-2009, f. & cert. ef. 12-29-09

## 413-090-0150

### Payment Determination

(1) Payment for the personal care services identified in the personal care services plan is based on the eligible child or young adult's personal care services at a level of personal care that corresponds to the needs identified in the personal care services assessment and is determined by the Department. The levels of personal care are set forth in Exhibit 1.

(a) If the eligible child or young adult qualifies as Level 1 (moderate care), the payment is a maximum of \$207 per month based on the days within the month the child or young adult is eligible for and receives personal care services.

(b) If the eligible child or young adult qualifies as Level 2 (intermediate care), the payment is a maximum of \$413 per month based on the days within the month the child or young adult is eligible for and receives personal care services.

(c) If the eligible child or young adult qualifies as Level 3 (advanced care), the payment is a maximum of \$620 per month based on the days within the month the child or young adult is eligible for and receives personal care services.

(d) If the eligible child or young adult qualifies as Level 4 (intensive care), the payment is an amount authorized by the Department, based on the days within the month the child or young adult is eligible for and receives personal care services and on the intensity and frequency of the personal care services in conjunction with all other medical services provided for the child or young adult.

(2) Payment for personal care services is made on a monthly basis, and is calculated based on the number of days personal care services were provided to the eligible child or young adult.

(a) General Fund payment for personal care services is authorized by the Department on the date the personal care services assessment is approved.

(b) Title XIX payment for personal care services is authorized by the Department on the date the personal care services plan was signed by the qualified provider.

[Publications: Publications referenced are available from the agency.]

[E.D. NOTE: Exhibits referenced are available from the agency.]

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 19-1999, f. 9-15-99, cert. ef. 9-20-99; SOSCF 6-2002, f. 3-28-02, cert. ef. 4-1-02; CWP 20-2006(Temp), f. & cert. ef. 10-13-06 thru 4-10-07; CWP 5-2007, f. 3-30-07, cert. ef. 4-1-07; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 9-2009(Temp), f. & cert. ef. 8-12-09 thru 12-28-09; CWP 11-2009(Temp), f. & cert. ef. 9-25-09 thru 12-28-09; CWP 21-2009, f. & cert. ef. 12-29-09

## 413-090-0210

### Termination of Personal Care Services and Payments

(1) Personal care services provided to a child or young adult are terminated when the child or young adult no longer meets the eligibility requirements under OAR 413-090-0130.

(2) Personal care services payments are made to the qualified provider as described in OAR 413-190-0150(2) until a personal care services plan is terminated or the date the child or young adult is no longer in the care of the foster parent or relative caregiver, whichever is earlier.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 19-1999, f. 9-15-99, cert. ef. 9-20-99; CWP 20-2006(Temp), f. & cert. ef. 10-13-06 thru 4-10-07; CWP 5-2007, f. 3-30-07, cert. ef. 4-1-07; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 21-2009, f. & cert. ef. 12-29-09

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

**Adm. Order No.:** CWP 22-2009

**Filed with Sec. of State:** 12-29-2009

**Certified to be Effective:** 12-29-09

**Notice Publication Date:** 11-1-2009

**Rules Adopted:** 413-130-0045

**Rules Amended:** 413-130-0000, 413-130-0010, 413-130-0020, 413-130-0030, 413-130-0040, 413-130-0050, 413-130-0060, 413-130-0070, 413-130-0075, 413-130-0080, 413-130-0090, 413-130-0100, 413-130-0110, 413-130-0115, 413-130-0125, 413-130-0130

**Rules Repealed:** 413-130-0120, 413-130-0127

**Subject:** These rules about payments to adoptive parents on behalf of an eligible child are being changed because the Department is redesigning the rates and structures for these payments (rate redesign). These rules, OAR 413-130-0000 to 413-130-0130 set the requirements and responsibilities for the Department and adoptive parents of an eligible child around adoption assistance benefits, including cash payments, medical coverage, an Agreement Only, reimbursement of nonrecurring expenses, and special payments. These rules also are being adopted, amended, and repealed so that the Department will be in compliance with federal requirements and timelines in response to a federal audit, to clarify the use of Title XIX personal care services payments, to comply with federal requirements addressing limitations for reducing adoption assistance payments, and to implement the new payment structure for foster care maintenance payments when a child is in a home certified by the Department. These rules also are being adopted, amended, and repealed to make permanent the temporary rule changes filed effective July 1, 2009.

OAR 413-130-0000 about the purpose of the adoption assistance rules (OAR 413-130-0000 to 413-130-0130), OAR 413-130-0010 about the definitions used in these rules, OAR 413-130-0020 about the eligibility requirements for adoption assistance, OAR 413-130-0030 about the eligibility requirements for nonrecurring expenses

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reimbursement, OAR 413-130-0040 about the eligibility requirements for adoption assistance payments, OAR 413-130-0050 about the availability of new adoption assistance payments and payment adjustments, OAR 413-130-0060 about agreement only adoption assistance agreements, OAR 413-130-0070 about how the Department determines adoption assistance payments, OAR 413-130-0075 about when the Department will renegotiate an adoption assistance agreement, OAR 413-130-0080 about adoption assistance payments for nonrecurring expenses, OAR 413-130-0090 about adoption assistance special payments, OAR 413-130-0100 about adoption assistance medical coverage benefits, OAR 413-130-0110 about how approved adoption assistance is administered, OAR 413-130-0115 about the functions of the Adoption Assistance Review Committee, OAR 413-130-0125 about what happens in response to budgetary reductions in adoption assistance funding, and OAR 413-130-0130 about how applications for adoption assistance received after an adoption is legally finalized are processed are being amended; OAR 413-130-0045 about how a child's immigrant status effects his or her eligibility for adoption assistance is being adopted; and OAR 413-130-0120 about the right of adoption assistance clients a contested case hearing and OAR 413-130-0127 about adjustments to adoption assistance payments are being repealed to clarify the Department's policy for this program, include definitions used throughout the adoption assistance rules (OAR 413-130-0000 to 413-130-0130), reflect current Department terminology, and bring the adoption assistance program into compliance with federal requirements.

**Rules Coordinator:** Annette Tesch—(503) 945-6067

## 413-130-0000

### Purpose

The purpose of these rules, OAR 413-130-0000 to 413-130-0130, is to describe the Department's responsibility to determine eligibility for adoption assistance for Oregon children. Adoption assistance for children placed into Oregon from another state is the responsibility of the sending state.

Stat. Auth.: ORS 418.005, 418.340

Stats. Implemented: ORS 418.330 - 418.340

Hist.: SCF 2-1995, f. & cert. ef. 8-21-95; SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 8-1999, f. & cert. ef. 5-17-99; CWP 16-2008, f. & cert. ef. 7-1-08; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 22-2009, f. & cert. ef. 12-29-09

## 413-130-0010

### Definitions

The following definitions apply to OAR 413-130-0000 to 413-130-0130:

(1) "Adoption assistance" means financial assistance and medical coverage granted to an adoptive family or pre-adoptive family, on behalf of an eligible adoptive child, to offset the costs associated with adopting and meeting the on-going needs of the child. Adoption assistance may include cash payments, medical coverage, an Agreement Only, reimbursement of nonrecurring expenses, or special payments.

(2) "Adoption assistance agreement" means a written agreement, binding on the parties to the agreement, between the Department and the adoptive family or pre-adoptive family of a minor child.

(3) "Adoption assistance payment" means a payment paid by the Department to the adoptive family or pre-adoptive family on behalf of the adoptive child.

(4) "Adoption Assistance Review Committee" means a committee composed of local and central office staff who have expertise in the area of adoption.

(5) "Adoptive family" means a family that includes at least one child who joined the family through a legally finalized adoption.

(6) "Agreement Only" means a written agreement between the Department and the adoptive family or pre-adoptive family when there is no current need for adoption assistance benefits. An Agreement Only may be renegotiated at the request of the adoptive family as provided in OAR 413-130-0075, if a need arises prior to the child reaching 18 years of age.

(7) "CANS screening" means the Child and Adolescent Needs and Strength screening, a process of integrating information on a child or young adult's needs and strengths for the purposes of case planning, service planning, and determining the supervision needs of the child or young adult. The Department uses two versions of the CANS Comprehensive Screening Tool, one for an individual birth through five years old and another version for an individual six through twenty years old.

(8) "Certified family" means an individual or individuals who hold a current Certificate of Approval from the Department to provide care, in the home in which they reside, to a child or young adult in the care or custody of the Department.

(9) "Child" means a person under 18 years of age.

(10) "Department" means the Department of Human Services, Child Welfare.

(11) "Enhanced supervision" means the additional support, direction, observation, and guidance provided by a certified family to a child or young adult to promote and ensure the safety and well-being of a child or young adult, beyond the level of supervision that typically would be required for a child or young adult of the same age.

(12) "Legally free" means that, with respect to a child, the legal rights of all parents with legal standing have been judicially terminated, voluntarily relinquished, or otherwise terminated by operation of law, thus allowing for the child to be adopted.

(13) "Level of care" means the payment for enhanced supervision needs of a child or young adult to a certified family.

(14) "Licensed adoption agency" means an adoption agency licensed by the state of Oregon to place children for adoption, or an adoption agency that holds a license from another state and is authorized under the laws of that state to place children for adoption.

(15) "Medical coverage" means eligibility for medical services as provided through Medicaid in accordance with OAR 413-130-0100.

(16) "Nonrecurring expenses" mean a one-time payment up to \$1,500, which the Department may pay to a pre-adoptive family to assist with the expenses incurred in legally finalizing the adoption of a special needs child as provided in OAR 413-130-0080. Nonrecurring adoption expenses are the reasonable and necessary adoption fees which may include the cost of a home study, court costs, attorney fees, physical and psychological examinations, travel to visit with the adoptive child prior to the placement, and other expenses which are related directly to the legal adoption of a child with special needs, are not incurred in violation of state or federal law, and have not been reimbursed from other sources or funds.

(17) "Payment" means cash assistance to an adoptive family or pre-adoptive family to meet the child's needs.

(18) "Pre-adoptive family" means an individual or individuals with a current Certificate of Approval to operate a home to provide care for a child placed by the Department for purposes of adoption.

(19) "Qualified alien" means, but is not limited to, permanent residents, asylees, and refugees under 8 USC 1641(b).

(20) "Qualified vendor attorney" means an attorney who has a price agreement with the Department to process the adoption of a child who is eligible for adoption assistance.

(21) "Sibling" means one of two or more children related:

(a) By blood or adoption through a common legal parent;

(b) Through the marriage of the children's legal or biological parents;

or

(c) Through a legal or biological parent who is the registered domestic partner of the child's legal or biological parent.

(22) "Special payment" means a payment for unanticipated short-term costs which are directly related to the child's special needs or are essential to the welfare of the child, and are not covered by the adoptive family's insurance or by Medicaid as negotiated between the Department and the family.

(23) "Substitute care" means the out-of-home placement of a child or young adult who is in the legal or physical custody and care of the Department.

(24) "Tribe" means a federally recognized Indian tribe in Oregon with a Title IV-E agreement with the Department.

Stat. Auth.: ORS 418.005, 418.340

Stats. Implemented: ORS 418.330 - 418.340

Hist.: SCF 2-1995, f. & cert. ef. 8-21-95; SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 8-1999, f. & cert. ef. 5-17-99; SOSCF 7-2002, f. 3-28-02, cert. ef. 4-1-02; CWP 23-2005(Temp), f. 12-30-05, cert. ef. 1-1-06; CWP 16-2006, f. 6-30-06, cert. ef. 7-1-06; CWP 16-2008, f. & cert. ef. 7-1-08; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 22-2009, f. & cert. ef. 12-29-09

## 413-130-0020

### Eligibility for Adoption Assistance

A child in the custody of the Department, a tribe with a Title IV-E Agreement, or a licensed adoption agency in Oregon is eligible for adoption assistance when the requirements of all of the following sections are met:

(1) The state has determined that the child cannot or should not be returned to the home of his or her parents. This decision is based on one of the following:

(a) An order from a court of competent jurisdiction terminating parental rights;

(b) The existence of a petition for termination of parental rights;

(c) For a child under the jurisdiction of the court, a signed relinquishment;

(d) For a child not under the jurisdiction of the court, a signed relinquishment and a subsequent court finding signed within six months of the date the child was last living with the parent that it would be contrary to the welfare of the child to return home at that time; or

(e) In the case of an orphan, verification of the death of the parent or parents.

(2) The Department determines the child has special needs, meaning the child has at least one of the following factors or conditions which make adoptive placement difficult to achieve:

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(a) A documented medical, physical, mental, emotional condition or other clinically diagnosed disability, or a documented history of abuse or neglect or other identified predisposing factor that places the child at risk for future problems that need treatment;

(b) Is a member of a sibling group which will be placed together and is difficult to place because there are three or more children, or if in a sibling group of two, at least one of the children is six years of age or older;

(c) Is a member of an ethnic, racial, or cultural minority (such as African American, Hispanic, Asian, Indian, or Pacific Islander); or

(d) Is eight years of age or older.

(3) A reasonable but unsuccessful effort to place the child with an appropriate adoptive family for adoption without assistance has been made, unless such effort is not in the best interests of the child.

Stat. Auth.: ORS 418.005, 418.340

Stats. Implemented: ORS 418.330 - 418.340

Hist.: SCF 2-1995, f. & cert. ef. 8-21-95; SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SCF 6-1996, f. & cert. ef. 9-17-96; SOSCF 8-1999, f. & cert. ef. 5-17-99; SOSCF 7-2002, f. 3-28-02, cert. ef. 4-1-02; CWP 16-2008, f. & cert. ef. 7-1-08; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 22-2009, f. & cert. ef. 12-29-09

## 413-130-0030

### Eligibility for Nonrecurring Expenses

(1) Any child who meets the eligibility criteria for adoption assistance under OAR 413-130-0020 is eligible for reimbursement of nonrecurring expenses.

(2) A child being adopted by an Oregon resident who is not the responsibility of the Department or an Oregon licensed adoption agency also is eligible for reimbursement of nonrecurring expenses if all other eligibility requirements under OAR 413-130-0020 are met.

Stat. Auth.: ORS 418.005, 418.340

Stats. Implemented: ORS 418.330 - 418.340

Hist.: SCF 2-1995, f. & cert. ef. 8-21-95; SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 8-1999, f. & cert. ef. 5-17-99; SOSCF 7-2002, f. 3-28-02, cert. ef. 4-1-02; SOSCF 7-2002, f. 3-28-02, cert. ef. 4-1-02; CWP 16-2008, f. & cert. ef. 7-1-08; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 22-2009, f. & cert. ef. 12-29-09

## 413-130-0040

### Eligibility for Adoption Assistance Payments

(1) The Department makes efforts to establish Title IV-E eligibility under OAR 413-100-0335 for any child eligible for adoption assistance under OAR 413-130-0020. Licensed adoption agencies must make all requested efforts to assist the Department in establishing Title IV-E eligibility. A child eligible for an adoption assistance payment under OAR 413-130-0020 who is determined ineligible for Title IV-E, is eligible for state-funded adoption assistance.

(2) A child determined eligible for an adoption assistance payment with respect to a prior adoption who becomes available for adoption again and continues to meet the special needs criteria set forth in OAR 413-130-0020, is eligible for an adoption assistance payment in the subsequent adoption when:

(a) The prior adoption has been dissolved, and the parental rights of the adoptive parents have been terminated or relinquished; or

(b) The child's adoptive parents have died.

(3) In addition to the adoption assistance eligibility criteria under OAR 413-130-0020 and section (2) of this rule, a child must meet the following requirements, as applicable:

(a) For adoption through a licensed adoption agency, the child must have been placed voluntarily with the licensed adoption agency in out-of-home care in the month the voluntary agreement was signed.

(b) Judicial Determination Criteria. A "contrary to the welfare" or "best interest" ruling is not required for a child receiving SSI, or for a child whose eligibility is based on a foster care payment being made for the child's minor parent with whom the child is placed, while in foster care. For any other child, a judicial determination that it is "contrary to the welfare of the child to remain in the home" or is in the "best interest of the child to be removed from the home" must be contained in one of the following:

(A) The first court order of removal for a child removed by court order;

(B) A court order signed within six months of the month the child last lived with a specified relative if the child's removal was via parental relinquishment only. Documentation of the date of the signing of the court order is necessary; or

(C) A court order with a finding made within 180 days of the date that the child voluntarily entered care, and signed within six months of the date the child was last living with the parent.

(c) The child must be a United States citizen or a qualified alien pursuant to OAR 413-100-0210(2).

Stat. Auth.: ORS 418.005, 418.340

Stats. Implemented: ORS 418.330 - 418.340

Hist.: SCF 2-1995, f. & cert. ef. 8-21-95; SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 8-1999, f. & cert. ef. 5-17-99; SOSCF 11-1999(Temp), f. & cert. ef. 6-3-99 thru 11-30-99; SOSCF 7-2002, f. 3-28-02, cert. ef. 4-1-02; CWP 16-2008, f. & cert. ef. 7-1-08; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 22-2009, f. & cert. ef. 12-29-09

## 413-130-0045

### Child's Immigrant Status

(1) The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), Public Law 104-193, as amended, limited federal

public benefits to qualified aliens. Adoption assistance under Title IV-E of the Act is considered a federal public benefit for the purposes of the PRWORA and, therefore, limited to U.S. citizens and qualified aliens.

(2) If a substitute caregiver or adoptive parent is not a qualified alien, a child who is otherwise eligible under section 473 of PRWORA must meet the five-year residency requirement to receive Title IV-E adoption assistance as Section 403 of PRWORA requires a qualified alien entering the United States on or after the date of enactment of PRWORA (August 22, 1996), unless excepted, to live in the United States for five years before becoming eligible for certain federal public benefits. In accordance with section 403(c)(2)(F) of PRWORA, however, a federal payment for adoption assistance is excluded from the five-year residency requirement if the child and the foster or adoptive parent with whom the child is placed are qualified aliens under OAR 413-130-0050.

Stat. Auth.: ORS 418.005, 418.340

Stats. Implemented: ORS 418.330 - 418.340

Hist.: CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 22-2009, f. & cert. ef. 12-29-09

## 413-130-0050

### Availability of New Adoption Assistance and Adoption Assistance Payment Adjustments

(1) The availability of state funds governs the adoption assistance payments which may be obligated. If all available adoption assistance funds are obligated, the Department continues to accept and process new applications and requests for adjustments in adoption assistance payments and establishes a waiting list. Adoption assistance agreements are granted in the order of the date of approval as funds become available. For a new adoption assistance application, an adoptive family is offered the opportunity to sign an Agreement Only to prevent delay in finalizing the adoption.

(2) Substitute care payments end when adoption assistance payments begin. Medical coverage continues until the adoption assistance payment is negotiated, agreements are signed, and adoption assistance benefits begin. Medical coverage as provided by Medicaid may continue as an adoption assistance benefit when requested by the adoptive family or pre-adoptive family.

(3) When a child is legally free for adoption, the Department's local office staff completes the adoption assistance application with the pre-adoptive family and submits the application to the Adoption Program no later than 60 days from the date the pre-adoptive family is selected. No later than 60 days after receipt of the completed adoption assistance application, the Department's Adoption Program staff must begin negotiation of the adoption assistance agreement.

Stat. Auth.: ORS 418.005, 418.340

Stats. Implemented: ORS 418.330 - 418.340

Hist.: SCF 2-1995, f. & cert. ef. 8-21-95; SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 8-1999, f. & cert. ef. 5-17-99; SOSCF 7-2002, f. 3-28-02, cert. ef. 4-1-02; CWP 16-2008, f. & cert. ef. 7-1-08; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 22-2009, f. & cert. ef. 12-29-09

## 413-130-0060

### Agreement Only

(1) An Agreement Only between the Department and the pre-adoptive family or adoptive family is signed when there is no current need for an adoption assistance payment or medical coverage, the adoptive family requests such an agreement, and the child is eligible for adoption assistance under OAR 413-130-0020.

(2) The Agreement Only becomes effective on the date the completed adoption assistance agreement is approved and signed by the Department, and automatically terminates when the child reaches 18 years of age.

(3) The adoptive family must make a written request to the Department to initiate any adoption assistance benefits subsequent to completing an Agreement Only. The adoptive family must provide documentation to the Department describing the child's need for services at the time an adoption assistance benefit is requested as provided in OAR 413-130-0075.

(4) The pre-adoptive family must notify the Department in writing if the family chooses not to accept any form of adoption assistance benefits, including an Agreement Only.

Stat. Auth.: ORS 418.005, 418.340

Stats. Implemented: ORS 418.330 - 418.340

Hist.: SCF 2-1995, f. & cert. ef. 8-21-95; SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 8-1999, f. & cert. ef. 5-17-99; SOSCF 7-2002, f. 3-28-02, cert. ef. 4-1-02; CWP 16-2008, f. & cert. ef. 7-1-08; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 22-2009, f. & cert. ef. 12-29-09

## 413-130-0070

### Determination of the Adoption Assistance Payment

(1) The rate of a monthly adoption assistance payment must be negotiated between the Department and the pre-adoptive family, taking into consideration relevant factors which include, but are not limited to:

(a) The special needs of the child;

(b) The services required to meet the child's special needs;

(c) The cost of the required services for the child;

(d) The family's ability to provide the required services to the child; and

(e) The resources available to the adoptive family and child in the community.

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(2) The adoption assistance payment is negotiated prior to completion of the adoption assistance agreement. The adoption assistance payment may not exceed the foster care base rate the child would receive if he or she continued in substitute care plus, effective September 1, 2009, any applicable level of care payment for enhanced supervision as determined by a CANS screening.

(3) If a child under the age of eight years meets special needs status under OAR 413-130-0020(2) and has no documented medical, physical, mental, or emotional condition, or other clinically diagnosed disability, he or she receives an adoption assistance payment that may not exceed the foster care base rate the child would receive if he or she continued in substitute care, unless the pre-adoptive family enters into an Agreement Only.

(4) An initial adoption assistance payment begins when all of the following criteria are met:

- (a) The child is legally free for adoption;
- (b) The Department or licensed adoption agency has designated the pre-adoptive family as the designated adoptive placement;
- (c) An adoption assistance agreement has been signed by the pre-adoptive family and by the Department representative.

(5) Medicaid coverage, private insurance, public education, and all community resources must be considered as resources for the child and the pre-adoptive family or adoptive family when determining the amount of an adoption assistance payment. A child's income from sources such as Social Security and Veterans benefits are considered in determining the adoption assistance payment, but are not necessarily deducted dollar for dollar from the amount of the adoption assistance payment.

(6) When adoptive parents divorce, legally separate, or are party to a judicially recognized modification of custody, the Department may request updated information, including financial information, to reflect the change in family circumstances.

(7) Within 30 days of receipt of a request from an adoptive parent for change of payee due to a divorce, legal separation, or other judicially recognized modification of custody, the Department must notify the other adoptive parent of the request. It is the responsibility of the requestor to provide the Department with the other adoptive parent's current address and telephone number. Failure to provide such information may cause a delay in processing the request. The adoptive parents have 60 days from the date the Department sends the notice to challenge the change of payee request. If the change of payee is challenged, the Department requires a valid legal document describing physical custody of the child. Any change of payee is determined based on legal documentation describing the physical custody of the child.

(8) An adoptive family who moves out-of-state continues to be eligible for adoption assistance benefits. Medical coverage for the child may change under OAR 413-130-0100.

(9) An adoption assistance payment may be retroactive to the date of the signed adoption assistance application if the child was legally free for adoption and in the designated adoptive placement on that date, and no foster care base rate, enhanced supervision, or personal care services payment was made for the same period.

(10) An adoption assistance payment is issued at the end of each month of eligibility.

(11) An adoption assistance payment made to an adoptive family by the Department is inalienable by any assignment or transfer and exempt from execution, levy, attachment, or garnishment under the laws of this state.

Stat. Auth.: ORS 418.005 & 418.340  
Stats. Implemented: ORS 418.330 - 418.340  
Hist.: SCF 2-1995, f. & cert. ef. 8-21-95; SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 8-1999, f. & cert. ef. 5-17-99; SOSCF 7-2002, f. 3-28-02, cert. ef. 4-1-02; CWP 16-2008, f. & cert. ef. 7-1-08; CWP 23-2008, f. & cert. ef. 10-1-08; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 22-2009, f. & cert. ef. 12-29-09

## 413-130-0075

### Renegotiation of an Adoption Assistance Payment

(1) An adoptive family may request an increase of an adoption assistance payment through the Department's adoption assistance coordinator. The request for renegotiation of adoption assistance must be made in writing by the adoptive family and be based on significant change in one or more of the relevant factors set forth in OAR 413-130-0070(1).

(2) Effective September 1, 2009, renegotiation may include the consideration of:

- (a) The results of a CANS screening which is conducted prior to the renegotiation of adoption assistance when the adoptive family requests a payment higher than the child's foster care base rate; and
- (b) The adoptive family demonstrates the child's physical, mental health, behavioral, or developmental needs have worsened or required escalated care and treatment.

(3) A renegotiated adoption assistance payment must be initiated pursuant to OAR 413-130-0070.

(4) A renegotiated adoption assistance payment may not exceed the total foster care base rate plus any applicable enhanced supervision payment that would be paid for the child in substitute care.

(5) When the adoption assistance payment is renegotiated, a new adoption assistance agreement with the revised adoption assistance payment must

be signed by the adoptive family and the Department prior to a change in the payment.

(6) A renegotiated adoption assistance payment becomes effective on the first of the month in which the written request to renegotiate was received by the Department's Adoption Program. In no case may a renegotiated adoption assistance payment be paid for more than 12 retroactive months.

(7) If, after renegotiation, the adoptive family does not agree with the renegotiated adoption assistance payment amount, the adoptive family may appeal the decision as provided in OAR 413-130-0115.

Stat. Auth.: ORS 418.005, 418.340  
Stats Implemented: ORS 418.330 - 418.340  
Hist.: SOSCF 8-1999, f. & cert. ef. 5-17-99; SOSCF 7-2002, f. 3-28-02, cert. ef. 4-1-02; CWP 16-2008, f. & cert. ef. 7-1-08; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 22-2009, f. & cert. ef. 12-29-09

## 413-130-0080

### Payment for Nonrecurring Expenses

(1) The Department may make a one-time payment of up to \$1,500 to a pre-adoptive family for nonrecurring expenses to assist with the costs incurred in legally finalizing the adoption of a special needs child. Nonrecurring expenses for adoption are the reasonable and necessary adoption fees, court costs, attorney fees, mediation costs, and other expenses which are directly related to the legal adoption of a special needs child. Other nonrecurring expenses may include the cost of a home study, health and psychological examinations, travel to visit with the adoptive child prior to the placement, supervision of the placement prior to adoption, and other expenses which are directly related to the legal adoption of a child with special needs, which are not incurred in violation of State or Federal law.

(2) Payment for nonrecurring expenses may not duplicate expenses covered by the Interstate Compact for Placement of Children, a Department contract with a licensed adoption agency, or already covered by some other resource available to the adoptive family.

(3) Documentation of the nonrecurring expenses is required and must be submitted prior to execution of the adoption assistance agreement. The agreement, indicating the nature and amount of the nonrecurring expenses, must be signed prior to the final decree of adoption.

(4) The legal fees, when reimbursement is requested, are included in the nonrecurring expenses. It is the responsibility of the pre-adoptive family to choose a privately retained attorney or enter into a legal fees agreement with a qualified vendor attorney. The Department makes payment directly to the qualified vendor attorney after the adoption is finalized. For privately retained attorneys, the pre-adoptive family is responsible for payment, and after the adoption is finalized the Department will reimburse the family for reasonable charges. Reasonable charges are the current qualified vendor attorney rate, and only in extraordinary circumstances may a higher amount be considered.

(5) Payments for nonrecurring expenses are made when the Department receives the final decree of adoption.

Stat. Auth.: ORS 418.005, 418.340  
Stats. Implemented: ORS 418.330 - 418.340  
Hist.: SCF 2-1995, f. & cert. ef. 8-21-95; SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 8-1999, f. & cert. ef. 5-17-99; SOSCF 7-2002, f. 3-28-02, cert. ef. 4-1-02; CWP 23-2005(Temp), f. 12-30-05, cert. ef. 1-1-06; CWP 16-2006, f. 6-30-06, cert. ef. 7-1-06; CWP 16-2008, f. & cert. ef. 7-1-08; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 22-2009, f. & cert. ef. 12-29-09

## 413-130-0090

### Special Payments

A special payment may be approved in exceptional cases as negotiated between the Department and the adoptive family. The Department may authorize a special payment for a limited duration, subject to the Department's discretion and availability of resources. An adoptive family making a request for a special payment must make documentation available to the Department when requested. A special payment is made to the adoptive family who then is responsible to reimburse the provider for the services.

Stat. Auth.: ORS 418.005, 418.340  
Stats. Implemented: ORS 418.330 - 418.340  
Hist.: SCF 2-1995, f. & cert. ef. 8-21-95; SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SCF 6-1996, f. & cert. ef. 9-17-96; SOSCF 8-1999, f. & cert. ef. 5-17-99; SOSCF 7-2002, f. 3-28-02, cert. ef. 4-1-02; CWP 16-2008, f. & cert. ef. 7-1-08; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 22-2009, f. & cert. ef. 12-29-09

## 413-130-0100

### Medical Assistance

(1) An adoptive child who meets the requirements of OAR 413-130-0020 is eligible for Medicaid coverage as provided by the Department of Human Services, Division of Medical Assistance Programs (DMAP) under the requirements of Oregon Health Plan.

(2) An adoptive child for whom Medicaid eligibility has been established is issued a medical identification card through DMAP. Payment for medical services will be in accordance with Department of Human Services administrative rules.

(3) Medical coverage for a Title IV E eligible child is provided by the medical assistance program in the state where the child resides:

(a) If the child is placed outside the adoptive home and is eligible for federal funding through Title IV E or SSI, the state in which the child resides

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will provide medical coverage in accordance with the rules of that state even if the adoptive family resides in a separate state.

(b) If the adoptive family moves to another state or the child is placed for adoption in a state other than Oregon, the Department provides the documentation necessary to assist the adoptive family to obtain Medicaid coverage.

(c) The Department provides written verification of the child's Title IV E eligibility to the appropriate coordinator of the adoption assistance program in the state where the adoptive family is residing to facilitate Medicaid medical coverage.

(4) Medical coverage for a child who is not eligible for Title IV E is provided by DMAP under the rules of the Oregon Health Plan. If the child is placed in another state, or the adoptive family moves from Oregon to another state, the child may continue to receive medical coverage from Oregon, except in those cases where the other state will provide the Medicaid coverage (see section (3) of this rule).

(5) An adoption assistance agreement must be signed by the adoptive family and the Department which documents that the child is eligible for adoption assistance, and that medical coverage has been requested.

Stat. Auth.: ORS 418.005, 418.340

Stats. Implemented: ORS 418.330 - 418.340

Hist.: SCF 2-1995, f. & cert. ef. 8-21-95; SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 8-1999, f. & cert. ef. 5-17-99; SOSCF 7-2002, f. 3-28-02, cert. ef. 4-1-02; CWP 16-2008, f. & cert. ef. 7-1-08; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 22-2009, f. & cert. ef. 12-29-09

## 413-130-0110

### Administration of Approved Adoption Assistance

(1) It is the responsibility of Department and licensed adoption agency staff to:

(a) Notify or advise the pre-adoptive family of the availability of adoption assistance for an eligible child;

(b) Provide the pre-adoptive family with a copy of OAR 413-130-0000 to 413-130-0130; and

(c) Assist the pre-adoptive family in making an application for adoption assistance, if appropriate.

(2) A pre-adoptive family must submit a written application for adoption assistance to the Adoption Program through the family's respective Department local office worker or licensed adoption agency worker.

(3) A pre-adoptive family applying for adoption assistance must be approved by the respective licensed adoption agency as being a suitable adoptive family who meets all state standards including certification standards as provided in Child Welfare Policy I-G.1.1, "Current Caretaker Adoption" OAR 413-120-0500 to 413-120-0550.

(a) A licensed adoption agency recommending adoption assistance for an adoptive family is responsible to verify and document on the adoption assistance application that efforts were made to place the child without adoption assistance.

(b) The Department local office submitting an adoption assistance application must assure that the adoptive placement status has been approved by the Department's Adoption Program.

(4) Prior to the finalization of an adoption and issuance of any benefits, a written adoption assistance agreement must be completed that meets all of the following requirements. The agreement must:

(a) Be signed by each pre-adoptive parent and the Department.

(b) State the duration of the agreement.

(c) State the amount of adoption assistance benefits, if any, and specify:

(A) The amount of the adoption assistance monthly payment, if any; and

(B) The nature and amount of any other payments, services, and assistance to be provided, including nonrecurring expenses.

(d) State that the agreement remains in effect regardless of the state of residence of the pre-adoptive family or adoptive family and the child.

(e) State whether the child is to receive medical benefits, and specify the child's eligibility for Title XIX and Title XX.

(f) State that Oregon Law ORS 192.520 allows the Department of Human Services' Oregon Health Plan (OHP) and OHP managed care plans to exchange the following protected health information without authorization from the pre-adoptive or adoptive parent for the purpose of treatment activities related to behavioral or physical health:

(A) Name and Medicaid recipient number;

(B) Name of the hospital provider or attending physician;

(C) The performing provider's Medicaid number;

(D) Diagnosis;

(E) Each date of service;

(F) Procedure or Revenue code;

(G) The quantity of units or services provided; and

(H) Information about prescription medication and monitoring.

(g) State that the pre-adoptive family or adoptive family has the right to a contested case hearing under Child Welfare Policy I-A.5.2, "Contested Cases" OAR 413-010-0500 to 413-010-0535 for any denial, reduction, or suspension of adoption assistance benefits.

(5) The initial effective date of the adoption assistance agreement is determined by the Department's Adoption Program, taking into consideration the request of the pre-adoptive family and the recommendations of the licensed adoption agency or the Department's local office. The effective date may not be prior to the completion of a signed adoption assistance application, and must be effective no later than the date the adoption is finalized.

(6) Annually, the Department's Adoption Program sends a letter to adoptive families requiring assurance that each child receiving a Title IV-E or non-IV-E adoption assistance payment is a full-time elementary or secondary school student, or is incapable of attending school due to a documented medical condition.

(7) No adoption assistance may be provided to an adoptive parent if the adoptive parent is no longer legally and financially responsible for the support of the child, or the child is no longer receiving support from the adoptive parent. An adoptive parent is considered no longer legally responsible for the support of a child when parental rights have been terminated or when the child becomes an emancipated minor, marries, or enlists in the military.

(8) In the case of an adopted child who becomes legally free for adoption due to the adoptive parent or parents' relinquishment of the child, the termination of the adoptive parent or parents' parental rights to the child, or the death of the adoptive parent or parents, the determination of eligibility of the adopted child for adoption assistance remains based on the eligibility of the child as if the child were in the same financial and other circumstances the child was in the last time the child was determined eligible for adoption assistance benefits. The child must meet special needs criteria under OAR 413-130-0020 at the time the child again becomes available for adoption. (This rule is intended to meet the requirements of Sec. 473 (a)(2)(C) of the Social Security Act, 42 USC 673.)

(9) If a child receiving adoption assistance benefits is placed in substitute care, adoption assistance benefits may be adjusted, continued, or suspended. If the adoptive family is involved in the child's treatment, and the plan is for the child to return home, the family may ask to have the adoption assistance suspended, continued, or adjusted to reflect current expenses. The Department may suspend, continue, or adjust adoption assistance benefits to reflect current expenses. When the child returns to the care of the adoptive family, adoption assistance benefits may be reviewed upon request by the adoptive family.

(10) An adoptive family must immediately inform the Department's Adoption Program when a change in circumstances indicates that there is no longer a need for adoption assistance as provided in OAR 413-130-0110(7).

(11) The Department may terminate the adoption assistance agreement upon 30 days written notice to the adoptive family when the child is no longer in the home, and the adoptive family is no longer providing support for the child.

(12) An adoption assistance agreement automatically terminates, as required by Oregon law, when the child is 18 years old.

Stat. Auth.: ORS 418.005, 418.340

Stats. Implemented: ORS 418.330 - 418.340

Hist.: SCF 2-1995, f. & cert. ef. 8-21-95; SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 8-1999, f. & cert. ef. 5-17-99; SOSCF 11-1999(Temp), f. & cert. ef. 6-3-99 thru 11-30-99; SOSCF 22-1999, f. & cert. ef. 11-24-99; SOSCF 7-2002, f. 3-28-02, cert. ef. 4-1-02; CWP 16-2006, f. 6-30-06, cert. ef. 7-1-06; CWP 16-2008, f. & cert. ef. 7-1-08; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 22-2009, f. & cert. ef. 12-29-09

## 413-130-0115

### Adoption Assistance Review Committee and Appeals Procedure

(1) The Adoption Assistance Review Committee serves as a consultation and review body for the adoption assistance program.

(a) Adoption Program staff may refer unusual or exceptionally costly benefit requests to the Adoption Assistance Review Committee for consultation; or

(b) If, during negotiations of adoption assistance benefits, Adoption Program staff and the adoptive family or pre-adoptive family are unable to reach agreement, the matter may be referred to the Adoption Assistance Review Committee for review at the request of either Adoption Program staff or the adoptive family or pre-adoptive family.

(2) The adoptive family or pre-adoptive family and the assigned caseworker must provide written documentation for the Committee's consideration.

(3) The caseworker for the pre-adoptive family may participate in an Adoption Assistance Review Committee meeting by phone.

(4) The Adoption Assistance Review Committee reviews relevant materials and provides a recommendation regarding level of benefits to the Department's adoption assistance coordinator. The Adoption Assistance Review Committee takes into consideration the special needs of the child and the financial circumstances of the adoptive family or pre-adoptive family.

(5) If the adoptive family or pre-adoptive family is unsatisfied with the adoption assistance offer made by the Adoption Assistance Review Committee, the family may request further review by the Department's Adoption Program Manager.

(6) Requests for further review must be made in writing and received by the Department's Adoption Program Manager within 14 days from the date of the Adoption Assistance Review Committee recommendation.

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(7) The Adoption Program Manager reviews the material and makes a decision within 60 days from the date of the Adoption Assistance Review Committee recommendation.

(8) After receipt of the Adoption Program Manager's decision, the adoptive family or pre-adoptive family may request a contested case hearing as provided in Child Welfare Policy I-A.5.2, "Contested Case Hearings" OAR 413-010-0500 to 413-010-0535.

Stat. Auth.: ORS 418.005, 418.340  
Stats. Implemented: ORS 418.330 - 418.340  
Hist.: SOSCF 8-1999, f. & cert. ef. 5-17-99; SOSCF 7-2002, f. 3-28-02, cert. ef. 4-1-02; CWP 16-2008, f. & cert. ef. 7-1-08; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 22-2009, f. & cert. ef. 12-29-09

## 413-130-0125

### Budgetary Reductions of Adoption Assistance

Once a child is adopted and determined to be eligible for adoption assistance, an adoption assistance payment may not be adjusted without the agreement of the adoptive family, except as provided under OAR 413-130-0110(7), (11), and (12).

Stat. Auth.: ORS 418.005, 418.340  
Stats. Implemented: ORS 418.330 - 418.340  
Hist.: CWP 16-2003, f. 1-21-03, cert. ef. 2-1-03; CWP 38-2003(Temp), f. & cert. ef. 11-19-03 thru 5-17-04; CWP 4-2004, f. & cert. ef. 4-1-04; CWP 16-2008, f. & cert. ef. 7-1-08; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 22-2009, f. & cert. ef. 12-29-09

## 413-130-0130

### Post Finalization Applications for Adoption Assistance

After the adoption has been finalized:

(1) An adoptive family may request the opportunity to apply for adoption assistance based on the following extenuating circumstances:

(a) Relevant facts regarding the child, the biological family, or child's background were known, but not shared with the adoptive family prior to legal finalization of the adoption;

(b) Adoption assistance was denied based on an assessment of the financial need of the adoptive family;

(c) The Department determined the child was ineligible for adoption assistance, but information becomes known which indicates it would be appropriate to review this determination; or

(d) The Department failed to advise the adoptive family of a special needs child of the availability of adoption assistance.

(2) An adoptive family must submit a written request to the Department's adoption assistance coordinator indicating the desire to apply for adoption assistance after an adoption has been legally finalized.

(3) Upon receipt of the written request, the Department determines, within thirty days, whether the child meets Title IV E eligibility requirements.

(4) When an adoptive family requests that the Department provide historic information regarding the child to determine eligibility for adoption assistance, the Department may obtain non-identifying genetic, social, and health history information as provided by ORS 109.425 through 109.507. In addition, the Department may request a court order to review the sealed adoption file.

(5) If the Department determines that a child meets Title IV E eligibility requirements, federal policy requires a contested case hearing be held before the state may provide adoption assistance benefits:

(a) The Department's adoption assistance coordinator must write a summary of the situation and submit a hearing referral and appropriate documentation to the Office of Administrative Hearings within 45 days of receipt of the request for a contested case hearing.

(b) An adoptive family has the burden of proof to show that extenuating circumstances exist. The Department may provide corroborating facts to both the adoptive family and the administrative law judge.

(c) The contested case hearing is conducted under Child Welfare Policy I-A.5.2, "Contested Case Hearings" OAR 413-010-0500 to 413-010-0535.

(d) If the contested case hearing decision finds that extenuating circumstances exist, an adoption assistance application may be signed, effective the date of the contested case hearing request.

(6) If the Department determines that a child does not meet Title IV E eligibility requirements, the Department's adoption assistance coordinator must prepare information for the Adoption Program Manager's review including information submitted by the adoptive family and information from Department records. The Adoption Program Manager decides if extenuating circumstances under section (1) of this rule exist which justify accepting an adoption assistance application from the adoptive family.

(a) A written finding will be sent to the adoptive family within 30 days.

(b) If the Adoption Program Manager finds that extenuating circumstances do not exist, the adoptive family may request a contested case hearing under Child Welfare Policy I-A.5.2, "Contested Case Hearings" OAR 413-010-0500 to 413-010-0535. The administrative law judge in such a hearing reviews whether extenuating circumstances exist so that the adoptive family may submit an application for adoption assistance. Whether the adoption assistance application is approved is a separate determination by the Department.

(7) If the decision, through a contested case hearing or Adoption Program Manager review, is that the adoptive family is eligible to apply for

adoption assistance on behalf of the child, and the adoption assistance application results in the award of adoption assistance:

(a) The adoption assistance payments (in the form of a one time lump sum payment) may not be retroactive for more than 12 months from the date of the signed adoption assistance application; and

(b) If after negotiation, the adoptive family does not agree with the amount negotiated, the family may appeal the decision under Child Welfare Policy I-A.5.2, "Contested Case Hearings" OAR 413-010-0500 to 413-010-0535.

Stat. Auth.: ORS 418.005, 418.340  
Stats. Implemented: ORS 418.330 - 418.340  
Hist.: SCF 2-1995, f. & cert. ef. 8-21-95; SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 8-1999, f. & cert. ef. 5-17-99; SOSCF 7-2002, f. 3-28-02, cert. ef. 4-1-02; CWP 16-2008, f. & cert. ef. 7-1-08; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 22-2009, f. & cert. ef. 12-29-09

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

**Adm. Order No.:** CWP 23-2009(Temp)

**Filed with Sec. of State:** 12-31-2009

**Certified to be Effective:** 1-1-10 thru 6-30-10

**Notice Publication Date:**

**Rules Amended:** 413-015-0415

**Subject:** OAR 413-015-0415 about the activities the Department conducts during a Child Protective Services (CPS) assessment is being amended in response to House Bill 2449 (2009 Or. Laws ch. 296) to restate that when a person conducting a CPS assessment of a child under ORS 419B.020 observes the child has suffered a suspicious physical injury and the person is certain or has a reasonable suspicion that the injury is or may be the result of abuse that person must take the specified actions to photograph the injuries and refer the child to a medical assessment.

**Rules Coordinator:** Annette Tesch—(503) 945-6067

## 413-015-0415

### CPS Assessment Activities

The required CPS assessment activities are outlined below. The activities are described in a logical order in these rules, but the order in which they occur is controlled by the specific circumstances in a given case.

(1) Review Records.

(a) The assigned CPS worker must:

(A) Thoroughly review the documentation in the referral;

(B) Thoroughly review the paper and electronic records maintained by Child Welfare for historical information on the family and the child that may be useful in completing the CPS assessment;

(C) Thoroughly review available Self Sufficiency records; and

(D) Make diligent efforts to contact another state's child welfare agency to obtain records, if any, when the CPS worker has information that the family has lived in another state.

(b) The CPS worker must review the documents to identify information related to:

(A) Safety threats;

(B) History or a pattern of abuse or neglect;

(C) Child and family support systems and protective capacity; and

(D) Worker safety.

(2) Addressing Prior Allegations that Have Not Been Assessed Because the Department was Unable to Locate the Family. The assigned CPS worker must address in the current assessment any allegations not previously assessed because the Department was unable to locate the family as follows:

(a) Discuss the prior unassessed allegations during interviews;

(b) Consider all information about prior unassessed allegations in the current safety analysis; and

(c) Document the consideration of prior unassessed allegations in interviews, observations, and dispositional findings.

(3) Contact Collateral Sources.

(a) The CPS worker must contact collateral sources who can clarify or supplement the information in the referral and in records already reviewed.

(A) The CPS worker must contact the assigned self sufficiency worker, if any.

(B) The CPS worker may contact other collateral sources including, but not limited to:

(i) Individuals who have regular contact with the child;

(ii) Doctors or others who have evaluated or maintain records on the child;

(iii) People who are in an established personal or professional relationship with the parent or caregiver and who can judge the quality and nature of the parent or caregiver behavior; and

(iv) People who have records or information about the parent or caregiver as a result of their involvement with, or exposure to, the parent or caregiver.

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(b) The CPS worker must gather information from collateral sources throughout the CPS assessment.

(c) The CPS worker must:

(A) Protect the identity of collateral sources to the extent possible.

(B) Consult with the district attorney or the assistant attorney general to obtain a court order for records from a collateral source, if the source is unable or unwilling to share information with Child Welfare.

(4) Consult with CPS Supervisor.

(a) The CPS worker must consult with a CPS supervisor or designee:

(A) When the CPS worker has reasonable cause to believe the alleged perpetrator is an employee of any program, office, or division of the Department or Oregon Youth Authority (OYA);

(B) When a referral involves the home of a Department certified foster parent or relative caregiver;

(C) When a referral involves allegations that child abuse or neglect occurred in a licensed child caring agency;

(D) Prior to a decision to place a child in protective custody, or after placement if consultation before placement will delay the safety intervention;

(E) Prior to initiating court action, or after initiating court action if consultation before will delay the safety intervention;

(F) When the referral involves a child fatality;

(G) When making dispositions in complicated or sensitive situations or cases;

(H) When closing an assessment with the disposition of "unable to locate"; or

(I) Prior to a decision to close a case during or at the end of the CPS assessment.

(b) Subject to the discretion of the CPS supervisor, the CPS worker will consult with a CPS supervisor or designee at additional key points during the assessment, such as:

(A) Before making initial contact with the family; or

(B) When a referral indicates potential danger to the worker.

(5) Contact and Work with Other Entities. The CPS worker may need to work with representatives of other entities to develop a sufficient protective action or ongoing safety plan, to analyze safety threats, and to complete the CPS assessment.

(a) The CPS worker may, as appropriate, notify or consult with other Department programs or other agencies, including but not limited to the Office of Vocational Rehabilitation Services and Animal Control.

(b) The CPS worker must contact and work with other entities as follows:

(A) Child Care Division. The CPS worker must notify and coordinate with the Child Care Division when a report involves a registered day-care home or a licensed day-care center, as required by ORS 418.747(2)(e) and 419B.020(1).

(B) Oregon Youth Authority (OYA). The CPS worker must notify OYA when the allegation involves an OYA certified foster home.

(C) Seniors and People with Disabilities Division (SPD).

(i) The CPS worker must notify the Office of Investigations and Training with the Department when the allegation involves a child with developmental disabilities in an SPD licensed group home.

(ii) The CPS worker must make a report to the Office of Investigations and Training with the Department when the CPS worker has reasonable cause to believe:

(I) That any person 18 years of age or older with a mental illness or a developmental disability whom the CPS worker comes into contact with, while acting in an official capacity, has suffered abuse.

(II) That any person with whom the CPS worker comes into contact, while acting in an official capacity, has abused a person 18 years of age or older with a mental illness or developmental disability.

(iii) The CPS worker must make a report to SPD when the CPS worker has reasonable cause to believe:

(I) That any person 65 years of age or older with whom the CPS worker comes into contact, while acting in an official capacity, has suffered abuse.

(II) That any person with whom the CPS worker comes into contact, while acting in an official capacity, has abused a person 65 years of age or older.

(D) Child Caring Agency Licensing Program. The CPS worker must notify the Department's Child Caring Agency Licensing Program when the allegation involves a licensed child caring facility.

(E) Indian Tribes. If the CPS worker knows or has reason to know that the child is an Indian child, the CPS worker must give notice within 24 hours to the Indian child's tribe that a CPS assessment is being conducted unless the screener documented completion of this notification in the referral.

(F) Probation and Parole. The CPS worker must contact probation and parole when the allegation involves a parent or caregiver, or alleged perpetrator who is supervised by probation or parole.

(G) Law Enforcement. If the screener did not cross report, the CPS worker must contact one or more law enforcement agencies in accordance with the protocols of the local MDT agreement and in accordance with cross reporting rules, OAR 413-015-0300 to OAR 413-015-0310. When there is a joint response involving a CPS worker and LEA staff, the CPS worker is still responsible for all of the activities necessary to complete a CPS assessment

which are summarized in OAR 413-015-0400. Whenever possible, the CPS worker must coordinate assessment activities with LEA in the following situations:

(i) Presence of danger. When the CPS worker has information that indicates that the child is unsafe right now.

(ii) Family cooperation. When the CPS worker has information that the family may not allow the CPS worker to observe the alleged victim or other children in the home.

(iii) Protective custody. When the CPS worker has information that a child may need to be placed in protective custody.

(iv) Child interview. When the CPS worker and the LEA officer must each interview a child, it is preferable to coordinate the interviews to reduce the number of interactions with the child.

(v) Worker safety. When the CPS worker has information that indicates the family behavior, circumstances, or situation could pose a danger to the CPS worker.

(vi) Crime committed. When the CPS worker suspects or receives a report that a crime may have been committed.

(H) Public or Private Schools. The CPS worker may interview a child at school when the worker believes it will be the best environment in which to assure a child's safety when making contact with the child. ORS 419B.045 provides requirements for CPS investigations that are conducted on school premises. The CPS worker must do following:

(i) Notify the school administrator that a CPS assessment must be conducted. If the school administrator is a subject of the CPS assessment, then notification is not required.

(ii) Report to the school office, provide identification, inform school personnel of the CPS assessment, and provide the name of the child to be interviewed.

(iii) Request information from school personnel regarding the disabilities of the child, if any, prior to an interview with the affected child.

(iv) Interview the child out of the presence of other persons, unless the CPS worker believes the presence of a school employee or other person would facilitate the interview. If the CPS worker believes that a school employee does not need to be present, but the school employee insists on being present during the interview, the worker should confer with the CPS supervisor for assistance in handling the situation.

(v) Discuss further actions with the child at the conclusion of the interview.

(vi) Inform school personnel when the interview has been completed.

(vii) Inform school personnel if the child is taken into protective custody.

(viii) Inform school personnel that the CPS worker will notify parents of the interview.

(ix) Contact the CPS supervisor if school officials refuse to allow the assessment to take place on school property.

(I) Multi-Disciplinary Teams (MDTs). Department district managers must develop interagency agreements regarding assessment of child abuse and neglect, as necessary, with local MDTs. Requirements for MDT protocols are set out in ORS 418.747.

(6) Obtain Interpreters and Translation. The CPS worker must obtain the services of a competent interpreter and competent written translation service for families, including hearing-impaired family members, who have limited or no means of communicating in or reading English.

(7) Determine ICWA Status and Comply with ICWA, if Applicable. The CPS worker must initiate the process to determine the child's ICWA status and notify the Indian child's tribe if ICWA applies. To initiate this process, the CPS worker must:

(a) Complete a form CF 1270, "Verification of ICWA Eligibility," to assist in determining ICWA eligibility.

(b) Contact the child's tribe when an Indian child is the subject of a CPS assessment. Federally recognized tribes must be notified within 24 hours after information alleging abuse or neglect is received by Child Welfare.

(c) If the Indian child is enrolled or eligible for enrollment in a federally recognized tribe, notify the child's tribe if the child may be placed in protective custody.

(d) Consult with the local Department ICWA liaison, a supervisor, or the ICWA manager if the worker has questions regarding the involvement of a tribe or the ICWA status of a child.

(e) Make a diligent attempt to address the following when determining the placement resource:

(A) Contact the Tribe's social services department;

(B) Search for relative resources;

(C) Search for available Indian homes; and

(D) Contact other Indian tribes and other Indian organizations with available placement resources; and

(f) Unless the Indian child's tribe has established a different order of preference, comply with the ICWA placement preference, which is:

(A) Placement with a member of Indian child's extended family.

(B) Placement with a foster family that is licensed, approved or specified by the Indian child's tribe.

(C) Placement with an Indian foster home licensed or approved by an authorized non-Indian licensing authority.

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(D) Placement with an institution for children approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the Indian child's needs.

(8) Determine Refugee Status and Comply with the Refugee Children Act, if applicable. During a CPS assessment, the CPS worker must consider whether the child is a refugee child. Under ORS 418.925, a "refugee child" is a "person under 18 years of age who has entered the United States and is unwilling or unable to return to the person's country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular group or political opinion, or whose parents entered the United States within the preceding 10 years and are or were unwilling or unable to return to their country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular group or political opinion."

(a) If it appears that a child is a refugee child:

(A) The CPS worker must ask about the child or parents' country of origin, length of time the child or parents have been in the United States, and the reasons why the child or parents came to the United States. The CPS worker does not have to make a legal determination that the child and parent are refugees, but if the child or the parents indicate they are refugees, then the CPS worker must proceed as if they are, until or unless it is known that they are not refugees.

(B) The CPS worker is not required to determine whether the child is a refugee child, but if the child appears to be a refugee child the CPS worker must proceed as if they are, until or unless it is known that the child is not a refugee child.

(b) The CPS worker may not take a refugee child into protective custody unless, in addition to the other requirements for taking a child into custody, the CPS worker determines that:

(A) Removal is necessary to prevent imminent serious emotional or physical harm to the child; and

(B) Reasonable efforts to alleviate the harm through remedial or preventive services do not alleviate the harm, have failed, or are not practical in an emergency situation.

(c) No refugee child may remain in placement more than five days unless there has been a judicial determination, supported by clear and convincing evidence that:

(A) Preventative or remedial services provided by the Department have failed to alleviate the need for removal; and

(B) Return to the home will likely result in psychological or physical damage to the child.

(d) When a refugee child is placed in care, the juvenile court petition must include, in addition to the information required by ORS 419B.809, the following information:

(A) A specific and detailed account of the circumstances that led the Department to conclude that the child was in imminent danger of serious emotional or physical harm;

(B) Specific actions the Department has taken or is taking to alleviate the need for removal;

(C) Assurance that the Department has complied with placement preferences listed in ORS 418.937 and listed in subsection (e) of this section; and

(D) Assurance that the Department is making or has made diligent efforts to locate and give notice to all affected refugee family members and to the Refugee Child Welfare Advisory Committee that the petition has been filed.

(e) The CPS worker must consider the refugee child's culture and tradition when making any placement decision for a refugee child and, unless shown to be inappropriate and inconsistent with the best interests of the child, place the child with the following in order of preference:

(A) Natural parents.

(B) Extended family member.

(C) Members from the same cultural heritage.

(D) Persons with knowledge and appreciation of the child's cultural heritage.

(f) The CPS worker may determine that placement under subsection (e) of this section is inappropriate and inconsistent with the best interests of the child if:

(A) The preferred placement presents safety threats to the child;

(B) The extreme medical, physical, or psychological needs of the child cannot be met in the placement; or

(C) There is an informed request from either of the child's biological parents not to use a placement, if the request is consistent with stability, security, and the individual needs of the child.

(g) The CPS worker must staff the case with the Refugee Child Welfare Advisory Committee (RCWAC). The CPS worker must contact the Cultural Competency Coordinator for Child Welfare to arrange a time for the staffing. In preparation for the staffing, the CPS worker must:

(A) Invite the CPS supervisor to the staffing; and

(B) Be prepared to discuss the reasons for the CPS referral, the information indicating that family members are refugees, and their country of origin.

(9) Take Photographs. The CPS worker must, during the CPS assessment, take photographs and document, as necessary, child abuse, neglect, and observable safety threats.

(a) As provided in ORS 419B.028, a law enforcement officer or the CPS worker may take photographs for the purpose of documenting the child's condition at the time of the CPS assessment.

(b) As provided in ORS 419B.028, if the CPS worker conducting a CPS assessment observes a child who has suffered suspicious physical injury and the CPS worker is certain or has a reasonable suspicion that the injury is or may be the result of abuse, the CPS worker, in accordance with the protocols and procedures of the county multi-disciplinary team described in ORS 418.747, will immediately photograph or cause to have photographed the suspicious physical injuries. Regardless of whether the child has previously been photographed or assessed during a CPS assessment, the CPS worker will photograph or cause to be photographed any suspicious injuries if the CPS worker is certain or has a reasonable suspicion the suspicious injuries are the result of abuse:

(A) During the assessment of a new allegation of abuse; and

(B) Each time, during the assessment, an injury is observed that was not previously observed by the assigned CPS worker.

(c) When a child is photographed pursuant to subsection (b) of this section:

(A) The person taking the photographs or causing to have the photographs taken must, within 48 hours or by the end of the next regular business day, whichever occurs later:

(i) Provide hard copies or prints of the photographs and, if available, copies of the photographs in an electronic format to the designated medical professional; and

(ii) Place hard copies or prints of the photographs and, if available, copies of the photographs in an electronic format in the child welfare record labeled with the case name, case number, sequence number, person letter, child's name, and date taken.

(B) If a county multidisciplinary team staffing of the case is held, photographs of the injury will be made available to each team member involved in the case staffing at the first meeting regarding the child's case.

(d) The CPS worker must document injuries, hazardous environments, and any observable safety threats in the assessment narrative by use of photographs, written description, or illustrations.

(e) Photographs of the anal or genital region may be taken only by medical personnel.

(10) Obtain Medical Assessment. The CPS worker must, during the CPS assessment as required in this section, facilitate a medical assessment of the child and obtain the child's medical history when necessary to assure child safety, determine treatment needs, reassure the child and family, or assist in analyzing safety threats.

(a) When the CPS worker determines that the child is in need of a medical assessment as part of a CPS assessment, the CPS worker must consult with a CPS supervisor as soon as possible, but not at the expense of delaying medical treatment.

(b) If a person conducting an assessment under ORS 419B.020 observes a child who has suffered suspicious physical injury and the person is certain or has a reasonable suspicion that the injury is or may be the result of abuse, the person must, in accordance with the protocols and procedures of the county multi-disciplinary team described in ORS 418.747, ensure that:

(A) A designated medical professional conducts a medical assessment within 48 hours of the observation of the suspicious physical injury, or sooner if dictated by the child's medical needs; or

(B) An available physician conducts a medical assessment if, after reasonable efforts to locate a designated medical professional, a designated medical professional is not available to conduct a medical assessment within 48 hours. The CPS worker is required to document in FACIS efforts to locate the designated medical professional when an available physician is used.

(c) The CPS worker must facilitate an assessment by a medical professional if the alleged child abuse or neglect involves injury to the anal or genital region.

(d) When there are indications of severe physical trauma to the child, the CPS worker must make arrangements to immediately transport the child to a medical facility, which may include calling 911. The CPS worker must also make arrangements for medical examination of a child for mild or moderate physical trauma.

(e) To make arrangements for the medical examination of a child, the CPS worker must do the following, unless completing the action would delay medical treatment for the child:

(A) Discuss with the parent or caregiver the need for medical examination or treatment.

(B) Ask the parent or caregiver to take the child to a medical facility for a medical examination or treatment.

(C) Request that the parent sign a form DHS 2099, "Authorization for Use and Disclosure of Information."

(D) Contact an LEA immediately and seek a juvenile court order to obtain protective custody of the child for the purpose of obtaining a medical examination or treatment when:



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(i) The parent or caregiver refuses to obtain needed medical examination or treatment;  
(ii) The parent or caregiver may flee with the child;  
(iii) Delaying medical examination or treatment could harm the child;

or

(iv) The CPS worker has reason to believe medical examination will reveal evidence of child abuse or neglect.

(E) Immediately seek medical care and consultation when the child may have a life-threatening condition, or a deteriorating condition that may become life-threatening.

(F) As soon as possible and not later than 24 hours after learning of the exposure, make arrangements to have the child tested for chemical exposure to harmful substances when there is reason to believe a child has been exposed to dangerous chemicals such as those found in a chemical drug lab.

(f) When a report of suspected medical neglect of an infant with a disability and with life-threatening conditions is referred for CPS assessment, the assigned CPS worker must comply with Child Welfare Policy I-B.2.2.2, "Investigation of Suspected Medical Neglect-Infants", OAR 413-030-0600 to 413-030-0650.

(g) When it is medically indicated to subject a child in the custody of the Department to HIV testing, the CPS worker must comply with Child Welfare Policy I-B.5.1, "HIV Testing of Children in Custody and HIV Confidentiality", OAR 413-040-0400 to 413-040-0450.

(h) As provided in ORS 147.425, a child who is the victim of a person crime and is at least 15 years of age at the time of the abuse may have a personal representative present during a medical examination. If a CPS worker believes that a personal representative would compromise the CPS assessment, a CPS worker may prohibit a personal representative from being present during the medical examination.

(i) When the CPS worker is assessing a CPS allegation of medical neglect, the CPS worker must consult with a health care professional as part of the assessment.

(11) Obtain Psychological and Psychiatric Evaluations.

(a) The CPS worker must make a referral for a psychological or psychiatric evaluation of the parent, caregiver, or child by a mental health professional to assure child safety, determine treatment needs, or assist in analyzing safety threats when during the CPS assessment the CPS worker identifies a specific condition or behavior that requires additional professional evaluation. This includes but is not limited to:

(A) Unusual or bizarre forms of punishment;

(B) Mental illness;

(C) Suicidal ideation;

(D) Homicidal ideation; or

(E) Unusual or bizarre child or parental behavior that is indicative of emotional problems.

(b) The CPS worker must obtain consent of the parent or caregiver prior to making a referral for a psychological or psychiatric evaluation of the parent, caregiver, or child, unless the evaluation is court ordered.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 409.185, 418.005, 418.015, 418.747, 418.785, 419B.005 - 419B.050, 2009 OL ch. 296

Hist.: CWP 3-2007, f. & cert. ef. 3-20-07; CWP 16-2007(Temp), f. & cert. ef. 10-16-07 thru 4-11-08; CWP 24-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 4-11-08; CWP 2-2008, f. & cert. ef. 4-1-08; CWP 6-2008(Temp), f. 6-27-08, cert. ef. 6-28-08 thru 12-24-08; CWP 20-2008, f. & cert. ef. 9-2-08; CWP 23-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10

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## Department of Human Services, Children, Adults and Families Division: Self-Sufficiency Programs Chapter 461

**Rule Caption:** Changing OARs affecting public assistance, medical assistance or food stamp clients.

**Adm. Order No.:** SSP 38-2009

**Filed with Sec. of State:** 12-31-2009

**Certified to be Effective:** 1-1-10

**Notice Publication Date:** 11-1-2009

**Rules Adopted:** 461-105-0006, 461-135-1149, 461-155-0688, 461-155-0693

**Rules Amended:** 461-025-0310, 461-101-0010, 461-110-0210, 461-110-0370, 461-110-0430, 461-115-0030, 461-115-0050, 461-115-0071, 461-115-0090, 461-115-0705, 461-120-0125, 461-120-0210, 461-120-0310, 461-120-0315, 461-120-0345, 461-120-0510, 461-125-0170, 461-125-0310, 461-135-0095, 461-135-0096, 461-135-0835, 461-135-0990, 461-135-1100, 461-135-1125, 461-135-1185, 461-135-1225, 461-135-1230, 461-145-0130, 461-145-0143, 461-145-0220, 461-145-0260, 461-145-0405, 461-145-0810, 461-145-0930, 461-150-0055, 461-155-0225, 461-155-0250, 461-155-0360, 461-155-0530, 461-155-0580, 461-155-0630, 461-155-0640, 461-155-0660, 461-155-0670, 461-155-0680, 461-160-0015, 461-160-

0580, 461-160-0610, 461-160-0700, 461-165-0010, 461-165-0200, 461-165-0210, 461-165-0230, 461-175-0270, 461-180-0085, 461-180-0090, 461-190-0199, 461-193-0031, 461-193-0240, 461-193-1380, 461-195-0501, 461-195-0521, 461-195-0541, 461-195-0551, 461-195-0561

**Rules Repealed:** 461-135-1100(T), 461-101-0010(T), 461-105-0006(T), 461-110-0210(T), 461-115-0030(T), 461-115-0050(T), 461-115-0705(T), 461-120-0125(T), 461-120-0210(T), 461-120-0310(T), 461-120-0315(T), 461-120-0345(T), 461-120-0510(T), 461-125-0170(T), 461-135-0095(T), 461-135-0096(T), 461-135-0990(T), 461-135-1125(T), 461-135-1149(T), 461-135-1180, 461-145-0130(T), 461-145-0143(T), 461-150-0055(T), 461-155-0175, 461-155-0225(T), 461-155-0360(T), 461-160-0015(T), 461-160-0700(T), 461-180-0085(T), 461-180-0090(T), 461-193-0121, 461-193-0920, 461-193-0980, 461-193-1360, 461-193-1370, 461-195-0511, 461-195-0531

**Subject:** OAR 461-025-0310 about hearing requests is being amended to correct a rule reference and remove outdated language in connection with service reassessments of clients in the Seniors and People with Disabilities Division.

OAR 461-101-0010 about the program acronyms the Department uses in the chapter 461 rules is being amended to include the acronyms for the Continuous Eligibility for OHP-CHP (CEC) and Continuous Eligibility for Medicaid (CEM) programs. The Department is amending this rule to implement the recent Healthy Kids legislation (2009 Or. Laws ch. 867). The legislation required the Department to put new programs into place effective October 1, 2009 to ensure eligible children in Oregon have health insurance coverage available. This rule is part of the implementation of the Department's Continuous Eligibility for OHP-CHP (CEC) and Continuous Eligibility for Medicaid (CEM) programs to expand health insurance coverage for Oregon children. This rule change also makes permanent the changes made by temporary rule effective October 1, 2009. This rule also is being amended to reflect that the name of the Food Stamp (FS) Program is changing to the Supplemental Nutrition Assistance Program (SNAP) to implement recent legislation (2009 Or. Laws ch. 599).

OAR 461-105-0006 is being adopted to make permanent a temporary rule adopted on October 1, 2009 and set out the exceptions to rules in Chapter 461 that may apply during a business continuity disruption, what a business continuity disruption is, and how the exception process is authorized.

OAR 461-110-0210 about how the Department determines the composition of a household group (the individuals who live together with or without benefit of a dwelling) is being amended to state when a child in the Continuous Eligibility for OHP-CHP (CEC) and Continuous Eligibility for Medicaid (CEM) programs still is considered to be in the household group. The Department is amending this rule to implement the recent Healthy Kids legislation (2009 Or. Laws ch. 867). The legislation required the Department to put new programs into place effective October 1, 2009 to ensure eligible children in Oregon have health insurance coverage available. This rule is part of the implementation of the Department's Continuous Eligibility for OHP-CHP (CEC) and Continuous Eligibility for Medicaid (CEM) programs to expand health insurance coverage for Oregon children. This rule change also makes permanent the changes made by temporary rule effective October 1, 2009. This rule also is being amended to comply with recent legislation (2009 Or. Laws ch. 599) changing the name of the Food Stamp (FS) program to SNAP.

OAR 461-110-0370 about filing group (the individuals from the household group whose circumstances are considered in the eligibility determination process) composition in the Supplemental Nutrition Assistance Program (SNAP) program is being amended to state when an individual is excluded from the SNAP program filing group when that individual already received SNAP program benefits in another household that month. This rule also is being amended to comply with recent legislation (2009 Or. Laws ch. 599) changing the name of the Food Stamp (FS) program to SNAP.

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OAR 461-110-0430 about the composition of a filing group (individuals from the household group whose circumstances are considered in the eligibility determination process) in the Department's Refugee (REF) and Refugee Medical (REFM) programs is being amended to state when the Department allows a separate filing group to be formed when a newly arriving refugee is joining a household group with his or her spouse or the parent of a common child.

OAR 461-115-0030 about how the Department determines the date a client requested program benefits is being amended to make permanent temporary rule changes adopted on August 28, 2009 that restate how the date of request is determined for an Oregon Health Plan - Standard (OHP-OPU) program reservation list applicant.

OAR 461-115-0050 about when an application for program benefits must be filed is being amended in response to House Bill 2116 (2009) to make permanent temporary rule changes adopted on August 1, 2009 that state that the Department may redetermine the eligibility of a child under 19 years of age for Extended Medical Assistance (EXT), Medical Assistance Assumed (MAA), Medical Assistance to Families (MAF), Oregon Health Plan (OHP), Oregon Supplemental Income Program Medical (OSIPM), Qualified Medicare Beneficiaries (QMB), or Medical Coverage for Children in Substitute or Adoptive Care (SAC) program benefits using the administrative rules in effect on October 1, 2009 and January 1, 2010 when the child applied for and was denied EXT, MAA, MAF, OHP, OSIPM, QMB, or SAC program benefits between July 1, 2009 and December 31, 2009 for a reason other than failing to complete the application. This rule also is being amended, in response to House Bill 2116 (2009), to allow clients in the EXT, MAA, MAF and OHP (except Oregon Health Plan Adults (OHP-OPU) who must use a Department specified application form), programs to change programs using the current application under certain conditions. This rule also is being amended to remove the requirement that OHP Standard Reservation List applicants must apply for OHP Standard using only the OHP 7210R application. This rule also is being amended to comply with recent legislation (2009 Or. Laws ch. 599) changing the name of the Food Stamp (FS) program to SNAP.

OAR 461-115-0071 about authorized representatives is being amended to indicate that an authorized representative may sign the application in the Oregon Supplemental Income Program and Oregon Supplemental Income Program-Medical. This rule also is being amended to comply with recent legislation (2009 Or. Laws ch. 599) changing the name of the Food Stamp (FS) program to SNAP.

OAR 461-115-0090 about application processing requirements is being amended to allow an applicant to designate an authorized representative of his or her choice without written documentation and to indicate when the Department is not required to accept the choice of authorized representative. This rule also is being amended to comply with recent legislation (2009 Or. Laws ch. 599) changing the name of the Food Stamp (FS) program to SNAP.

OAR 461-115-0705 about required verification is being amended to state that the Department verifies income in the Oregon Health Plan program for the month prior to the budget month, the income already received in the budget month, and the income reasonably anticipated to be received in the budget month. The Department is amending this rule to implement the recent Healthy Kids legislation (2009 Or. Laws ch. 867). The legislation required the Department to put new programs into place effective October 1, 2009 to ensure eligible children in Oregon have health insurance coverage available. This rule is part of the implementation of the Department's Continuous Eligibility for OHP-CHP (CEC) and Continuous Eligibility for Medicaid (CEM) programs to expand health insurance coverage for Oregon children. This rule change also makes permanent the changes made by temporary rule effective October 1, 2009.

OAR 461-120-0125 about the alien status requirements is being amended to state that in the Department's medical assistance programs a qualified non-citizen meets the alien status requirements if he or she is under 19 years of age, add the alien status requirements for the Continuous Eligibility for OHP-CHP (CEC), Continuous Eli-

gibility for Medicaid (CEM), and Extended Medical Assistance (EXT) programs, and extend Food Stamp (FS) program eligibility for Afghan special immigrants to eight months. The Department is amending this rule to implement the recent Healthy Kids legislation (2009 Or. Laws ch. 867). The legislation required the Department to put new programs into place effective October 1, 2009 to ensure eligible children in Oregon have health insurance coverage available. This rule is part of the implementation of the Department's Continuous Eligibility for OHP-CHP (CEC) and Continuous Eligibility for Medicaid (CEM) programs to expand health insurance coverage for Oregon children. This rule change also makes permanent the changes made by temporary rule effective October 1, 2009. The Department also is amending this rule to comply with recent federal legislation (The Afghan Allies Protection Act of 2009 under the Omnibus Appropriations Act of 2009 (Section 602, Division F of Public Law 111-08)) extending Supplemental Nutrition Assistance Program (SNAP) eligibility to eight months and removing the September 30, 2009 restriction on SNAP program eligibility for Afghan special immigrants and removing the September 30, 2008 restriction on SNAP program eligibility for Iraqi special immigrants. This rule also is being amended to comply with recent legislation (2009 Or. Laws ch. 599) changing the name of the Food Stamp (FS) program to SNAP.

OAR 461-120-0210 about when a client in the Department's programs must provide or apply for a social security number (SSN) is being amended to state when a client in the Continuous Eligibility for OHP-CHP (CEC) or Continuous Eligibility for Medicaid (CEM) program may not be required to provide the SSN due to religious objections or may delay supplying the SSN due to being a newborn child. The Department is amending this rule to implement the recent Healthy Kids legislation (2009 Or. Laws ch. 867). The legislation required the Department to put new programs into place effective October 1, 2009 to ensure eligible children in Oregon have health insurance coverage available. This rule is part of the implementation of the Department's Continuous Eligibility for OHP-CHP (CEC) and Continuous Eligibility for Medicaid (CEM) programs to expand health insurance coverage for Oregon children. This rule change also makes permanent the changes made by temporary rule effective October 1, 2009. This rule also is being amended to comply with recent legislation (2009 Or. Laws ch. 599) changing the name of the Food Stamp (FS) program to SNAP.

OAR 461-120-0310 about assignment of support rights is being amended to clarify that to be eligible to receive services funded with federal grants under Title IV-A (TANF) of the Social Security Act, a filing group must assign to the state child support that accrues during any time period that the filing group receives assistance. The filing group is no longer required to assign child support that accrues during any period that the filing group did not receive assistance funded with federal grants under Title IV-A (TANF) of the Social Security Act. This rule is also being amended to make permanent October 1, 2009 temporary rule changes that state that its provisions do not apply to clients in the Continuous Eligibility for OHP-CHP (CEC) program and state when clients in the Continuous Eligibility for Medicaid (CEM) program must assign the right to child support to the state. This rule also is being amended to comply with recent legislation (2009 Or. Laws ch. 599) changing the name of the Food Stamp (FS) program to SNAP.

OAR 461-120-0315 about the assignment of the right to reimbursement for health care costs for clients in the Department medical programs is being amended to state that clients in the Continuous Eligibility for OHP-CHP (CEC) and Continuous Eligibility for Medicaid (CEM) programs must agree to turn over their right to reimbursement for health care costs to the Department. The Department is amending this rule to implement the recent Healthy Kids legislation (2009 Or. Laws ch. 867). The legislation required the Department to put new programs into place effective October 1, 2009 to ensure eligible children in Oregon have health insurance coverage available. This rule is part of the implementation of the Department's

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Continuous Eligibility for OHP-CHP (CEC) and Continuous Eligibility for Medicaid (CEM) programs to expand health insurance coverage for Oregon children. This rule change also makes permanent the changes made by temporary rule effective October 1, 2009. This rule also is being amended to state that failure to assign the rights to reimbursement to the Department makes a client ineligible for medical program benefits. The rule also is being amended to state that in all programs, except the Program for All-Inclusive Care for the Elderly, a client in a nursing facility who is receiving long-term care insurance payments may meet the requirement to assign rights for medical care reimbursements to the Department by assigning them to the long-term care facility or immediately turning them over to the long-term care facility if received directly. In addition, this rule is being amended to state that the Department establishes an overpayment if it is discovered after-the-fact that during any period of time a client or another individual submitting long term care insurance claims on the client's behalf received long term care insurance payments that were not turned over to the long term care facility.

OAR 461-120-0345 about the obligation of clients in the Department's medical assistance programs, except the Continuous Eligibility for OHP-CHP (CEC) and Refugee Medical (REFM) programs, to obtain health care coverage and cash medical support for members of the benefit group is being amended to state that its provisions apply to clients in the Continuous Eligibility for Medicaid (CEM) program. The Department is amending this rule to implement the recent Healthy Kids legislation (2009 Or. Laws ch. 867). The legislation required the Department to put new programs into place effective October 1, 2009 to ensure eligible children in Oregon have health insurance coverage available. This rule is part of the implementation of the Department's Continuous Eligibility for OHP-CHP (CEC) and Continuous Eligibility for Medicaid (CEM) programs to expand health insurance coverage for Oregon children. This rule change also makes permanent the changes made by temporary rule effective October 1, 2009.

OAR 461-120-0510 about the age requirements for clients to receive benefits is being amended to state the age requirement to receive benefits for clients in the Continuous Eligibility for OHP-CHP (CEC) and Continuous Eligibility for Medicaid (CEM) programs. The Department is amending this rule to implement the recent Healthy Kids legislation (2009 Or. Laws ch. 867). The legislation required the Department to put new programs into place effective October 1, 2009 to ensure eligible children in Oregon have health insurance coverage available. This rule is part of the implementation of the Department's Continuous Eligibility for OHP-CHP (CEC) and Continuous Eligibility for Medicaid (CEM) programs to expand health insurance coverage for Oregon children. This rule also is being amended to add the cross-reference for the defined term "regularly attending school". This rule change also makes permanent the changes made by temporary rule effective October 1, 2009.

OAR 461-125-0170 about when deprivation exists based on the unemployment or underemployment of a primary wage earner (PWE) in the Temporary Assistance for Needy Families (TANF) program is being amended to state the definition for the term "most recent employment", affecting the eligibility of two-parent families in which the PWE separated from his or her most recent employment. This rule is also being amended to state when a need group is not subject to the provision excluding clients from TANF program benefits when they leave a job for a reason that would otherwise disqualify them from TANF program benefits under the provisions of this rule.

OAR 461-125-0310 about the basis of need for clients of the Oregon Supplemental Income Program Medical (OSIPM) is being amended to remove references to the Oregon Supplemental Income Program (OSIP) and the OSIP supplemental income payment as the payments are being discontinued effective January 1, 2010 in response to HB 3065 (2009).

OAR 461-135-0095 about the specific eligibility requirements for the Extended Medical Assistance (EXT) program is being amended

to make permanent temporary rule changes adopted on October 1, 2009 that allow the Department to provide EXT program benefits to an eligible filing group for a longer initial period and remove the requirement that a filing group have been eligible for and received Medial Assistance Assumed (MAA) or Medical Assistance to Families (MAF) program benefits for at least three of the six months prior to the beginning of the EXT program benefit eligibility period.

OAR 461-135-0096 about Extended Medical Assistance (EXT) program eligibility periods is being amended to make permanent temporary rule changes adopted on October 1, 2009 that remove the prohibition against extending medical eligibility beyond four months for clients eligible for EXT due to increased child support and to state that the initial EXT eligibility period is twelve months for clients eligible for EXT due to an increase in the earnings of the caretaker relative.

OAR 461-135-0835 about the limits on claims against an estate the Department may make in the Breast and Cervical Cancer Medical (BCCM), General Assistance (GA), General Assistance Medical (GAM), Oregon Health Plan (OHP), Oregon Supplemental Income Program (OSIP), Oregon Supplemental Income Program Medical (OSIPM), and Qualified Medicare Beneficiaries (QMB) programs is being amended to comply with recent federal legislation (Pub. Law 110-275, sec. 115) by removing language allowing claims against an estate for Medicare cost sharing for Medicare premium payments, co-payments, and deductibles made under the QMB program.

OAR 461-135-0990 about when the Department reimburses a client for cost-effective employer-sponsored health insurance premiums is being amended to state that its provisions apply to clients in the Continuous Eligibility for Medicaid (CEM) program. The Department is amending this rule to implement the recent Healthy Kids legislation (2009 Or. Laws ch. 867). The legislation required the Department to put new programs into place effective October 1, 2009 to ensure eligible children in Oregon have health insurance coverage available. This rule is part of the implementation of the Department's Continuous Eligibility for OHP-CHP (CEC) and Continuous Eligibility for Medicaid (CEM) programs to expand health insurance coverage for Oregon children. This rule change also makes permanent the changes made by temporary rule effective October 1, 2009.

OAR 461-135-1100 about the specific eligibility requirements for the Oregon Health Plan (OHP) program is being amended to state that its definition of private major medical health insurance also applies to OAR 461-135-1149 (a new rule about the specific eligibility requirements in the Continuous Eligibility for OHP-CHP (CEC) and Continuous Eligibility for Medicaid (CEM) programs for ensuring continuous eligibility for non-Citizen/Alien-Waived Emergent Medical program children). OAR 461-135-1100 also is being amended to state that to be eligible for the Oregon Health Plan - Persons Under 19 (OHP-CHP) program a client cannot have had private major medical health insurance during the preceding two months and must have lost the health insurance coverage due to a loss of employment, and to remove language stating a client had to meet a resource limit. The Department is amending this rule to implement the recent Healthy Kids legislation (2009 Or. Laws ch. 867). The legislation required the Department to put new programs into place effective October 1, 2009 to ensure eligible children in Oregon have health insurance coverage available. This rule is part of the implementation of the Department's Continuous Eligibility for OHP-CHP (CEC) and Continuous Eligibility for Medicaid (CEM) programs to expand health insurance coverage for Oregon children. This rule change also makes permanent the changes made by temporary rule effective October 1, 2009.

OAR 461-135-1125 about how the Department determines eligibility for and manages the Oregon Health Plan - Standard (OHP-OPU) program reservation list is being amended to make permanent temporary rule changes adopted on August 28, 2009 that remove the requirement that an individual selected to be considered for OHP-OPU program benefits submit an OHP 7210R Reservation List Application to qualify for OHP-OPU program benefits.

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OAR 461-135-1149 is being adopted to state specific eligibility requirements in the Continuous Eligibility for OHP-CHP (CEC) and Continuous Eligibility for Medicaid (CEM) programs, to state the definition for “continuous eligibility for non-CAWEM children”, and how continuous eligibility applies to non-Citizen/Alien-Waived Emergent Medical (CAWEM) program children. The Department is adopting this rule to implement the recent Healthy Kids legislation (2009 Or. Laws ch. 867). The legislation required the Department to put new programs into place effective October 1, 2009 to ensure eligible children in Oregon have health insurance coverage available. This rule is part of the implementation of the Department’s Continuous Eligibility for OHP-CHP (CEC) and Continuous Eligibility for Medicaid (CEM) programs to expand health insurance coverage for Oregon children. This rule change also makes permanent the changes made by temporary rule effective October 1, 2009.

OAR 461-135-1180 about the program establishment, eligibility requirements, procedures, benefits, and appeals in the Senior Prescription Drug Assistance Program is being repealed to comply with Senate Bill 154 (2009) ending the program and repealing its statutory authority.

OAR 461-135-1185 about the Low-Income Subsidy (LIS) program, a federal assistance program for Medicare clients who need extra help meeting their Medicare Part D prescription drug costs, is being amended to remove a cross-reference to OAR 461-135-1180 which is being repealed.

OAR 461-135-1225 about the eligibility and verification requirements for a client in the Temporary Assistance for Domestic Violence Survivors (TA-DVS) program is being amended to state that the Temporary Assistance for Needy Families (TANF) program requirement for a caretaker relative in the need group to not have been separated from his or her most recent employment for a reason that would result in a denial of TANF program benefits under OAR 461-135-0070 is waived when there is risk of further or future domestic violence against the need group. The rule also is being amended to state that if a client has been arrested for or convicted of an act of domestic violence in the past and if it is uncertain whether the individual is a victim of domestic violence, the Department verifies that the individual is not or was not a perpetrator of domestic violence.

OAR 461-135-1230 about the benefits provided and the benefit periods in the Temporary Assistance for Domestic Violence Survivors (TA-DVS) program is being amended to state that two TA-DVS program 90-day eligibility periods may not overlap and that a TA-DVS program client may not receive benefits in more than four eligibility periods during any 12-month period.

OAR 461-145-0130 about how the Department treats earned income in the Medical Assistance Assumed (MAA) and Medical Assistance to Families (MAF) programs is being amended to make permanent temporary rule changes adopted on October 1, 2009 that remove language excluding income that would result in MAA or MAF ineligibility prior to meeting the have been eligible for and received MAA or MAF for three of the prior six months requirement. This rule also is being amended to comply with recent legislation (2009 Or. Laws ch. 599) changing the name of the Food Stamp (FS) program to SNAP.

OAR 461-145-0143 about how the Department treats a \$250 federal economic recovery payment made to a client when determining the client’s income and resources is being amended to state how the Medical Assistance Assumed (MAA), Medical Assistance to Families (MAF), Oregon Health Plan (OHP), Oregon Supplemental Income Program Medical (OSIPM), and Qualified Medicare Beneficiaries (QMB) programs treat the income of clients who have and have not received the payment and to comply with the American Recovery and Reinvestment Act of 2009 (Pub. Law 111-5).

OAR 461-145-0220 about the treatment of a client’s home when the Department is determining a client’s assets for individuals receiving long-term care service is being amended to state when the home is excluded from the client’s assets. This rule also is being amend-

ed to comply with recent legislation (2009 Or. Laws ch. 599) changing the name of the Food Stamp (FS) program to SNAP.

OAR 461-145-0260 about how the Department treats Indian (Native American) benefits when determining income and resources is being amended to state how the Department treats Individual Indian Money (IIM) accounts in the General Assistance (GA), General Assistance Medical (GAM), Oregon Supplemental Income Program (OSIP), Oregon Supplemental Income Program Medical (OSIPM), and Qualified Medicare Beneficiary (QMB) programs. This rule also is being amended to comply with recent legislation (2009 Or. Laws ch. 599) changing the name of the Food Stamp (FS) program to SNAP.

OAR 461-145-0405 about how the Department treats assets in a client’s Plan for Self Support is being amended to state that the assets listed in an approved Plan for Self Support are excluded.

OAR 461-145-0810 about how the Department treats deemed assets is being amended to state that this rule applies only to assets deemed for a sponsored noncitizen.

OAR 461-145-0930 about how the Department determines countable income for self-employed clients is being amended to state more clearly what the term gross sales and receipts encompasses. This rule also is being amended to comply with recent legislation (2009 Or. Laws ch. 599) changing the name of the Food Stamp (FS) program to SNAP.

OAR 461-150-0055 about eligibility and budgeting in the Oregon Health Plan (OHP) program is being amended to revise how the Department averages income when determining eligibility for the OHP program. The Department is amending this rule to implement the recent Healthy Kids legislation (2009 Or. Laws ch. 867). The legislation required the Department to put new programs into place effective October 1, 2009 to ensure eligible children in Oregon have health insurance coverage available. This rule is part of the implementation of the Department’s Continuous Eligibility for OHP-CHP (CEC) and Continuous Eligibility for Medicaid (CEM) programs to expand health insurance coverage for Oregon children. This rule change also makes permanent the changes made by temporary rule effective October 1, 2009.

OAR 461-155-0175 about the income standards in the Extended Medical Assistance (EXT) program is being repealed to make permanent the rule suspension adopted on October 1, 2009 because the rule is unnecessary in the context of changes to medical eligibility requirements and the new EXT eligibility period.

OAR 461-155-0225 about the income standards is being amended to state the income standard for the Oregon Health Plan - Persons Under 19 (OHP-CHP) program. The Department is amending this rule to implement the recent Healthy Kids legislation (2009 Or. Laws ch. 867). The legislation required the Department to put new programs into place effective October 1, 2009 to ensure eligible children in Oregon have health insurance coverage available. This rule is part of the implementation of the Department’s Continuous Eligibility for OHP-CHP (CEC) and Continuous Eligibility for Medicaid (CEM) programs to expand health insurance coverage for Oregon children. This rule change also makes permanent the changes made by temporary rule effective October 1, 2009.

OAR 461-155-0250 about the income and payment standards for the Oregon Supplemental Income Program (OSIP) and the Oregon Supplemental Income Program Medical (OSIPM) programs is being amended to remove the provisions related to the OSIP program as the Department is ending supplemental income payments in the OSIP program effective January 1, 2010 in response to HB 3065 (2009). This rule also is being amended to state that a client who receives both benefits under Part A of Medicare and SSI is assumed eligible for OSIPM program benefits. This rule also is being amended to state the countable income standard the Department applies to a client in a nonstandard living arrangement.

OAR 461-155-0360 about how the Department determines whether an employer-sponsored health insurance plan is cost effective is being amended to state that its provisions apply to the Con-

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tinuous Eligibility for Medicaid (CEM) program. The Department is amending this rule to implement the recent Healthy Kids legislation (2009 Or. Laws ch. 867). The legislation required the Department to put new programs into place effective October 1, 2009 to ensure eligible children in Oregon have health insurance coverage available. This rule is part of the implementation of the Department's Continuous Eligibility for OHP-CHP (CEC) and Continuous Eligibility for Medicaid (CEM) programs to expand health insurance coverage for Oregon children. This rule change also makes permanent the changes made by temporary rule effective October 1, 2009.

OAR 461-155-0530 regarding special need payments for food for guide dogs and special assistance animals to Oregon Supplemental Income Program (OSIP) and Oregon Supplemental Income Program Medical (OSIPM) program clients is being amended to allow OSIP and OSIPM program clients with adjusted income below the OSIPM income standard to be eligible for these payments.

OAR 461-155-0580 about special need payments for laundry allowances made to Oregon Supplemental Income Program (OSIP) and Oregon Supplemental Income Program Medical (OSIPM) program clients who have excessive costs for laundry is being amended to allow OSIP and OSIPM program clients with adjusted income below the OSIPM program income standard to be eligible for these payments.

OAR 461-155-0630 about special need payments for Oregon Supplemental Income Program Medical (OSIPM) program clients in community based care is being amended to state when spouses who each receive SSI and services in a community based care facility are eligible for a special need payment and how the payment amount is determined.

OAR 461-155-0640 about special need payments for restaurant meals made to Oregon Supplemental Income Program (OSIP) and Oregon Supplemental Income Program Medical (OSIPM) program clients who have medical and nutritional needs that cannot be met with meals purchased with Supplemental Nutrition Assistance Program (SNAP) benefits is being amended to allow OSIP and OSIPM program clients with adjusted income below the OSIPM program income standard to be eligible for these payments.

OAR 461-155-0660 about special need payments for accommodation allowances (a payment covering some housing and utility costs of a client) made to Oregon Supplemental Income Program (OSIP) and Oregon Supplemental Income Program Medical (OSIPM) program clients who temporarily leave their home to stay at an adult foster care facility, assisted living facility, group care home, hospital, nursing facility, residential care facility, specialized living facility, or state psychiatric institution is being amended to allow OSIP and OSIPM program clients with adjusted income below the OSIPM program income standard to be eligible for these payments. This rule also is being amended to comply with recent legislation (2009 Or. Laws ch. 599) changing the name of the Food Stamp (FS) program to SNAP.

OAR 461-155-0670 about special need payments for special diet allowances (a payment for a diet needed to prevent imminent life-threatening harm) made to certain Oregon Supplemental Income Program (OSIP) and Oregon Supplemental Income Program Medical (OSIPM) program clients who require a special diet is being amended to allow OSIP and OSIPM program clients with adjusted income below the OSIPM program income standard to be eligible for these payments. This rule also is being amended to comply with recent legislation (2009 Or. Laws ch. 599) changing the name of the Food Stamp (FS) program to SNAP.

OAR 461-155-0680 about special need payments for supplemental telephone allowance to clients in the Oregon Supplemental Income Program Medical (OSIPM) program is being amended to allow these payments for clients with an adjusted income less than the OSIPM program standard.

OAR 461-155-0688 about prescription drug co-payments for individuals in the Oregon Supplemental Income Program-Medical

(OSIPM) program who receive SSI as their only income is being adopted to state when the Department makes the co-payments.

OAR 461-155-0693 about transportation services payments for individuals in the Oregon Supplemental Income Program-Medical (OSIPM) program is being adopted to state how the Department makes these payments to these clients.

OAR 461-160-0015 about the resource limits on eligibility for the Department's programs is being amended to state that there is no resource limit for a client applying for Oregon Health Plan - Persons Under 19 (OHP-CHP) program benefits. The Department is amending this rule to implement the recent Healthy Kids legislation (2009 Or. Laws ch. 867). The legislation required the Department to put new programs into place effective October 1, 2009 to ensure eligible children in Oregon have health insurance coverage available. This rule is part of the implementation of the Department's Continuous Eligibility for OHP-CHP (CEC) and Continuous Eligibility for Medicaid (CEM) programs to expand health insurance coverage for Oregon children. This rule change also makes permanent the changes made by temporary rule effective October 1, 2009. This rule also is being amended to comply with recent legislation (2009 Or. Laws ch. 599) changing the name of the Food Stamp (FS) program to SNAP.

OAR 461-160-0580 about the excluded resource - community spouse provision in the OSIP and OSIPM programs except OSIP-EPD (Employed Persons with Disabilities) and OSIPM-EPD is being amended to adjust these standards to reflect the annual federal cost of living adjustments. This rule in relation to resource assessments is also being amended for married clients in the Oregon Supplemental Income Program (OSIP) and the Oregon Supplemental Income Program Medical (OSIPM) to make it more abundantly clear that the rule applies only to legally married couples.

OAR 461-160-0610 about the liability payment a client in the Oregon Supplemental Income Program Medical (OSIPM) program must make to remain eligible for long-term care services is being amended to state when in an initial month of a long term care placement a client may be exempt from the payments required under this rule. This rule also is being amended to remove references to the Oregon Supplemental Income Program (OSIP).

OAR 461-160-0700 about how the Department uses income when determining eligibility for Oregon Health Plan (OHP) program benefits is being amended to state when an Oregon Health Plan - Persons Under 19 (OHP-CHP) program need group member is eligible for OHP despite not meeting the OHP income standard. The Department is amending this rule to implement the recent Healthy Kids legislation (2009 Or. Laws ch. 867). The legislation required the Department to put new programs into place effective October 1, 2009 to ensure eligible children in Oregon have health insurance coverage available. This rule is part of the implementation of the Department's Continuous Eligibility for OHP-CHP (CEC) and Continuous Eligibility for Medicaid (CEM) programs to expand health insurance coverage for Oregon children. This rule change also makes permanent the changes made by temporary rule effective October 1, 2009.

OAR 461-165-0010 about the legal status of benefit payments the Department makes to clients is being amended to state when Temporary Assistance - Domestic Violence Survivors (TA-DVS) program benefit payments become vested in a TA-DVS program client.

OAR 461-165-0200, 461-165-0210, and 461-165-0230 are being amended to allow the Department to restore Supplemental Nutrition Assistance Program (SNAP) benefits used by a former household member when the Department's failure to cancel the former member's EBT card allows unauthorized access to the household's SNAP program benefits. These rules also are being amended to comply with recent legislation (2009 Or. Laws ch. 599) changing the name of the Food Stamp (FS) program to SNAP.

OAR 461-175-0270 about when a notice is sent to clients assigned to the various Department reporting systems, the type of notice sent, and what the notice must contain is being amended to state the information that is provided in the notice that is sent to clients when an action is taken based on information the client reported on the

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Monthly Change Report or the Interim Change Report form and that this provision applies to the Supplemental Nutrition Assistance Program (SNAP). This rule also is being amended to comply with recent legislation (2009 Or. Laws ch. 599) changing the name of the Food Stamp (FS) program to SNAP program.

OAR 461-180-0085 about the effective date of redetermination for eligibility for benefits in certain Department medical assistance programs is being amended to state that its provisions apply for the Continuous Eligibility for OHP-CHP (CEC) and Continuous Eligibility for Medicaid (CEM) programs. The Department is amending this rule to implement the recent Healthy Kids legislation (2009 Or. Laws ch. 867). The legislation required the Department to put new programs into place effective October 1, 2009 to ensure eligible children in Oregon have health insurance coverage available. This rule is part of the implementation of the Department's Continuous Eligibility for OHP-CHP (CEC) and Continuous Eligibility for Medicaid (CEM) programs to expand health insurance coverage for Oregon children. This rule change also makes permanent the changes made by temporary rule effective October 1, 2009.

OAR 461-180-0090 about the effective dates for the initial month of medical benefits is being amended to change the effective date for starting the Medicare Savings Programs (MSPs). Starting January of 2010 the Social Security Administration (SSA) will be sending a data feed from the Low Income Subsidy (LIS) applications they process. Oregon will treat this information as a Medicaid application and use the date SSA received the information from the applicant as the protected effective date for starting benefits for eligible applicants, changing how Oregon determines effective dates currently for MSP applications. Oregon had used the date the state receives a request as the date from which to determine eligibility. These two dates (the date the client requests a LIS and the date Oregon receives the request for Medicaid) may be 60 days or more apart as SSA will process the LIS application before they send the data to the states. This change assures the applicant will have the earlier date used for the eligibility date determination. This rule is also being amended to state the effective date for the initial month of benefits in the Continuous Eligibility for OHP-CHP (CEC) and Continuous Eligibility for Medicaid (CEM) programs. The Department is amending this rule to implement the recent Healthy Kids legislation (2009 Or. Laws ch. 867). The legislation required the Department to put new programs into place effective October 1, 2009 to ensure eligible children in Oregon have health insurance coverage available. This rule is part of the implementation of the Department's Continuous Eligibility for OHP-CHP (CEC) and Continuous Eligibility for Medicaid (CEM) programs to expand health insurance coverage for Oregon children. This rule change also makes permanent the changes made by temporary rule effective October 1, 2009.

OAR 461-190-0199 about the operation of and the eligibility, selection, and participation requirements for the Parents as Scholars (PAS) component of the Job Opportunity and Basic Skills (JOBS) program is being amended to state the documentation a PAS participant must provide prior to the start of each academic term.

OAR 461-193-0031 about the eligibility requirements for Refugee Case Services Project (RCSP) program services is being amended to state a client may meet one of its eligibility provisions by also meeting all Refugee (REF) program eligibility requirements.

OAR 461-193-0121 about how the Department handles Refugee (REF) program inquiries and complaints is being repealed because its relevant provisions have been incorporated into other rules in this division of rules.

OAR 461-193-0240 about when a client is exempt from participating in the New Arrival Employment Services (NAES) program is being amended to expand eligibility to those refugees who are not eligible for Refugee Case Services Project (RCSP) due to having been in the United States longer than eight months and to state an exemption from NAES program participation due to a client's medical condition.

OAR 461-193-0920 about how the Department handles a Refugee (REF) program client's request for review of a decision the Department has made is being repealed because its relevant provisions have been incorporated into other rules in this division of rules.

OAR 461-193-0980 about how the Department handles a Refugee (REF) program client's appeal for review of a staffing decision the Department has made is being repealed because its relevant provisions have been incorporated into other rules in this division of rules.

OAR 461-193-1360 about the eligibility requirements for transportation support services payments in the New Arrival Employment Services (NAES) program is being repealed because its relevant provisions have been incorporated into OAR 461-193-1380.

OAR 461-193-1370 about the eligibility requirements for child care support services payments in the New Arrival Employment Services (NAES) program is being repealed because its relevant provisions have been incorporated into OAR 461-193-1380.

OAR 461-193-1380 about the standards and eligibility requirements for support services payments in the New Arrival Employment Services (NAES) program is being amended to state the purpose of the support services payments, how the Department authorizes the payments, the eligibility requirements to receive a payment, when the Department denies or reduces a support service payment, verification requirements, and the requirements to receive each type of payment (child care, housing and utilities, transportation, and other items directly related to participation in NAES program activities).

OAR 461-195-0501 about how the Department defines and categorizes overpayments (benefits paid to a client in error, that the Department generally attempts to recover from the client) for programs administered under chapters 410, 411, and 461 of the Oregon administrative rules is being amended to reflect current Department terminology, policy, and practices and to state the definition of an overpayment, when the Department considers a payment received in the initial month of benefits an overpayment, what the Department does not consider an overpayment, and how a child care provider overpayment is determined. This rule also is being amended to state how the Department determines the category of an overpayment (administrative error, client error, fraud, Supplemental Nutrition Assistance Program (SNAP) program provider error, or child care program provider error), to remove the definition of administrative technical overpayment, and the primary cause of the overpayment when an overpayment is caused by both an administrative and client error in the same month. This rule also is being amended to state what the SNAP programs considers to be trading of a controlled substance and that a Temporary Assistance for Needy Families (TANF) program overpayment is waived if it puts a client at greater risk of domestic violence. This rule also is being amended to comply with recent legislation (2009 Or. Laws ch. 599) changing the name of the Food Stamp (FS) program to SNAP program.

OAR 461-195-0511 about how the Department determined and categorized child care provider overpayments is being repealed as it reflected outdated Department terminology, policy, and practices, and its amended relevant provisions incorporated into OAR 461-195-0501, 461-195-0541 and 461-195-0551.

OAR 461-195-0521 about how the Department calculates the amount of a client or provider's overpayment liability is being amended to reflect current Department terminology, policy, and practices and to state the Department calculates the amount of an overpayment by determining the amount the client received or the payment made by the Department on behalf of the client that exceeds the amount for which the client was eligible. This rule also is being amended to specify how the Department calculates the amount of an overpayment due to failure to report income or earned income, or incorrect prospective budgeting, when credit against an overpayment is allowed, and how an overpayment affects eligibility for other programs. This rule also is being amended to comply with recent legislation (2009 Or. Laws ch. 599) changing the name of the Food Stamp (FS) program to SNAP program.

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OAR 461-195-0531 about how the Department established an overpayment is being repealed as it reflected outdated Department terminology, policy, and practices, and its amended relevant provisions incorporated into OAR 461-195-0501.

OAR 461-195-0541 about the individuals liable for repayment of an overpayment is being amended to reflect current Department terminology, policy, and practices and to state who is liable and who is excepted from liability for overpayments in the Department's programs. This rule also is being amended to comply with recent legislation (2009 Or. Laws ch. 599) changing the name of the Food Stamp (FS) program to SNAP program.

OAR 461-195-0551 about the Department's methodology for recovering overpayments is being amended to reflect current Department terminology, policy, and practices and to state how the Department proceeds to recover an overpayment, when the Department reduces current benefits to collect an overpayment, and when the Department may recover an overpayment by offset. This rule also is being amended to comply with recent legislation (2009 Or. Laws ch. 599) changing the name of the Food Stamp (FS) program to SNAP program.

OAR 461-195-0561 about when and how the Department compromises an overpayment claim is being amended to reflect current Department terminology, policy, and practices and to state this rule applies to all Department programs, remove references to the child support program, the restrictions on compromising a claim, when the Department may allow installment payments of a compromised claim, and when the Department may collect the original full amount of a compromised claim.

**Rules Coordinator:** Annette Tesch—(503) 945-6067

## 461-025-0310

### Hearing Requests

(1) A *claimant* (see OAR 461-025-0305) has the right to a contested case hearing in the following situations upon the timely completion of a request for hearing:

(a) Except as provided in subsection (o) of this section, the Department has not approved or denied a request or application for public assistance within 45 days of the application.

(b) The Department has not acted timely on an application as follows:

(A) An application for SNAP program benefits — within 30 days of the filing date.

(B) An application for a JOBS support service payment — within the time frames established in OAR 461-115-0190(3).

(c) The Department acts to deny, reduce, close, or suspend SNAP program benefits, a *grant of public assistance*, a *grant of aid*, a support service payment authorized in the JOBS program by OAR 461-190-0211, medical assistance, or child care benefits authorized under Division 160 or 165 of this chapter of rules in the ERDC or TANF child care programs. When used in this subsection, *grant of public assistance* and *grant of aid* mean the grant of cash assistance calculated according to the client's need.

(d) The Department claims that an earlier public assistance payment was an overpayment, or that an earlier issuance of SNAP program benefits was an overissuance.

(e) The *claimant* claims that the Department previously underissued public assistance or SNAP program benefits and the Department denies the claim.

(f) The household disputes its current level of SNAP program benefits.

(g) The *filing group* (see OAR 461-110-0370) is aggrieved by any action of the Department that affects the participation of the filing group in the SNAP program.

(h) The *claimant* asks for a hearing to determine if the waiver of an Intentional Program Violation hearing was signed under duress.

(i) The Department establishes or changes the client's premium for the Oregon Health Plan.

(j) In the Pre-TANF program, the Department denies payment for a basic living expense (see OAR 461-135-0475) or other support service payment in the JOBS program (see subsection (c) of this section).

(k) In the TA-DVS program, when OAR 461-135-1235 provides a right to a hearing.

(l) A service re-assessment of a client conducted in accordance with OAR Division 411-015 has resulted in a reduction or termination of nursing facility services or *Waivered Services* (defined at OAR 461-001-0030).

(m) The *claimant's* benefits are changed to vendor, protective, or two-party payments.

(n) Department has issued a notice seeking repayment under ORS 411.892 to an employer participating in the JOBS program.

(o) In the OSIP and OSIPM programs, when the Department has not approved or denied an application within the time frames established in OAR 461-115-0190.

(p) The right to a hearing is otherwise provided by statute or rule.

(2) A client is not entitled to a hearing on the question of the contents of a *case plan* (defined in OAR 461-190-0151) unless the right to hearing is specifically authorized by the Department's rules. For a dispute about an activity in the JOBS program, the client is entitled to use the Department's re-engagement process (see OAR 461-190-0231). In the TA-DVS program, a dispute about the contents of a TA-DVS case plan (see OAR 461-135-1205) is resolved through re-engagement if there is no right to a hearing under OAR 461-135-1235.

(3) A request for hearing is complete:

(a) In public assistance programs, when the Department's Administrative Hearing Request form (form DHS 443) is completed and signed by the *claimant* or the claimant's representative and is received by the Department.

(b) In the SNAP program when:

(A) The Department receives the claimant's oral or written statement that he or she wishes to appeal a decision affecting the claimant's SNAP program benefits to a higher authority; or

(B) The Department's Administrative Hearing Request form (form DHS 443) is completed and signed by the *claimant* or the claimant's representative and is received by the Department.

(c) In the case of a provider of child care, when a written request for hearing from the provider is received by the Department.

(4) In the event a request for hearing is not timely, the Department will determine whether the failure to timely file a request for hearing was beyond the reasonable control of the party and enter an order accordingly. The Department may refer an untimely request to the Office of Administrative Hearings for a hearing on the question of timeliness.

(5) In the event the *claimant* has no right to a contested case hearing on an issue, the Department may enter an order accordingly. The Department may refer a hearing request to the Office of Administrative Hearings for a hearing on the question of whether the *claimant* has the right to a contested case hearing.

(6) To be timely, a completed hearing request must be received by the Department not later than:

(a) Except as provided in subsection (b) of this section, the 45th day following the date of the *decision notice* (see OAR 461-001-0000) in public assistance and medical programs.

(b) The 90th day following the effective date of the reduction or termination of benefits in a public assistance program if the reduction or termination of aid is a result of a JOBS disqualification (see OAR 461-130-0330) or a penalty for failure to seek treatment for substance abuse or mental health (see OAR 461-135-0085).

(c) The 90th day following the date of the *decision notice* in the SNAP program, except:

(A) A *filing group* may submit a hearing request at any time within a *certification period* (see OAR 461-001-0000) to dispute its current level of benefits.

(B) A *filing group* may submit a hearing request within 90 days of the denial of a request for restoration of benefits if not more than twelve months has expired since the loss of benefits.

(d) The 30th day following the date of notice from the Oregon Department of Revenue in cases covered by ORS 293.250.

(e) In a case described in subsection (1)(h) of this rule, the request must be made within 90 days of the date the waiver was signed.

(7) In determining timeliness under section (6) of this rule, delay caused by circumstances beyond the control of the *claimant* is not counted.

(8) In computing the time periods provided by this rule, see OAR 461-025-0300(1).

(9) In the REF and REFM programs, a client is not eligible for a contested case hearing when assistance is terminated because the eligibility time period imposed by OAR 461-135-0900 has been reached. If the issue is the date of entry into the United States the Department provides for prompt resolution of the issue by inspection of the individual's documentation issued by the US Citizenship and Immigration Services (USCIS) or by information obtained from USCIS, rather than by contested case hearing.

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

Stat. Auth.: ORS 411.060, 411.816, 411.892, 412.014, 412.049, 414.042

Stats. Implemented: ORS 411.060, 411.095, 411.117, 411.816, 411.892, 412.009, 412.014, 412.049, 412.069, 414.042, 414.055

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 4-1995, f. & ef. 2-1-95; AFS 26-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 3-2000, f. 1-31-2000, cert. ef. 2-1-00; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 22-2001, f. & cert. ef. 10-1-01; AFS 23-2002(Temp), f. 12-31-02, cert. ef. 1-1-03 thru 6-30-03; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 21-2004, f. & cert. ef. 10-1-04; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07; SSP 7-2007, f. 6-29-07, cert. ef. 7-1-07; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08; SSP 8-2008, f. & cert. ef. 4-1-08; SSP 17-2008, f. & cert. ef. 7-1-08; SSP 38-2009, f. 12-31-09, cert. ef. 1-1-10

# ADMINISTRATIVE RULES

## 461-101-0010

### Program Acronyms and Overview

(1) Acronyms are frequently used when referring to a program. There is an acronym for each umbrella program (for instance, OSIP) and acronyms for each subprogram (for instance, OSIP-AB, OSIP-AD, and OSIP-OAA).

(2) When no program acronym appears in a rule in Chapter 461 of these rules, the rule with no program acronym applies to all programs listed in this rule. If a rule does not apply to all programs, the rule uses program acronyms to identify the programs to which the rule applies.

(3) Wherever an umbrella acronym appears, that means the rule covers all the subprograms under that code (for instance, OSIP means OSIP-AB, OSIP-AD, and OSIP-OAA).

(4) ADC; Aid to Dependent Children. Financial aid to low-income families when children are deprived of parental support because of continued absence, death, incapacity, or unemployment. When used alone, ADC refers to all ADC programs. Use of the acronym, ADC, which stands for Aid to Dependent Children, and use of the phrase, Aid to Dependent Children, refer to the state's Temporary Assistance for Needy Families Program, and its acronym, TANF. The following codes are used for ADC subprograms:

(a) ADC-BAS; Aid to Dependent Children — Basic (includes eligibility based on continued absence, death, incapacity, or unemployment). ADC with deprivation based on unemployment is also denoted by ADC-BAS/UN.

(b) EA; Aid to Dependent Children — Emergency Assistance. Emergency cash to families without the resources to meet emergent needs.

(5) ADCM; Aid to Dependent Children Medical. Medical aid to low-income families when children are deprived of parental support, as for ADC. Use of the acronym ADCM, which stands for Aid to Dependent Children Medical, and use of the phrase Aid to Dependent Children Medical refer to EXT, MAA, MAF, and SAC programs. When used alone, ADCM refers to all ADC-related medical programs. The following codes are used for ADCM subprograms:

(a) ADCM-BAS; Aid to Dependent Children Medical — Basic.

(b) ADCM-EXT; Aid to Dependent Children Medical — Extended. ADCM-EXT provides extended medical benefits to families after their ADC benefits end.

(c) ADCM-SAC; Aid to Dependent Children Medical — Substitute or Adoptive Care. ADCM-SAC gives medical coverage to children in substitute or adoptive care.

(6) The Assessment Program (see the Pre-TANF program in this rule).

(7) BCCM; Breast and Cervical Cancer Medical program.

(8) CAWEM; Citizen/Alien-Waived Emergent Medical. Medicaid coverage of emergent medical needs for clients who are not eligible for other medical programs solely because they do not meet citizenship and alien status requirements.

(9) CEC; Continuous Eligibility for OHP-CHP. Title XXI medical assistance for a pregnant non-CAWEM child found eligible for the OHP-CHP program who, for a reason other than moving out of state or becoming a recipient of private major medical health insurance, otherwise would lose her eligibility. The pregnant individual is deemed eligible for OHP-CHP through the last day of the month in which the pregnancy ends.

(10) CEM; Continuous Eligibility for Medicaid. Title XIX medical assistance for a non-CAWEM child found eligible for Medicaid who loses his or her eligibility for a reason other than turning 19 years of age or moving out of state. The child is deemed eligible for Medicaid for the remainder of the 12 month eligibility period.

(11) DSNAP; Disaster Supplemental Nutrition Assistance Program. Following a presidential declaration of a major disaster in Oregon, DSNAP provides emergency DSNAP program benefits to victims. OAR 461-135-0491 to 461-135-0497 cover DSNAP eligibility and benefits.

(12) ERDC or ERDC-BAS; Employment Related Day Care-Basic. Helps low-income working families pay the cost of child care.

(13) EXT; Extended Medical Assistance. The Extended Medical Assistance program provides medical assistance for a period of time after a family loses its eligibility for the MAA, MAF, or Pre-TANF program due to an increase in their child support or earned income.

(14) FS; Food Stamps. Helps low-income households maintain proper nutrition by giving them the means to purchase food. Any reference to Food Stamps or FS also includes the Supplemental Nutrition Assistance Program or SNAP.

(15) GA; General Assistance. Cash assistance to low-income individuals with disabilities who do not have dependent children.

(16) GAM; General Assistance Medical. Medical assistance to clients who are eligible for the GA program but have not been found eligible for OSIPM benefits.

(17) HSP; Housing Stabilization Program. A program that helps low-income families obtain stable housing. The program is operated through the Housing and Community Services Department through community-based, service-provider agencies. The Department's rules for the program (OAR 461-135-1305 to 461-135-1335) were repealed July 1, 2001.

(18) JOBS; Job Opportunity and Basic Skills. An employment program for REF, REFM, and TANF clients. JOBS helps these clients attain self-sufficiency through training and employment. The program is part of Welfare Reform.

(19) JOBS Plus. Provides subsidized jobs rather than SNAP or TANF benefits. For TANF clients, JOBS Plus is a component of the JOBS Program; for FS clients and noncustodial parents of children receiving TANF, it is a separate employment program. Eligibility for TANF clients, SNAP clients, and noncustodial parents of children receiving TANF is determined by the Department. Eligibility for UI recipients is determined by the Oregon State Employment Department. When used alone, JOBS Plus includes only clients whose JOBS Plus program participation is through the Department of Human Services. JOBS Plus administered through the Oregon State Employment Department is known in chapter 461 of the Oregon Administrative Rules as Oregon Employment Department UI JOBS Plus. The following acronyms are used for specific categories:

(a) ADC-PLS; Clients eligible for JOBS Plus based on TANF.

(b) SNAP-PLS; Clients eligible for JOBS Plus based on SNAP.

(c) NCP-PLS; Noncustodial parents of children receiving TANF.

(20) LIS; Low-Income Subsidy. The Low-Income Subsidy program is a federal assistance program for Medicare clients who are eligible for extra help meeting their Medicare Part D prescription drug costs.

(21) MAA; Medical Assistance Assumed. The Medical Assistance Assumed program provides medical assistance to people who are eligible for the Pre-TANF program or ongoing TANF benefits.

(22) MAF; Medical Assistance to Families. The Medical Assistance to Families program provides medical assistance to people who are ineligible for MAA but are eligible for Medicaid using ADC program standards and methodologies that were in effect as of July 16, 1996.

(23) OFSET. The Oregon Food Stamp Employment Transition Program, which helps SNAP program benefit recipients find employment. This program is mandatory for some SNAP program benefit recipients.

(24) OHP; Oregon Health Plan. The Oregon Health Plan Program provides medical assistance to many low-income individuals and families. The program includes five categories of people who may qualify for benefits. The acronyms for these categories are:

(a) OHP-OPU; Adults. OHP coverage for adults who qualify under the 100 percent income standard. A person eligible under OHP-OPU is referred to as a health plan new/noncategorical (HPN) client.

(b) OHP-OPC; Children. OHP coverage for children who qualify under the 100 percent income standard.

(c) OHP-OP6; Children Under 6. OHP coverage for children under age 6 who qualify under the 133 percent income standard.

(d) OHP-OPP; Pregnant Females and their newborn children. OHP coverage for pregnant females who qualify under the 185 percent income standard and their newborn children.

(e) OHP-CHP; Persons Under 19. OHP coverage for persons under age 19 who qualify under the 185 percent income standard for medical assistance authorized by the Children's Health Insurance Program (CHIP) provision of the 1997 Balanced Budget Act.

(25) OSIP; Oregon Supplemental Income Program. Cash supplements and special need payments to persons who are blind, disabled, or 65 years of age or older. When used alone, OSIP refers to all OSIP programs. The following acronyms are used for OSIP subprograms:

(a) OSIP-AB; Oregon Supplemental Income Program — Aid to the Blind.

(b) OSIP-AD; Oregon Supplemental Income Program — Aid to the Disabled.

(c) OSIP-EPD; Oregon Supplemental Income Program — Employed Persons with Disabilities program. This program provides Medicaid coverage for employed persons with disabilities with adjusted income less than 250 percent of the Federal Poverty Level.

(d) OSIP-OAA; Oregon Supplemental Income Program — Old Age Assistance.

(26) OSIPM; Oregon Supplemental Income Program Medical. Medical coverage for elderly and disabled individuals. When used alone, OSIPM refers to all OSIP-related medical programs. The following codes are used for OSIPM subprograms:

(a) OSIPM-AB; Oregon Supplemental Income Program Medical — Aid to the Blind.

(b) OSIPM-AD; Oregon Supplemental Income Program Medical — Aid to the Disabled.

(c) OSIPM-EPD; Oregon Supplemental Income Program Medical — Employed Persons with Disabilities program. This program provides Medicaid coverage for employed persons with disabilities with adjusted income less than 250 percent of the Federal Poverty Level.

(d) OSIPM-OAA; Oregon Supplemental Income Program Medical — Old Age Assistance.

(e) OSIPM-IC; Oregon Supplemental Income Program Medical — Independent Choices

(27) The Post-TANF program provides a monthly transitional payment to employed clients who are no longer eligible for the Pre-TANF or TANF programs due to earnings, and meet the other eligibility requirements.

(28) The Pre-TANF program is an up-front assessment and resource-search program for TANF applicant families. The intent of the program is to assess the individual's employment potential; determine any barriers to employment or family stability; develop an individualized case plan that pro-



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notes family stability and financial independence; help individuals find employment or other alternatives; and provide basic living expenses immediately to families in need.

(29) QMB; Qualified Medicare Beneficiaries. Programs providing payment of Medicare premiums and one program also providing additional medical coverage for Medicare recipients. Each of these programs also is considered to be a Medicare Savings Program (MSP). When used alone in a rule, QMB refers to all MSP. The following codes are used for QMB subprograms:

(a) QMB-BAS; Qualified Medicare Beneficiaries — Basic. The basic QMB program.

(b) QMB-DW; Qualified Medicare Beneficiaries — Disabled Worker. Payment of the Medicare Part A premium for people under age 65 who have lost eligibility for Social Security disability benefits because they have become substantially gainfully employed.

(c) QMB-SMB; Qualified Medicare Beneficiaries — Specified Limited Medicare Beneficiary. Payment of the Medicare Part B premium only. There are no medical benefits available through QMB-SMB.

(d) QMB-SMF; Qualified Medicare Beneficiaries — Qualified Individuals. Payment of the Medicare Part B premium only. There are no medical benefits available through QMB-SMF. This program has a 100-percent federal match, but also has an allocation that, if reached, results in the closure of the program.

(30) REF; Refugee Assistance. Cash assistance to low-income refugee singles or married couples without children.

(31) REFM or REFM-BAS; Refugee Assistance Medical — Basic. Medical coverage for low-income refugees.

(32) The Repatriate Program helps Americans resettle in the United States if they have left a foreign land because of an emergency situation.

(33) SAC; Medical Coverage for Children in Substitute or Adoptive Care.

(34) Senior Prescription Drug Assistance Program; provides that people 65 years of age or older can purchase prescription drugs at the Medicaid price.

(35) SFDNP; Senior Farm Direct Nutrition Program. Food vouchers for low income seniors. Funded by a grant from the United States Department of Agriculture.

(36) SFPSS; State Family Pre-SSI/SSDI Program. A voluntary program providing cash assistance and case management services to families when at least one TANF eligible adult in the household has an impairment (see OAR 461-125-0260) and is or will be applying for Supplemental Security Income (SSI) or Social Security Disability Insurance (SSDI).

(37) SNAP; Supplemental Nutrition Assistance Program. Helps low-income households maintain proper nutrition by giving them the means to purchase food. SNAP used to be known as FS or Food Stamps, any reference to SNAP also includes FS and Food Stamps.

(38) TA-DVS; Temporary Assistance for Domestic Violence Survivors. Addresses the needs of clients threatened by domestic violence.

(39) TANF; Temporary Assistance for Needy Families. Cash assistance for families when children in those families are deprived of parental support because of continued absence, death, incapacity, or unemployment. Cash assistance used to be known as ADC.

Stat. Auth.: ORS 411.060, 411.816, 412.014, 412.049, 414.042, 414.342  
Stats. Implemented: ORS 411.060, 411.816, 412.014, 412.049, 414.042, 414.342  
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 16-1990, f. 6-29-90, cert. ef. 7-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 23-1990, f. 9-28-90, cert. ef. 10-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 35-1992, f. 12-31-92, cert. ef. 1-1-93; AFS 16-1993, f. & cert. ef. 9-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; 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 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 17-1996, f. 4-29-96, cert. ef. 5-1-96; 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 9-1997, f. & cert. ef. 7-1-97; AFS 4-1998, f. 2-25-98, cert. ef. 3-1-98; AFS 10-1998, f. 6-29-98, cert. ef. 7-1-98; AFS 17-1998, f. & cert. ef. 10-1-98; AFS 25-1998, f. 12-18-98, cert. ef. 1-1-99; 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 9-1999, f. & cert. ef. 7-1-99; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; AFS 11-2001, f. 6-29-01, cert. ef. 7-1-01; AFS 17-2001(Temp), f. 8-31-01, cert. ef. 9-1-01 thru 9-30-01; 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 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 7-2003, f. & cert. ef. 4-1-03; 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 17-2004, f. & cert. ef. 7-1-04; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 7-2005, f. & cert. ef. 7-1-05; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06; SSP 8-2006, f. & cert. ef. 6-1-06; SSP 7-2007, f. 6-29-07, cert. ef. 7-1-07; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08; SSP 23-2008, f. & cert. ef. 10-1-08; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09; 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

## 461-105-0006

### Business Continuity Provisions

(1) The use of this rule by any CAF *branch office* (see OAR 461-001-0000) requires the approval for that site by:

(a) The Deputy Assistant Director for CAF Field Services or the designee of this official; and

(b) The Administrator of the Office of Self Sufficiency Programs or the designee of this official.

(2) The Department will only approve the use of this rule after considering the feasibility of avoiding the use of the rule by moving enough employees who are able to perform the needed tasks to the sites that have too few employees.

(3) For purposes of this rule:

(a) “Business continuity disruption” refers to an emergency event or a work stoppage that causes the absence of most of the employees in at least one *branch office* for an expected time period of sufficient duration that compliance with applicable administrative rules in Chapter 461 is not feasible. A “business continuity disruption” continues until a sufficient number of employees return to work to permit compliance at the *branch office* with the administrative rules in Chapter 461.

(b) “Emergent need”.

(A) In the ERDC program, the term “emergent need” refers to an individual who requires child care in order to work and who will lose this child care unless the application is processed promptly.

(B) In the SNAP program, the term “emergent need” refers to an individual who qualifies for expedited services under OAR 461-135-0575.

(C) In the medical assistance programs:

(i) The term “emergent need” refers to an individual reporting either of the following:

(I) A medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention or medication may reasonably be expected to result in placing the health of the patient in serious jeopardy, serious impairment to bodily functions, or serious dysfunction of any bodily organ or part.

(II) A need for prompt processing of an application to secure provider services for mental health, substance abuse, or long-term care.

(ii) An individual does not need to document the “emergent need”.

(D) In the REF and TANF programs, the term “emergent need” refers to a household that meets the requirements of one of the following subparagraphs:

(i) Countable income less than \$150 a month, and liquid resources that do not exceed \$100.

(ii) Gross income and resources that combined are less than the total of the household’s monthly rent or mortgage, plus its utilities.

(iii) Liquid resources (see subsection (c) of this section) that do not exceed \$100 as well as being a destitute household of migrant and seasonal farmworkers (see OAR 461-001-0015) with little or no income at the time of application.

(E) In the TA-DVS program, the term “emergent need” refers to an individual with an immediate safety need.

(c) “Liquid resources” refers to cash on hand, a checking or savings account, a savings certificate, and a lump sum payment.

(4) During a *business continuity disruption*, a *branch office* issues DSNAP benefits as provided in OAR 461-135-0491 to 461-135-0497 if the *branch office* is in a location authorized by the Food and Nutrition Service (FNS) during a disaster benefit period. This rule does not otherwise apply to the DSNAP program.

(5) Notwithstanding any other administrative rule in Chapter 461, during a *business continuity disruption* under the authorization required in section (1) of this rule, a CAF *branch office* may use any or all of the following special provisions:

(a) Application process.

(A) Individuals qualifying as *emergent need*.

(i) In the ERDC, medical assistance, REF, and TANF programs, acceptance or processing by the Department of applications may be limited to individuals in *emergent need*.

(ii) In the SNAP program, processing of applications for new clients may be limited to individuals in *emergent need*.

(iii) In the TA-DVS program, waive the requirement to jointly staff an application for TA-DVS benefits under OAR 461-135-1230(3).

(B) Application process for individuals without an *emergent need*.

(i) In the ERDC, REF, and TANF programs, each *branch office* using this provision may document a request for benefits by maintaining a dated list of the names of these new clients as well as social security numbers (if available). The Department will use these lists to establish the date of request for those clients who request assistance during the *business continuity disruption* and complete the application within 30 days after the conclusion of the *business continuity disruption* or by the deadline that applies under another program rule, whichever occurs later.

(ii) In the SNAP program, for a new client, each *branch office* using this provision may document a filing date by maintaining a file of completed filing pages (DHS 415Y or DHS 539F). The Department will schedule and conduct interviews with each client after the conclusion of the *business continuity disruption*.

(iii) In the medical assistance programs, each *branch office* should establish a date of request using OAR 461-115-0030.

(iv) In the TA-DVS program, the Department may document a request for benefits by maintaining a dated list of the names of the applicants as well as social security numbers (if available). The Department will use this list to establish a date of request for those clients who request assistance during the *business continuity disruption*. The Department will schedule and conduct interviews with each client within two business days after the conclusion of the *business continuity disruption* or when an immediate safety need arises, whichever occurs sooner.

(b) Benefit levels. In the ERDC, REF, SFPSS, and TANF programs:

# ADMINISTRATIVE RULES

(A) Except as provided for REF in OAR 461-135-0900(4), a client, including a client in the monthly reporting system (MRS) or in the Simplified Reporting System (SRS), may continue to receive benefits at the level in effect the day before the special provisions of this rule applied to the *branch office*.

(B) In the ERDC, SFPSS, and TANF programs, the Department may authorize a *branch office* to automatically extend certification periods for the duration of the *business continuity disruption*.

(C) Payments for *support services* (see OAR 461-001-0025) listed in a *case plan* (see OAR 461-001-0025) may continue at the level in effect the day before the special provisions of this rule applied to the *branch office*. The Department approves or denies any new request for a support services payment on a case by case basis.

(D) In the REF and TANF programs, for an *emergent need* household, the Department may issue a temporary benefit in the following amounts:

- (i) \$200 for a single individual.
- (ii) \$100 for each additional individual to a maximum payment of \$900.

(E) In the TA-DVS program, payments will be made to address immediate safety needs.

(c) Processing changes for current recipients. Except in the SNAP program, a *branch office* may suspend the processing of changes during the *business continuity disruption*.

(d) Redetermination of benefits issued in accordance with this rule; payments for supplemental benefits and establishment of overpayments. For each client who receives a benefit under the provisions of this rule, after the *business continuity disruption* ends:

(A) The Department will determine the correct benefit amount and either provide a supplemental payment or assess an overpayment as appropriate.

(B) In the SNAP program, the Department will make the determination about supplemental payments under paragraph (A) of this subsection within 10 days of the end of the *business continuity disruption*.

(e) In the SNAP program, in addition to the other processes described in this rule, the policies under this subsection may be implemented upon authorization by the Food and Nutrition Service (FNS). The Department notifies each affected *branch office* of the authorization and its effective dates prior to implementation.

(A) For a telephone request for a SNAP program application, the *filing date* (see OAR 461-115-0040) is the same as the *date of request* (see OAR 461-115-0030).

(B) A SNAP program applicant may receive a telephone interview without a Department determination that a *branch office* visit is a hardship to the applicant.

(C) An applicant requesting a SNAP program application via the telephone, meeting the expedited service criteria under OAR 461-115-0690, and whom the *branch office* must be able to identify may be interviewed and may provide an oral signature via the telephone after affirming all of the provided information is true and correct.

(i) If eligible for SNAP program benefits, the applicant is certified until the last day of the following month.

(ii) The applicant must sign and return a completed SNAP program application along with any requested verifications to the local *branch office* within 30 days.

(D) SNAP program benefits may be maintained at the current level and extended for two additional months when the Department receives FNS approval within any month described in the following situations:

- (i) The last month of a *certification period* (see OAR 461-001-0000).
- (ii) The month an Interim Change Report is due.
- (iii) The month a Transitional Benefit Alternative period ends.
- (iv) The month a Monthly Change Report is due.

(E) A client must report changes described in OAR 461-170-0011 by the last day of the month following the month in which the change occurred.

(6) Notwithstanding any other administrative rule in Chapter 461, during a *business continuity disruption* with the approval of the Manager of Field Services for the Seniors and People with Disabilities Division (SPD) or the designee of this official:

(a) A *branch office* may limit acceptance or processing of applications for long-term services to individuals in *emergent need* who do not yet have a placement or are at risk of losing their current one.

(b) An SPD or AAA office may apply any exception in this rule for SNAP and Medicaid programs to the extent authorized.

Stat. Auth.: ORS 411.060, 411.816, 412.014, 412.049, 414.042  
Stats. Implemented: ORS 411.060, 411.816, 412.014, 412.049, 414.042  
Hist.: SSP 30-2009(Temp), f. & cert. ef. 10-1-09 thru 3-30-10; SSP 38-2009, f. 12-31-09, cert. ef. 1-1-10

## 461-110-0210

### Household Group

(1) The household group consists of the individuals who live together with or without benefit of a dwelling. For homeless people, the household group consists of the individuals who consider themselves living together.

(2) A separate household group is established for all the individuals who live in a dwelling. A separate dwelling is not recognized for the purpose of determining the members of a household group unless the living space

has—separate from other dwellings—an access to the outside that does not pass through another dwelling, a sleeping area, a bathroom, and a kitchen facility.

(3) For all programs except the SNAP program, a separate household group is established for individuals who live in the same dwelling as another household group, if all the following are true:

(a) There is a landlord-tenant relationship between the two groups in which the tenant is billed by the landlord at *fair market value* (see OAR 461-001-0000) for housing.

(b) The tenant lives independently from the landlord.

(c) The tenant:

(A) Has and uses sleeping, bathroom, and kitchen facilities separate from the landlord; or

(B) Shares bathroom or kitchen facilities with the landlord, but the facilities are in a commercial establishment that provides room or board or both for compensation at *fair market value*.

(4) Individuals who live with more than one household group during a calendar month are members of the household group in which they spend more than half of their time, except as follows:

(a) In the ERDC program, if a *child* (see OAR 461-001-0000) lives with different caretakers during the month, the child is considered a member of both household groups.

(b) In the MAA, MAF, and TANF programs:

(A) If a *parent* (see OAR 461-001-0000) sleeps at least 30 percent of the time during the calendar month in the home of the *dependent child* (see OAR 461-001-0000), the parent is in the same household group as the *dependent child*.

(B) A *dependent child* is included in the group with the *caretaker relative* (see OAR 461-001-0000), who usually has the major responsibility for care and control of the *dependent child*, if the *dependent child* lives with two household groups in the same calendar month for at least one of the following reasons:

(i) Education.

(ii) The usual *caretaker relative* is gone from the household for part of the month because of illness.

(iii) A family emergency.

(c) In the SNAP program:

(A) The individual is a member of the household group that provides the individual more than half of his or her 21 weekly meals. If the individual is a *child*, the *child* is a member of the household group credited with providing the *child* more than half of his or her 21 weekly meals. A household group is credited with providing breakfast and lunch for each day the *child* departs that group's home for school, even if the child eats no breakfast or lunch at that home.

(B) During the month in which a resident of a *domestic violence shelter* (see OAR 461-001-0000) enters the shelter, the resident may be included both in the household he or she left and in a household group in the shelter.

(5) In the OSIPM program, individuals receiving waived care or nursing facility care are each an individual household group.

(6) In the QMB program, the household group consists of the client and the client's *spouse* (see OAR 461-001-0000), even if the *spouse* does not meet all nonfinancial eligibility requirements.

(7) The individuals in the household group who apply for benefits are called applicants. The household group and applicants form the basis for determining who is in the remaining eligibility groups.

(8) Individuals absent from the household for 30 days or more are no longer part of the household, except for the following:

(a) In all programs except the SNAP program, individuals in a general hospital for 30 days or more remain in the household group unless they go into long-term care. In the SNAP program, these individuals are no longer in the household group.

(b) In the CEC, CEM, ERDC, EXT, MAA, MAF, OHP, REF, REFM, SAC, and TANF programs:

(A) A *caretaker relative* who is absent for up to 90 days while in a residential alcohol or drug treatment facility is in the household group.

(B) A *child* who is absent for 30 days or more is in the household group if the *child* is:

(i) Absent for illness (unless the *child* is in a long-term care Title XIX facility), social service, or educational reasons;

(ii) In foster care, but expected to return to the household within the next 30 days; or

(iii) For OHP only, in a residential alcohol or drug treatment facility. If the household of the *child* is ineligible because of income, the *child* is a separate household.

(c) In the ERDC and OHP programs, an individual who is absent because of education, training, or employment, including long-haul truck driving, fishing, and active duty in the U.S. armed forces.

(d) In the MAA, MAF, REF, REFM, and TANF programs, a *parent* who is absent for 30 days or more is in the household group if:

(A) The *parent* is absent because of education, training or employment — including absence while working or looking for work outside the area of their residence, such as long-haul truck driving, fishing and active duty in the U.S. armed forces; and

# ADMINISTRATIVE RULES

(B) The other *parent* remains in the home.

(9) In the OSIP-EPD and OSIPM-EPD programs, the household group consists only of the individual applying for or receiving benefits.

Stat. Auth.: ORS 411.060, 411.070, 411.816, 412.049, 414.042

Stats. Implemented: ORS 411.060, 411.070, 411.816, 412.049, 414.042

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 13-1994, f. & cert. ef. 7-1-94; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 4-1998, f. 2-25-98, cert. ef. 3-1-98; 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 5-1999(Temp), f. & cert. ef. 4-1-99 thru 6-30-99; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 19-2001, f. 8-31-01, cert. ef. 9-1-01; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 7-2007, f. 6-29-07, cert. ef. 7-1-07; SSP 10-2007, f. & cert. ef. 10-1-07; 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

## 461-110-0370

### Filing Group; SNAP

In the SNAP program:

(1) Except as provided in this rule, the filing group is composed of members of a *household group* (see OAR 461-110-0210) who customarily purchase and prepare meals together.

(2) Except as provided in sections (3) and (8) of this rule, the following individuals, if in the same *household group*, must be in the same filing group, even if they do not customarily purchase and prepare meals together:

(a) Each *spouse* (see OAR 461-001-0000).

(b) A *parent* (see OAR 461-001-0000) and his or her child under age 22 living with the *parent*.

(c) A *household group* member and child under age 18 who lives with and is under *parental control* of that *household group* member. For the purposes of this subsection, "parental control" means the adult is responsible for the care, control, and supervision of the child or the child is financially dependent on the adult.

(3) Notwithstanding sections (1) and (2) of this rule:

(a) An individual is excluded from the filing group if, during the month the group applied for SNAP program benefits, the individual received SSI benefits through the state of California that included SNAP program benefits. This exclusion applies only in the initial month and, if necessary to meet notice requirements, in the month following the initial month. This exclusion does not apply to an individual who was the head of household in the prior household.

(b) An individual is excluded from the filing group if during the initial month the group applied for SNAP program benefits the individual received SNAP program benefits in another household and was not the head of household in the prior household.

(c) An *elderly* (see OAR 461-001-0015) individual and his or her *spouse* may be considered a separate filing group from others with whom the *elderly* individual purchases and prepares meals, if:

(A) The *elderly* individual is unable to purchase or prepare food because of a permanent and severe disabling condition; and

(B) The combined income of the other members of the *household group* does not exceed the following limit: [Table not included. See ED. NOTE]

(4) A paid live-in attendant and the attendant's minor child may choose not to be in the filing group with the recipient of the services provided, unless required by section (2) of this rule to be in the same filing group.

(5) An individual in foster care, the individual's *spouse*, and each child under age 22 living with the individual are not eligible to participate in the SNAP program independently of the care or service provider's filing group, but may be included in the provider's filing group if the provider applies for benefits.

(6) Notwithstanding section (2) of this rule, the following *household group* members may form a separate filing group from other members of the *household group*:

(a) A resident of an alcohol or drug treatment and rehabilitation program certified by the Department for which an employee of the facility is the authorized representative (see OAR 461-135-0550). A resident's *spouse* in the same facility may be in a separate filing group, but a child of a resident must be in the same filing group as the resident.

(b) A resident in *group living* (see OAR 461-001-0015).

(c) A resident of a public or private non-profit homeless or *domestic violence shelter* (see OAR 461-135-0510).

(d) An individual who is a resident of federally subsidized housing for the *elderly*, an individual with a disability, or blind recipient of benefits under Title I, II, X, XIV, or XVI of the Social Security Act.

(7) A member of the *household group* who pays the filing group for room and board (lodger) is treated as follows:

(a) A lodger cannot participate in the SNAP program independently of the *household group* when the lodger pays a reasonable amount for room and board. A reasonable amount is:

(A) An amount that equals or exceeds the Thrifty Food Plan for the individual and anyone in that individual's filing group (see OAR 461-155-0190(2)), if more than two meals per day are provided; or

(B) An amount that equals or exceeds two-thirds of the Thrifty Food Plan for the individual and anyone in the individual's filing group, if two or fewer meals per day are provided.

(b) A lodger may participate in the SNAP program independently of the *household group* when the lodger pays less than a reasonable amount for room and board.

(8) The following *household group* members are excluded from the filing group:

(a) A resident of a commercial boarding house.

(b) An ineligible student, as defined in OAR 461-135-0570.

(9) A household member may be in two filing groups if the member:

(a) Is a resident of a *domestic violence shelter* (see OAR 461-001-0000) or *safe home* (see OAR 461-001-0000); and

(b) Recently left the household containing the individual abuser.

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

Stat. Auth.: ORS 411.816

Stats. Implemented: ORS 411.816, 411.825

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 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 9-1991, f. 3-29-91, cert. ef. 4-1-91; AFS 20-1991, f. & cert. ef. 10-1-91; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 1-1993, f. & cert. ef. 2-1-93; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 6-1994, f. & cert. ef. 4-1-94; 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 23-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 32-1996(Temp), f. & cert. ef. 9-23-96; AFS 34-1996, f. 9-26-96, cert. ef. 10-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 19-1997, f. & cert. ef. 10-1-97; 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 11-1999, f. & cert. ef. 10-1-99; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 12-2001, f. 6-29-01, cert. ef. 7-1-01; 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 22-2004, f. & cert. ef. 10-1-04; SSP 7-2005, f. & cert. ef. 7-1-05; 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 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 7-2007, f. 6-29-07, cert. ef. 7-1-07; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 23-2008, f. & cert. ef. 10-1-08; SSP 5-2009, f. & cert. ef. 4-1-09; SSP 28-2009, f. & cert. ef. 10-1-09; SSP 38-2009, f. 12-31-09, cert. ef. 1-1-10

## 461-110-0430

### Filing Group; REF, REFM

In the REF and REFM programs:

(1) The filing group consists of only the individuals described in at least one of the following three subsections:

(a) A single adult who has no *spouse* (see OAR 461-001-0000) or *dependent child* (see OAR 461-001-0000) in the *household group* (see OAR 461-110-0210).

(b) A married couple who is in the same *household group* and has no *dependent child*.

(c) A TANF program filing group (see OAR 461-110-0330) that is ineligible for TANF program benefits.

(2) A separate REF and REFM program filing group may be formed within a *household group* consisting of only the newly arriving refugees, if:

(a) The newly arrived refugee is rejoining a *spouse* (see OAR 461-001-0000) or a *parent* (see OAR 461-001-0000) of a common child in the *household group*;

(b) The previously arrived *spouse* or *parent* of a common child is working and over TANF program income limits; and

(c) There is at least one adult in the new filing group.

(3) A separate REF and REFM program filing group may be formed within a *household group* consisting of only the newly arriving refugees, if the spouse of the refugee does not meet the requirements of OAR 461-135-0900(2).

Stat. Auth.: ORS 411.060, 411.070

Stats. Implemented: ORS 411.060, 411.070

Hist.: AFS 9-1997, f. & cert. ef. 7-1-97; AFS 10-2002, f. & cert. ef. 7-1-02; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 38-2009, f. 12-31-09, cert. ef. 1-1-10

## 461-115-0030

### Date of Request

(1) For all programs covered by Chapter 461 of the Oregon Administrative Rules, the client or someone authorized to act on behalf of the client must contact the Department or use another appropriate method to request benefits (see OAR 461-115-0150). The request may be oral or in writing. The request starts the application process.

(2) The *date of request* is one of the following:

(a) In the EA, ERDC, GA, OSIP, REF, and TANF programs and for support service payments in the JOBS program authorized by OAR 461-190-0211, the *date of request* is the day the request for benefits is received by the Department.

(b) In the SNAP program, this section does not apply. See OAR 461-115-0040.

(c) In the GAM, MAA, MAF, OHP, OSIPM, REFM, and SAC programs, the *date of request* is determined as follows:

(A) For a new applicant:

(i) The day the request for medical benefits is received by a Department representative, except as described in subparagraphs (ii) and (iii) of this paragraph.

(ii) If the request for medical benefits is received by a Department representative no later than the next business day after medical services are received, the *date of request* is the day these medical services were received.

(iii) An individual's request to be placed on the *OHP Standard Reservation List* (see OAR 461-135-1125) does not establish a *date of request* for medical benefits.

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(B) For a current recipient, the *date of request* is one of the following:

(i) The date the client reports a change requiring a redetermination of eligibility.

(ii) The date the Department initiates a review, except that the automatic mailing of an application does not constitute a Department-initiated review.

(iii) The date the client establishes a *date of request* by contacting the Department orally or in writing or by submitting an application.

(d) In the SFPSS program:

(A) Except as provided in paragraph (B) of this subsection, the *date of request* is the day the client signs the program's Interim Assistance Agreement.

(B) The *date of request* for support service payments is the day the request for benefits is received by the Department.

Stat. Auth: ORS 409.050, 411.060, 411.070, 411.816, 412.014, 412.049, 414.042, 2009 OR Ch. 867

Stats. Implemented: ORS 411.060, 411.070, 411.816, 412.014, 412.049, 414.042, 2009 OR Ch. 867

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; 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 2-1994, f. & cert. ef. 2-1-94; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 1-2000, f. 1-13-00, cert. ef. 2-1-00; AFS 5-2000, f. 2-29-00, cert. ef. 3-1-00; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 21-2004, f. & cert. ef. 10-1-04; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07; SSP 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 12-2008(Temp), f. & cert. ef. 4-17-08 thru 6-30-08; SSP 17-2008, f. & cert. ef. 7-1-08; SSP 23-2008, f. & cert. ef. 10-1-08; SSP 22-2009(Temp), f. & cert. ef. 8-28-09 thru 2-21-10; SSP 38-2009, f. 12-31-09, cert. ef. 1-1-10

## 461-115-0050

### When an Application Must Be Filed

(1) A client must file an application, or may amend a completed application, as a prerequisite to receiving benefits as follows:

(a) A client may apply for the TA-DVS program as provided in OAR 461-135-1220.

(b) In all programs except the TA-DVS program:

(A) Except as provided otherwise in this rule, a client wishing to apply for program benefits must submit a complete application on a form approved by the Department.

(B) An application is complete if all of the following requirements are met:

(i) All information necessary to determine the individual's eligibility and benefit amount is provided on the application for each individual in the filing group.

(ii) The applicant, even if homeless, provides a mailing address.

(iii) The application is signed. An individual required but unable to sign the application may sign with a mark, witnessed by another individual.

(iv) The application is received by the Department, except an *electronic application* (see OAR 461-001-0000) meets the requirements of this paragraph only when submitted to and received by the Department with an electronic signature.

(2) A new application is not required in the following situations:

(a) In the SNAP program, when a single application can be used both to determine a client is ineligible in the month of application and to determine the client is eligible the next month. This can be done when:

(A) Anticipated changes make the *filing group* (see OAR 461-110-0370) eligible the second month; or

(B) The *filing group* provides verification between 30 and 60 days following the filing date (see OAR 461-115-0040), under OAR 461-180-0080.

(b) In all programs except the SNAP program, when a single application can be used both to determine a client is ineligible on the *date of request* (see OAR 461-115-0030) and to determine the client is eligible when anticipated changes make the *filing group* eligible within 45 days from the date of request.

(c) When the case is closed and reopened during the same calendar month.

(d) When benefits were suspended for one month because of the level of income, and the case is reopened the month following the month of suspension.

(e) When reinstating medical benefits for a pregnant woman covered by OAR 461-135-0950.

(f) When the Department determines a child under the age of 19 years with a *date of request* from July 1, 2009 through December 31, 2009 is not eligible for EXT, MAA, MAF, OHP, OSIPM, QMB, or SAC program benefits for a reason other than failure to complete the application requirements under OAR 461-115-0020, and the Department chooses to redetermine the child's eligibility for EXT, MAA, MAF, OHP, OSIPM, QMB, and SAC program benefits under the administrative rules in effect on October 1, 2009 and January 1, 2010.

(3) When a client establishes a new *date of request* (see OAR 461-115-0030) prior to the end of the month following the month of case closure, unless the Department determines a new application is required, a new application is not required in the following situations:

(a) In the OSIPM program, when the client's case closed due to failure to make a liability payment required under OAR 461-160-0610.

(b) In the OSIPM-EPD program, when the client's case closed due to failure to make a participant fee payment required under OAR 461-160-0800.

(4) A new application is required to add a newborn child to a *benefit group* (see OAR 461-110-0750) according to the following requirements:

(a) For the REF and TANF programs:

(A) A new application is not required if the child is listed on the application as "unborn" and there is sufficient information about the child to establish its eligibility.

(B) A new application is required if the child is not included on the application as "unborn."

(b) In the EXT, MAA, MAF, OHP, and REFM programs, no additional application is required to add the child to the *benefit group* of the child's mother. The child may be added to a *benefit group* other than the *benefit group* of the child's mother if eligibility can be determined without submission of a new application.

(c) In the ERDC and SNAP programs, an application is not required to add the child to the *benefit group*.

(d) In all programs other than ERDC, EXT, MAA, MAF, OHP, REF, REFM, SNAP, and TANF, an application is required.

(5) A new application is required to add an individual, other than a newborn child, to a *benefit group* according to the following requirements:

(a) In the ERDC and SNAP programs, a new application is not required.

(b) In the EXT, MAA, MAF, OHP, REF, REFM, SAC, and TANF programs, an individual may be added by amending a current application if the information is sufficient to determine eligibility; otherwise a new application is required.

(c) In all programs other than the ERDC, EXT, MAA, MAF, OHP, REF, REFM, SAC, SNAP, and TANF programs, a new application is required.

(6) A client whose TANF grant is closing may request ERDC orally or in writing.

(7) Except for an applicant for the SNAP program, a client may change between programs administered by the Department using the current application if the following conditions are met:

(a) The client makes an oral or written request for the change.

(b) The Department has sufficient evidence to determine eligibility and benefit level for the new program without a new application.

(c) The program change can be effected while the client is eligible for the first program.

(8) In the EXT, MAA, MAF, OHP, OSIP, OSIPM, and QMB programs, a new application is not required to redetermine eligibility if the following conditions are met:

(a) The client is currently receiving benefits from one of these programs; and

(b) The Department has sufficient evidence to redetermine eligibility for the same program or determine eligibility for the new program without a new application or by amending the current application.

Stat. Auth: ORS 409.050, 411.060, 411.070, 411.816, 412.049, 414.042

Stats. Implemented: ORS 411.060, 411.070, 411.816, 412.049, 414.042

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 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 3-1991(Temp), f. & cert. ef. 1-17-91; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; 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 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 27-1996, f. 6-27-1996, cert. ef. 7-1-96; AFS 36-1996, f. 10-31-96, cert. ef. 11-1-96; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 13-1997, f. 8-28-97, cert. ef. 9-1-97; 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 17-1998, f. & cert. ef. 10-1-98; AFS 2-1999, f. 3-26-99, cert. ef. 4-1-99; AFS 1-2000, f. 1-13-00, cert. ef. 2-1-00; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 19-2001, f. 8-31-01, cert. ef. 9-1-01; AFS 21-2001(Temp), f. & cert. ef. 10-1-01 thru 12-31-01; AFS 22-2001, f. & cert. ef. 10-1-01; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 7-2007, f. 6-29-07, cert. ef. 7-1-07; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 2-2008(Temp), f. & cert. ef. 1-28-08 thru 6-30-08; 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 17-2009(Temp), f. 7-29-09, cert. ef. 8-1-09 thru 1-28-10; SSP 22-2009(Temp), f. & cert. ef. 8-28-09 thru 1-28-10; SSP 38-2009, f. 12-31-09, cert. ef. 1-1-10

## 461-115-0071

### Who Must Sign the Application and Complete the Application Process

(1) In the ERDC, MAA, MAF, REF, REFM, and TANF programs, the following people must sign the application and complete the application process:

(a) In the MAA, MAF, REF, REFM, and TANF programs:

(A) Each parental caretaker relative must sign the application.

(B) A non-parental caretaker relative must sign the application, subject to the following specific requirements:

(i) If the non-parental caretaker relative applies for benefits with the dependent child and lives with a spouse, both the non-parental caretaker relative and the spouse must sign the application.

(ii) A non-parental caretaker relative who applies only for children must sign the application, but the non-parental caretaker relative's spouse is not required to sign the application.

(iii) If the non-parental caretaker relative changes, the new non-parental caretaker relative must sign a current application.

(b) In the ERDC program, a caretaker must sign.

(2) In the EA program:

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(a) A caretaker relative must sign the application and complete the application process for a dependent child under age 18. If the child is not living with a caretaker relative, another adult may act on behalf of the child.

(b) If the caretaker relative lives with a spouse, both must sign the application.

(c) A dependent child age 18 who applies must sign the application and complete the application process.

(3) In the GA, GAM, and QMB programs, an adult requesting assistance and the adult's spouse, if they live together, must complete the application process and sign the application.

(4) In the OHP program, the primary person, the spouse of the primary person, and other adult members of the filing group who are age 19 or over must sign the application and complete the application process.

(5) In the OSIP and OSIPM programs, an adult requesting assistance and the adult's spouse, if they live together, must sign the application and complete the application process, if able. If the client and the spouse are unable to sign the application and complete the application process, this can be done by the authorized representative. If the applicant dies prior to the determination of eligibility for OSIPM, the application may be processed if the Department receives the required verification.

(6) In the SNAP program, the primary person, the spouse of the primary person, or another adult member of the filing group must sign the application and complete the application process.

(7) A person required to sign the application but unable to sign may sign with a mark, witnessed by an employee of the field office.

Stat. Auth.: 411.060, 411.816, 412.049, 414.042  
Stats. Implemented: 411.060, 411.816, 412.049, 414.042  
Hist.: SSP 4-2005, f. & cert. ef. 4-1-05; 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 38-2009, f. 12-31-09, cert. ef. 1-1-10

## 461-115-0090

### Authorized Representatives; General

(1) The head of household, *spouse* (see OAR 461-001-0000), or any other responsible member of the household may designate an authorized representative to act on behalf of the household in making application for the program, in reporting changes, in obtaining benefits, or in using benefits.

(2) In all programs except the SNAP program, the Department must allow a person or persons of the applicant's choice to act as the authorized representative unless the person may cause harm to the client.

(3) In all programs except the SNAP program, if an authorized representative is needed but has not been designated by the client, the Department will appoint one.

(4) In the SNAP program, the selection of authorized representatives and their authority are limited by federal regulations in 7 CFR 273.2(n).

(5) A client who resides in a drug addiction or alcoholic treatment center identified in OAR 461-135-0550(2) may apply for SNAP program benefits only through an authorized representative. The authorized representative must be an employee of and designated by the center.

(6) A client with a *disability* (see OAR 461-001-0015) who participates in the SNAP program while residing in a *group living facility* (see OAR 461-001-0015) may participate through an authorized representative or on his or her own behalf, at the option of the *group living facility* (see OAR 461-135-0510(2)(e)).

(7) In the TANF program, a person not related to the dependent child may serve as authorized representative or alternate payee for not more than 60 days.

Stat. Auth.: ORS 411.060, 411.816, 412.014, 412.049, 414.042  
Stats. Implemented: ORS 411.060, 411.816, 412.014, 412.049, 414.042  
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 23-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 13-1997, f. 8-28-97, cert. ef. 9-1-97; AFS 1-2000, f. 1-13-00, cert. ef. 2-1-00; AFS 9-2001, f. & cert. ef. 6-1-01; SSP 7-2007, f. 6-29-07, cert. ef. 7-1-07; SSP 38-2009, f. 12-31-09, cert. ef. 1-1-10

## 461-115-0705

### Required Verification; BCCM, MAA, MAF, OHP, SAC

(1) This rule establishes verification requirements for the BCCM, MAA, MAF, OHP, and SAC programs in addition to the requirements of OAR 461-115-0610.

(2) Except as provided in section (3) of this rule, each client declaring U.S. citizenship must provide *acceptable documentation* of citizenship and identity. For purposes of this rule, *acceptable documentation* consists of any of the documents permitted under section 1903(x) of the Social Security Act (42 U.S.C. 1396b).

(a) A new applicant must provide *acceptable documentation* as a condition of *eligibility* (see OAR 461-001-0000). Except for an applicant whose medical benefits previously were closed after March 31, 2009 for not providing *acceptable documentation*, an applicant's medical assistance may not be delayed for citizenship documentation while the *eligibility* decision is pending if all other medical assistance *eligibility* requirements have been met.

(b) A current recipient who has not already provided *acceptable documentation* must provide *acceptable documentation* as a condition of eligibility when requested by the Department.

(c) A client who already has provided *acceptable documentation* is not required to provide additional evidence during a subsequent application for benefits or redetermination of *eligibility*.

(3) Each of the following clients is exempt from the requirements of section (2) of this rule, a client who is:

(a) Assumed eligible under OAR 461-135-0010(5);

(b) Eligible for OHP-CHP;

(c) Eligible for or receiving Medicare;

(d) Presumptively eligible for the BCCM program;

(e) Receiving Social Security Disability Income (SSDI); or

(f) Receiving Title IV-E benefits.

(4) In the OHP program:

(a) At initial application and at any other time it affects the client, the following must be verified:

(A) The requirement in OAR 461-120-0210 to have or apply for a social security number.

(B) Alien status for an applicant who indicates he or she is not a U.S. citizen.

(C) The premium exemption allowed because a client is:

(i) A member of a federally recognized Indian tribe, band, or group;

(ii) An Eskimo, Aleut, or other Alaska native enrolled by the Secretary of the Interior pursuant to the Alaska Native Claims Settlement Act; or

(iii) An individual eligible for benefits through an Indian Health Program.

(D) Income from the month prior to the budget month and income already received in the budget month. If income cannot be verified, the client's statement is accepted.

(b) At recertification, the following must be verified, except that if income cannot be verified, the client's statement is accepted:

(A) Unearned income if it has changed since the last certification.

(B) Earned income from the three months prior to the budget month.

(c) A client enrolled *full time in higher education* must provide verification, at application and recertification, that the client meets the requirements of OAR 461-135-1110.

(d) The following must be verified when it is first reported or changed:

(A) Pregnancy of the client, which must be verified by a medical practitioner, health department, clinic, or crisis pregnancy center or like facility.

(B) Amount of the premium for cost-effective employer-sponsored health insurance.

(e) A client must provide verification for any eligibility requirement questioned by the Department.

Stat. Auth.: ORS 409.050, 411.060 & 414.042  
Stats. Implemented: ORS 411.060, 414.042 & 414.042

Hist.: AFS 2-1994, f. & cert. ef. 2-1-94; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 41-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 15-1996, f. 4-29-96, cert. ef. 5-1-96; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 2-1999, f. 3-26-99, cert. ef. 4-1-99; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 12-2006(Temp), f. & cert. ef. 9-1-06 thru 12-31-06; Suspended by SSP 13-2006(Temp), f. & cert. ef. 9-25-06 thru 12-31-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 7-2007, f. 6-29-07, cert. ef. 7-1-07; SSP 8-2008, f. & cert. ef. 4-1-08; SSP 10-2009(Temp), f. & cert. ef. 5-6-09 thru 9-28-09; 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

## 461-120-0125

### Alien Status; Not REF or REFM

In all programs except the REF and REFM programs:

(1) For purposes of this chapter of rules, an individual is a "qualified non-citizen" if he or she is any of the following:

(a) A non-citizen who is lawfully admitted for permanent residence under the Immigration and Nationality Act (INA) (8 U.S.C. 1101 et seq).

(b) A refugee who is admitted to the United States as a refugee under section 207 of the INA (8 U.S.C. 1157).

(c) A non-citizen who is granted asylum under section 208 of the INA (8 U.S.C. 1158).

(d) A non-citizen whose deportation is being withheld under section 243(h) of the INA (8 U.S.C. 1253(h)) (as in effect immediately before April 1, 1997) or section 241(b)(3) of the INA (8 U.S.C. 251(b)(3)) (as amended by section 305(a) of division C of the Omnibus Consolidated Appropriations Act of 1997, Pub. L. No. 104-208, 110 Stat. 3009-597 (1996)).

(e) A non-citizen who is paroled into the United States under section 212(d)(5) of the INA (8 U.S.C. 1182(d)(5)) for a period of at least one year.

(f) A non-citizen who is granted conditional entry pursuant to section 203(a)(7) of the INA (8 U.S.C. 1153(a)(7)) as in effect prior to April 1, 1980.

(g) A non-citizen who is a "Cuban and Haitian entrant" (as defined in section 501(3) of the Refugee Education Assistance Act of 1980).

(h) In all programs except the SNAP program — a battered spouse or dependent child who meets the requirements of 8 U.S.C. 1641(c) and is in the United States on a conditional resident status, as determined by the U.S. Citizenship and Immigration Services.

(i) In the SNAP program — a non-citizen who has been battered or subjected to extreme cruelty in the United States by a spouse or parent or by a member of the spouse or parent's family residing in the same household as the non-citizen at the time of the abuse; a non-citizen whose child has been battered or subjected to battery or cruelty; or a non-citizen child whose parent has been battered.

(2) An individual meets the alien status requirements if he or she is one of the following:

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(a) An American Indian born in Canada to whom the provisions of section 289 of the INA (8 U.S.C. 1359) apply.

(b) A member of an Indian tribe, as defined in section 4(e) of the Indian Self-Determination and Education Act (25 U.S.C. 450b(e)).

(3) In the ERDC and TANF programs, an individual meets the alien status requirements if he or she is one of the following:

(a) An individual who is a *qualified non-citizen*.

(b) A non-citizen who is currently a victim of domestic violence or who is at risk of becoming a victim of domestic violence.

(c) A “victim of a severe form of trafficking in persons” certified under the Victims of Trafficking and Violence Protection Act of 2000 (22 U.S.C. 7101 to 7112).

(d) A family member of a victim of a severe form of trafficking in persons who holds a visa for family members authorized by the Trafficking Victims Protection Reauthorization Act of 2003 (22 U.S.C. 7101 to 7112).

(e) An Iraqi or Afghan alien granted special immigrant status (SIV) under section 101(a)(27) of the Immigration and Nationality Act. Such an individual meets the alien status requirements for a maximum of eight months as follows:

(A) If the individual enters the United States with the special immigrant status, the month that the individual enters the United States counts as the first month.

(B) If the individual is granted special immigrant status after entering the United States, then the month in which the special immigrant status was granted counts as the first month.

(4) In the BCCM, CEC, CEM, EXT, MAA, MAF, OHP, OSIPM, QMB, and SAC programs, a *qualified non-citizen* meets the alien status requirements if he or she satisfies one of the following situations:

(a) Effective October 1, 2009, is an individual under 19 years of age.

(b) Was a *qualified non-citizen* before August 22, 1996.

(c) Physically entered the United States before August 22, 1996, and was continuously present in the United States between August 22, 1996, and the date *qualified non-citizen* status was obtained. An individual is not continuously present in the United States if he or she is absent from the United States for more than 30 consecutive days or a total of more than 90 days between August 22, 1996 and the date *qualified non-citizen* status was obtained.

(d) Is an individual granted any of the following alien statuses:

(A) Refugee — under section 207 of the INA.

(B) Asylum — under section 208 of the INA.

(C) Deportation being withheld under section 243(h) of the INA.

(D) Cubans and Haitians who are either public interest or humanitarian parolees.

(E) An individual granted immigration status under section 584(a) of the Foreign Operations, Export Financing and Related Program Appropriations Act of 1988.

(F) A “victim of a severe form of trafficking in persons” certified under the Victims of Trafficking and Violence Protection Act of 2000 (22 U.S.C. 7101 to 7112).

(G) A family member of a victim of a severe form of trafficking in persons who holds a visa for family members authorized by the Trafficking Victims Protection Reauthorization Act of 2003 (22 U.S.C. 7101 to 7112).

(H) An Iraqi or Afghan alien granted special immigrant status (SIV) under section 101(a)(27) of the Immigration and Nationality Act. Such an individual meets the alien status requirements for a maximum of eight months as follows:

(i) If the individual enters the United States with the special immigrant status, the month that the individual enters the United States counts as the first month.

(ii) If the individual is granted special immigrant status after they have already entered the United States, then the month in which the special immigrant status was granted counts as the first month.

(e) Meets the alien status requirements in section (2), (7), or (8) of this rule.

(f) In the OSIPM program, is receiving SSI benefits.

(g) In the QMB program, is receiving SSI and Medicare Part A benefits.

(5) In the GA and GAM programs, an individual meets the alien status requirement if he or she is one of the following:

(a) An individual who is blind or has a disability was lawfully residing in the United States on August 22, 1996, and is now a *qualified non-citizen*.

(b) An individual granted one of the following statuses, but only for seven years following the date the status is granted:

(A) Refugee — under section 207 of the INA.

(B) Asylum — under section 208 of the INA.

(C) Deportation being withheld under section 243(h) of the INA.

(D) An individual granted immigration status under section 584(a) of the Foreign Operations, Export Financing and Related Program Appropriations Act of 1988.

(E) Cubans and Haitians who are either public interest or humanitarian parolees.

(F) A “victim of a severe form of trafficking in persons” certified under the Victims of Trafficking and Violence Protection Act of 2000 (22 U.S.C. 7101 to 7112).

(G) A family member of a victim of a severe form of trafficking in persons who holds a visa for family members authorized by the Trafficking Victims Protection Reauthorization Act of 2003 (22 U.S.C. 7101 to 7112).

(c) An individual who meets one of the alien status requirements in section (2) or (7) of this rule.

(d) An Iraqi or Afghan alien granted special immigrant status (SIV) under section 101(a)(27) of the INA. Such an individual meets the alien status requirements for a maximum of eight months as follows:

(A) If the individual enters the United States with the special immigrant status, the month that the individual enters the United States counts as the first month.

(B) If the individual is granted special immigrant status after they have already entered the United States, then the month in which the special immigrant status was granted counts as the first month.

(6) In the OSIP program, an individual meets the alien status requirement if he or she is one of the following:

(a) An individual who is blind or has a disability, was lawfully residing in the United States on August 22, 1996, and is now a *qualified non-citizen*.

(b) A *qualified non-citizen* who physically entered the United States on or after August 22, 1996, has had the *qualified non-citizen* status for at least five years, and has forty qualifying quarters of coverage as defined in section (10) of this rule.

(c) An individual granted one of the following statuses, but only for seven years following the date the status is granted:

(A) Refugee — under section 207 of the INA.

(B) Asylum — under section 208 of the INA.

(C) Deportation being withheld under section 243(h) of the INA.

(D) An individual granted immigration status under section 584(a) of the Foreign Operations, Export Financing and Related Program Appropriations Act of 1988.

(E) Cubans and Haitians who are either public interest or humanitarian parolees.

(F) A “victim of a severe form of trafficking in persons” certified under the Victims of Trafficking and Violence Protection Act of 2000 (22 U.S.C. 7101 to 7112).

(G) A family member of a victim of a severe form of trafficking in persons who holds a visa for family members authorized by the Trafficking Victims Protection Reauthorization Act of 2003 (22 U.S.C. 7101 to 7112).

(d) An individual receiving SSI benefits.

(e) An individual who meets one of the alien status requirements in section (2) or (7) of this rule.

(f) An Iraqi or Afghan alien granted special immigrant status (SIV) under section 101(a)(27) of the INA. Such an individual meets the alien status requirements for a maximum of eight months as follows:

(A) If the individual enters the United States with the special immigrant status, the month that the individual enters the United States counts as the first month.

(B) If the individual is granted special immigrant status after they have already entered the United States, then the month in which the special immigrant status was granted counts as the first month.

(7) In all programs except the ERDC and TANF programs, a *qualified non-citizen* meets the alien status requirement if he or she is:

(a) A veteran of the United States Armed Forces who was honorably discharged for reasons other than alien status and who fulfilled the minimum active-duty service requirements described in 38 U.S.C. 5303A(d).

(b) A member of the United States Armed Forces on active duty (other than active duty for training).

(c) The spouse or a dependent child of an individual described in subsection (a) or (b) of this section.

(d) In the SNAP program, a *qualified non-citizen* who meets the requirement in section (10) of this rule.

(8) Except as provided in section (2), subsection (3)(e), and sections (4), (5), and (7) of this rule, a non-citizen who entered the United States or was given *qualified non-citizen* status on or after August 22, 1996:

(a) Is ineligible for the BCCM, MAA, MAF, OHP, OSIPM, QMB, and SAC programs for five years beginning on the date the non-citizen received his or her *qualified non-citizen* status.

(b) Meets the alien status requirement following the five-year period.

(9) In the SNAP program, an individual meets the alien status requirement if he or she is one of the following:

(a) An individual granted any of the following alien statuses —

(A) Refugee — under section 207 of the INA.

(B) Asylum — under section 208 of the INA.

(C) Deportation being withheld under section 243(h) of the INA.

(D) Cubans and Haitians who are either public interest or humanitarian parolees.

(E) An individual granted immigration status under section 584(a) of the Foreign Operations, Export Financing and Related Program Appropriations Act of 1988.

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(F) A “victim of a severe form of trafficking in persons” certified under the Victims of Trafficking and Violence Protection Act of 2000 (22 U.S.C. 7101 to 7112).

(G) A family member of a victim of a severe form of trafficking in persons who holds a visa for family members authorized by the Trafficking Victims Protection Reauthorization Act of 2003 (22 U.S.C. 7101 to 7112).

(H) An Iraqi or Afghan alien granted special immigrant status (SIV) under section 101(a)(27) of the Immigration and Nationality Act. Such an individual meets the alien status requirements for a maximum of eight months as follows:

(i) If the individual enters the United States with the special immigrant status, the month that the individual enters the United States counts as the first month.

(ii) If the individual is granted special immigrant status after they have already entered the United States, then the month in which the special immigrant status was granted counts as the first month.

(b) A *qualified non-citizen* under 18 years of age.

(c) A non-citizen who has been residing in the United States for at least five years while a *qualified non-citizen*.

(d) A non-citizen who is lawfully residing in the United States and who was a member of a Hmong or Highland Laotian tribe at the time that the tribe rendered assistance to United States personnel by taking part in a military or rescue operation during the Vietnam era (as defined in 38 U.S.C. 101).

(e) The spouse, the un-remarried surviving spouse, or an unmarried dependent child, of an individual described in subsection (d) of this section.

(f) A *qualified non-citizen* who has a *disability*, as defined in OAR 461-001-0015.

(10) A client who is lawfully admitted to the United States for permanent residence under the INA and has worked 40 qualifying quarters of coverage as defined under title II of the Social Security Act, or can be credited with such qualifying quarters as provided under 8 U.S.C. 1645, meets the alien status requirements for the SNAP program, subject to the following provisions:

(a) No quarter beginning after December 31, 1996, is a qualifying quarter if the client received any federal, means-tested benefit during the quarter. Federal means tested benefits include SNAP, TANF, and Medicaid (except emergency medical).

(b) For the purpose of determining the number of qualifying quarters of coverage, a client is credited with all of the quarters of coverage worked by a parent of the client while the client was under the age of 18 and all of the qualifying quarters worked by a spouse of the client during their marriage, during the time the client remains married to such spouse or such spouse is deceased.

(c) A lawful permanent resident who would meet the alien status requirement, except for a determination by the Social Security Administration (SSA) that he or she has fewer than 40 quarters of coverage, may be provisionally certified for SNAP program benefits while SSA investigates the number of quarters creditable to the client. A client provisionally certified under this section who is found by SSA, in its final administrative decision after investigation, not to have 40 qualifying quarters is not eligible for SNAP program benefits received while provisionally certified. The provisional certification is effective according to the rule on effective dates for opening benefits, OAR 461-180-0080. The provisional certification cannot run more than six months from the date of original determination by SSA that the client does not have sufficient quarters.

Stat. Auth.: ORS 411.060, 411.816 & 412.049

Stats. Implemented: ORS 411.060, 411.816 & 412.049

Hist.: AFS 17-1992, f. & cert. ef. 7-1-92; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 32-1996(Temp), f. & cert. ef. 9-23-96; AFS 36-1996, f. 10-31-96, cert. ef. 11-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 13-1997, f. 8-28-97, cert. ef. 9-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 22-1998, f. 10-30-98, cert. ef. 11-1-98; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 17-2001(Temp), f. 8-31-01, cert. ef. 9-1-01 thru 9-30-01; 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; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 29-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 3-31-04; SSP 36-2003(Temp), f. 12-31-03 cert. ef. 1-1-04 thru 3-31-04; SSP 6-2004, f. & cert. ef. 4-1-04; SSP 10-2004(Temp), f. & cert. ef. 4-9-04 thru 6-30-04; SSP 14-2004(Temp), f. & cert. ef. 5-11-04 thru 6-30-04; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 7-2005, f. & cert. ef. 7-1-05; 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 11-2006(Temp), f. 6-30-06, cert. ef. 7-1-06 thru 9-30-06; 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 3-2008(Temp), f. & cert. ef. 1-30-08 thru 7-28-08; SSP 4-2008(Temp), f. & cert. ef. 7-28-08; SSP 17-2008, f. & cert. ef. 7-1-08; 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 9-2009(Temp), f. & cert. ef. 5-1-09 thru 10-28-09; SSP 29-2009(Temp), f. & cert. ef. 10-1-09 thru 3-30-10; SSP 28-2009, f. & cert. ef. 10-1-09; SSP 38-2009, f. 12-31-09, cert. ef. 1-1-10

## 461-120-0210

### Requirement to Provide or Apply for SSN

(1) In the CAWEM, ERDC, REF, and REFM programs, a member of a *need group* (see OAR 461-110-0630) or a *benefit group* (see OAR 461-110-0750) is not required to provide or apply for a social security number (SSN). In these programs, the Department may request that a member of the filing or *need group* provide an SSN on a voluntary basis.

(2) In the EA and TA-DVS programs, an individual must provide his or her SSN if the individual can.

(3) Except as provided in section (5) of this rule, in the OSIP, OSIPM, and QMB programs, to be included in the *benefit group*, an individual must:

(a) Provide a valid SSN for the individual; or

(b) Apply for a number if the individual does not have a valid one and provide the SSN when it is received.

(4) Except as provided in sections (5) to (7) of this rule, in all programs not covered by sections (1) to (3) of this rule, to be included in the *need group*, an individual (other than an unborn) must:

(a) Provide a valid SSN for the individual; or

(b) Apply for a number if the individual does not have one and provide the SSN when it is received.

(5) In the BCCM, CEC, CEM, EXT, GA, GAM, MAA, MAF, OHP, OSIP, OSIPM, QMB, SAC, and SNAP programs, an individual is not required to apply for or provide an SSN if the individual is:

(a) A member of religious sect or division of a religious sect that has continuously existed since December 31, 1950; and

(b) Adheres to its tenets or teachings that prohibit applying for or using an SSN.

(6) The requirement to apply for or provide the SSN is delayed as follows:

(a) In the BCCM, CEC, CEM, EXT, MAA, MAF, OHP, and SAC programs, a newborn who is assumed eligible based on the eligibility of the mother of the newborn may receive benefits until one year of age without meeting the SSN requirements of section (4) of this rule.

(b) In the SNAP program:

(A) An applicant eligible for expedited services may receive his or her first full month's allotment without meeting the SSN requirement but must meet the requirement before receiving a second full month's allotment.

(B) Before applying for or providing an SSN, a newborn may be added to an existing *benefit group* (see OAR 461-110-0750) for six months following the date the baby is born or until the group's next recertification, whichever is later.

(7) In the SNAP program:

(a) An individual who refuses or fails without good cause to provide or apply for an SSN when required by this rule is ineligible to participate. This period of ineligibility continues until the individual provides the SSN to the Department.

(b) An individual may participate in SNAP for one month in addition to the month of application, if the individual can show good cause why the application for an SSN has not been completed. To continue to participate, the individual must continue to show good cause each month until the application for an SSN is complete with Social Security Administration.

(c) An individual meets the good cause requirement in subsections (a) and (b) of this section if the individual provides evidence or collateral information that the individual applied for or made every effort to supply the Social Security Administration with the necessary information to complete the application process. Delays due to illness not associated with a *disability* (see OAR 461-001-0015), lack of transportation, or temporary absence do not qualify as good cause under this rule.

(8) This rule authorizes or requires the collection of an SSN for each of the following purposes.

(a) The determination of eligibility for benefits. The SSN is used to verify income and other assets, and match with other state and federal records such as the Internal Revenue Service (IRS), Medicaid, child support, Social Security benefits, and unemployment benefits.

(b) The preparation of aggregate information and reports requested by funding sources for the program providing benefits.

(c) The operation of the program applied for or providing benefits.

(d) Conducting quality assessment and improvement activities.

(e) Verifying the correct amount of payments, recovering overpaid benefits, and identifying any individual receiving benefits in more than one household.

Stat. Auth.: ORS 411.060, 411.070, 411.816, 412.049, 414.042

Stats. Implemented: ORS 411.060, 411.070, 411.816, 412.049, 414.042

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 2-1994, f. & cert. ef. 2-1-94; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 1-2000, f. 1-13-00, cert. ef. 2-1-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07; SSP 10-2007, f. & cert. ef. 10-1-07; 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

## 461-120-0310

### Assignment of Support Rights; Not BCCM, CEC, OHP-CHP, OHP-OPP, SNAP

In all programs except the BCCM, CEC, OHP-CHP, OHP-OPP, and SNAP programs:

(1) To be eligible for any program funded in whole or in part with federal grants under Title IV-A (TANF) of the Social Security Act, the filing group must assign to the state its right to receive, from any other person, child support that accrues during any time period that the group receives assistance, not to exceed the total amount of assistance paid.

(2) To be eligible for any program funded in whole or in part with federal grants under Title IV-E of the Social Security Act, the filing group must assign to the state its right to receive, from any other person, child support

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that has accrued or that accrues during any time period that the group receives assistance, not to exceed the total amount of assistance paid.

(3) To be eligible for the CEM, EXT, MAA, MAF, OHP-OPC, OHP-OP6, and OSIPM programs, a filing group must assign to the state the right of any Medicaid-eligible child in the filing group to receive any cash medical support that accrues while the group receives assistance, not to exceed the total amount of assistance paid.

(4) Cash medical support received by the Department will be retained by the Department as is necessary to reimburse the Department for CEM, EXT, MAA, MAF, OHP-OPC, OHP-OP6, and OSIPM program medical assistance payments made on behalf of an individual with respect to whom such assignment was executed. Once yearly, the remainder of such amount retained will be paid to such individual.

(5) When the Department provides benefits or services for the support of a child who is in a filing group in any program funded in whole or in part with a federal grant under Title IV-A (TANF) or IV-E of the Social Security Act, the right to child support for that child that any individual may have is deemed to be assigned to the state by operation of law.

Stat. Auth.: ORS 411.060, 411.070, 414.024, 412.049 & 414.042  
Stats. Implemented: ORS 411.060, 411.070, 412.001, 412.024, 412.049, 414.025 & 414.042  
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 8-1992, f. & cert. ef. 4-1-92; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 1-2000, f. 1-13-00, cert. ef. 2-1-00; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 12-2007(Temp), f. 11-30-07, cert. ef. 12-1-07 thru 3-29-07; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08; SSP 12-2009(Temp), f. 6-23-09, cert. ef. 7-1-09 thru 12-28-09; SSP 29-2009(Temp), f. & cert. ef. 10-1-09 thru 3-30-10; SSP 28-2009, f. & cert. ef. 10-1-09; SSP 38-2009, f. 12-31-09, cert. ef. 1-1-10

## 461-120-0315

### Medical Assignment

(1) In the CEC, CEM, EXT, GAM, MAA, MAF, OHP, OSIPM, QMB, REFM, and SAC programs, by signing the application for assistance, clients agree to turn over their rights to reimbursement for medical care costs to the Department.

(a) If a client or the client's *authorized representative* (see OAR 461-115-0090) refuses to assign the rights to reimbursement for medical care costs to the Department, the filing group is ineligible until the client complies with this requirement. This includes a client eligible for *long term care* (see OAR 461-001-0000) insurance payments who fails to comply as described in subsection (b) of this section.

(b) In all programs except the Program for All-Inclusive Care for the Elderly (PACE, see OAR 411-045-0000 to 411-045-0140), when a client has *long term care* insurance, the client complies with the requirements of this rule by reducing the Department's share of the *long term care* service costs by taking the following actions for the entire period of time that the client is eligible for Department-covered *long term care* services:

(A) For a client in a nursing facility:

(i) Submitting the necessary paperwork to receive the *long term care* insurance payments and designating the *long term care* facility as the payee for the *long term care* insurance benefits; or

(ii) When the insurance company will not pay the *long term care* insurance benefits directly to the *long term care* facility, submitting the necessary paperwork to receive insurance payments and then promptly turning over the *long term care* insurance payments to the *long term care* facility upon receipt.

(B) For a client in community based care (see OAR 461-001-0000):

(i) Submitting the necessary paperwork to receive the *long term care* insurance payments and designating the Department as the payee for the *long term care* insurance benefits; or

(ii) When the insurance company will not pay the *long term care* insurance benefits directly to the Department, submitting the necessary paperwork to receive the insurance payments and then promptly turning over the *long term care* insurance payments to the Department upon receipt.

(2) The Department may refuse to pay medical expenses for anyone in the *benefit group* (see OAR 461-110-0750) when another party or resource should pay first.

(3) The amount the Department may collect in reimbursement is limited to the amount of medical services paid by the Department on the client's behalf.

(4) The Department establishes an overpayment if it is discovered after-the-fact that during any period of time a client or another individual submitting a *long term care* insurance claim on the client's behalf received a *long term care* insurance payment that was not turned over to the *long term care* facility or Department as required by subsection (1)(b) of this rule.

Stat. Auth.: ORS 411.060, 414.042  
Stats. Implemented: ORS 411.060, 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 1-2000, f. 1-13-00, cert. ef. 2-1-00; 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

## 461-120-0345

### Clients Required to Obtain Health Care Coverage and Cash Medical Support; CEM, EXT, GAM, MAA, MAF, OHP (except OHP-CHP), OSIPM, SAC

This rule explains the obligation of clients to obtain health care coverage and cash medical support for members of the *benefit group* (see OAR

461-110-0750) in the CEM, EXT, GAM, MAA, MAF, OHP (except OHP-CHP), OSIPM, and SAC programs.

(1) Unless excused from the requirements of this section for *good cause* defined in OAR 461-120-0350, each adult client must assist the Department and the Division of Child Support of the Department of Justice in establishing paternity for each of his or her children and obtaining an order directing the non-custodial *parent* (see OAR 461-001-0000) of a *child* (see OAR 461-001-0000) in the *benefit group* to provide:

(a) Cash medical support for that *child*; and

(b) Health care coverage for that *child*.

(2) Each adult client must make a good faith effort to obtain available coverage under Medicare.

(3) To be eligible for the EXT, GAM, MAA, MAF, OHP (except OHP-CHP and OHP OPU), OSIPM, and SAC 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 GAM and OSIPM programs, the client is not required to incur a cost for the health insurance.

(4) In the OHP-OPU program:

(a) An individual who can obtain health insurance through his or her employer must cooperate in determining eligibility for the Family Health Insurance Assistance Program (FHIAP). Rules for FHIAP are at OAR 442-004-0000 and following. If eligible for FHIAP, the individual must:

(A) Apply for and accept the employer-sponsored health insurance.

(B) Enroll the other OHP-OPU recipients who are eligible for insurance through FHIAP.

(b) The requirements of subsection (a) of this section do not apply to:

(A) Members of a federally recognized Indian tribe, band or group;

(B) Eskimos, Aleuts or other Alaska natives enrolled by the Secretary of the Interior pursuant to the Alaska Native Claims Settlement Act;

(C) Individuals eligible for benefits through an Indian Health Program; and

(D) Individuals eligible under the CAWEM program.

(5) An individual who fails to meet an applicable requirement in sections (1), (2), (3), or (4) of this rule is removed from the *need group* (see OAR 461-110-0630) except that in the OHP program the individual is removed from the *benefit group* (see OAR 461-110-0750).

(6) 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.

(7) The penalty provided by this rule ends when the client meets the requirements of this rule.

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

## 461-120-0510

### Age Requirements for Clients to Receive Benefits

(1) If the year of a person's birth is known but the month is unknown, the month of birth is presumed to be July. If the date of birth is unknown, the date of birth is presumed to be the first of the month.

(2) To be eligible for the BCCM program, a woman must be under 65 years of age.

(3) To be eligible for the CEC program, an individual must be under 20 years of age.

(4) To be eligible for the CEM program, an individual must be under 19 years of age.

(5) To be eligible for the EXT, MAA, MAF, or TANF programs:

(a) A child (see OAR 461-001-0000) must be:

(A) Under 18 years of age; or

(B) Under 19 years of age and *regularly attending school* (see OAR 461-120-0530) full time, as determined by the school.

(b) A caretaker relative may be any age.

(6) To be eligible for payment of child care costs for the ERDC or TANF program, a child must be:

(a) Under 12 years of age for the ERDC program or under 13 years of age for the TANF program; or

(b) Under 18 years of age and:

(A) Physically or mentally incapable of selfcare;

(B) Under court supervision;

(C) Receiving foster care;

(D) Eligible for the special need rate for child care in OAR 461-155-0150; or



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(E) Subject to circumstances that significantly compromise the child's safety or the caretaker's ability to work or participate in an assigned activity if child care is not available.

(7) To be eligible for the OSIP-AB, OSIPM-AB, QMB-BAS, QMB-SMB, REFM, or SNAP programs, a client may be any age.

(8) To be eligible for the GA and GAM programs, a client must be:

- (a) Eighteen years of age or older and less than 65 years of age; or
- (b) Sixty-five years of age or older and must be a non-citizen who meets the requirements of OAR 461-120-0125.

(9) To be eligible for the OHP program, a client must meet the age requirements in OAR 461-135-1100.

(10) To be eligible for the OSIP-AD (except OSIP-EPD) program, a client must be 18 years of age or older and under 65 years of age.

(11) To be eligible for the OSIP-EPD and OSIPM-EPD programs, the client must be 18 years of age or older or be legally emancipated.

(12) To be eligible for the OSIP-OAA or OSIPM-OAA programs, a client must be 65 years of age or older.

(13) To be eligible for the OSIPM-AD (except OSIPM-EPD) or QMB-DW programs, a client must be under 65 years of age.

(14) To be eligible for the REF program, a client must be:

- (a) 18 years of age or older;
- (b) A legally emancipated minor; or
- (c) Part of a TANF filing group that is ineligible for TANF.

(15) To be eligible for the SAC program, the child must be under 21 years of age.

Stat. Auth.: ORS 411.060, 411.816, 412.049

Stats. Implemented: ORS 411.060, 411.816, 412.049

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 20-1991, f. & cert. ef. 10-1-91; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 35-1992, f. 12-31-92, cert. ef. 1-1-93; AFS 12-1993, f. & cert. ef. 7-1-93; 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 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 10-1998, f. 6-29-98, cert. ef. 7-1-98; AFS 25-1998, f. 12-28-98, cert. ef. 1-1-99; AFS 1-1999(Temp), f. & cert. ef. 2-1-99 thru 7-31-99; AFS 7-1999, f. 4-27-99, cert. ef. 5-1-99; AFS 1-2000, f. 1-13-00, cert. ef. 2-1-00; AFS 18-2001(Temp), f. 8-31-01, cert. ef. 9-1-01 thru 12-31-01; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; AFS 5-2002, f. & cert. ef. 4-1-02; 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 17-2004, f. & cert. ef. 7-1-04; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06; SSP 17-2008, f. & cert. ef. 7-1-08; SSP 23-2008, f. & cert. ef. 10-1-08; 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

## 461-125-0170

### Deprivation Based on Unemployment or Underemployment of the Primary Wage Earner (PWE); MAA, TANF

(1) In the MAA and TANF programs, deprivation based on the unemployment or underemployment of the primary wage earner (PWE) exists if all the following are true:

- (a) A child lives with two parents.
- (b) The PWE is unemployed or underemployed.
- (c) The PWE is not participating in a labor dispute.
- (d) Except as provided otherwise under section (2) of this rule, the PWE is not separated from his or her *most recent employment* (see OAR 461-135-0070), for any of the following reasons:

- (A) Discharged or fired for:
  - (i) *Misconduct* (see OAR 461-135-0070); or
  - (ii) Felony or theft.
- (B) Voluntary quit:
  - (i) In anticipation of discharge; or
  - (ii) Without *good cause* (see OAR 461-135-0070).

(2) A *need group* (see OAR 461-110-0630) may not be denied TANF program benefits based on subsections (1)(c) and (d) of this rule if the PWE is one of the following:

(a) A Parents as Scholars (PAS) participant who temporarily becomes ineligible for TANF program benefits for four months or less due to income from a *paid work experience* (see OAR 461-190-0199);

- (b) A teen parent returning to high school or equivalent;
- (c) An individual fleeing from or at risk of *domestic violence* (see OAR 461-001-0000);

(d) An individual in the ninth month of pregnancy or experiencing a medical complication due to the pregnancy which is documented by a qualified and appropriate professional;

(e) An individual unable to work due to a disability or medical condition documented by a qualified and appropriate professional, and which is expected to last for 30 days or more from the *date of request* (see OAR 461-115-0030) for TANF program benefits;

(f) An individual who is separated from his or her *most recent employment* for a reason the Department determines is *good cause*.

Stat. Auth.: ORS 411.060, 412.006, 412.016, 412.049

Stats. Implemented: ORS 411.060, 411.070, 412.006, 412.016, 412.049, 2009 OL Ch. 827  
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 28-1992, f. & cert. ef. 10-1-92; 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 27-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 8-1998, f. 4-28-98, cert. ef. 5-1-98; SSP 18-2009(Temp), f. 7-29-09, cert. ef. 8-1-09 thru 1-28-10; SSP 32-2009(Temp), f. & cert. ef. 10-29-09 thru 1-28-10; SSP 38-2009, f. 12-31-09, cert. ef. 1-1-10

## 461-125-0310

### Basis of Need; OSIPM

In the OSIPM program, an individual must be one of the following:

- (1) Blind (see OAR 461-125-0330) at any age (AB).
- (2) Age 65 or over (see OAR 461-125-0350) (OAA).
- (3) An individual with a disability (see OAR 461-125-0370) (AD).  
Stat. Auth.: ORS 411.060, 411.070, 411.704, 414.042, 2009 OL Ch. 849  
Stats. Implemented: ORS 411.060, 411.070, 411.704, 411.706, 414.042, 2009 OL Ch. 849  
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; SSP 8-2008, f. & cert. ef. 4-1-08; SSP 38-2009, f. 12-31-09, cert. ef. 1-1-10

## 461-135-0095

### Specific Requirements; EXT

(1) To be eligible for EXT benefits, at least one member of the filing group must have been eligible for and received MAA or MAF, and then become ineligible because of:

- (a) An increase in the earnings of the caretaker relative;
- (b) An increase in child support received; or
- (c) A combination of an increase in both the earnings of the caretaker relative and child support received.

(2) If the filing group becomes ineligible for MAA or MAF when another change occurs in conjunction with the increase in earned income or child support, the filing group is not eligible for EXT if the other change, by itself, makes the group ineligible for MAA or MAF.

(3) Eligibility for EXT is limited to the members of the MAA or MAF benefit group at the time that those benefits end.

(4) Subject to the time periods established in OAR 461-135-0096(1):  
(a) Once eligibility for EXT is established, members of the benefit group are ineligible if the filing group contains no dependent child.

(b) A benefit group may regain EXT eligibility after becoming ineligible, even if eligibility was lost due to moving out of state, whenever the group again meets EXT eligibility requirements.

(c) Persons who have lost EXT eligibility because they leave the household during the EXT eligibility period may regain eligibility when they return to the household.

Stat. Auth.: ORS 411.060, 414.042

Stats. Implemented: ORS 411.060, 414.042

Hist.: AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 6-1994, f. & cert. ef. 4-1-94; AFS 36-1996, f. 10-31-96, cert. ef. 11-1-96; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 13-1997, f. 8-28-97, cert. ef. 9-1-97; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06; SSP 7-2006(Temp), f. 3-31-06, cert. ef. 4-1-06 thru 9-28-06; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 31-2009(Temp), f. & cert. ef. 10-1-09 thru 3-30-10; SSP 38-2009, f. 12-31-09, cert. ef. 1-1-10

## 461-135-0096

### Eligibility Period; EXT

(1) For a client who meets the eligibility requirements for EXT, the period of eligibility is one of the following:

- (a) If eligibility for EXT results from increased child support, the period of eligibility is four months.
- (b) If eligibility for EXT results from an increase in the caretaker relative's earnings, the period of eligibility is twelve months.

(2) The period of eligibility for EXT is based on the increase in the caretaker relative's earnings and is described in subsection (1)(b) of this rule in each of the following situations:

(a) A client meets the eligibility requirements for EXT based on an increase in the caretaker relative's earnings and also meets the eligibility requirements based on an increase in child support in the same month.

(b) A client meets the eligibility requirements for EXT based on a combination of increased income from the caretaker relative's earnings and child support, although either increase by itself does not make the filing group ineligible for MAA or MAF.

(3) The EXT eligibility period begins the first of the month following the month eligibility for MAA or MAF ends. If a benefit group received MAA or MAF benefits when they were eligible for EXT, the MAA or MAF benefits are not an overpayment. However, any month in which the client receives MAA or MAF benefits when eligible for EXT is counted as a month of EXT eligibility.

Stat. Auth.: ORS 411.060, 414.042

Stats. Implemented: ORS 411.060, 414.042

Hist.: AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; SSP 7-2006(Temp), f. 3-31-06, cert. ef. 4-1-06 thru 9-28-06; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 31-2009(Temp), f. & cert. ef. 10-1-09 thru 3-30-10; SSP 38-2009, f. 12-31-09, cert. ef. 1-1-10

## 461-135-0835

### Limits on Estate Claims

(1) In the BCCM, GA, GAM, OHP, OSIP, OSIPM, and QMB programs:

- (a) The Department has a priority claim against the property or any interest therein belonging to the estate of any deceased person as provided in ORS Chapters 411 and 414. The Estate Administration Unit of the Department (EAU) is authorized to present and file such claim against the estate. It will be treated as a preferred claim and filed in a like manner as the claims of other creditors.

# ADMINISTRATIVE RULES

(b) In determining the extent of the estate resources subject to the Department's claim, except as provided in subsection (c) of this section, the Department must disregard resources in an amount equal to the value 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 Medicaid benefits received after the effective date of the Medicaid eligibility determination in which a *qualified partnership policy* was considered and approved. The amount of any Medicaid assistance incurred in a prior Medicaid eligibility period where *qualified partnership policy* benefits were not considered would not be subject to the estate resource disregard.

(c) There is no disregard of resources under subsection (b) of this section if the client, or the spouse of the client, 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 client or the client's surviving spouse, or exhausted the disregarded resource amount by purchasing things of value to the client or the client's surviving spouse while either was living.

(d) For a recipient who died prior to October 1, 2008:

(A) If there is a surviving spouse, the Department has a claim against the estate of the surviving spouse for public assistance paid to the surviving spouse.

(B) In addition, the Department has a claim against the estate of the surviving spouse for public assistance paid to the pre-deceased spouse, but only to the extent that the surviving spouse received property or other assets from the pre-deceased spouse through any of the following:

- (i) Probate.
- (ii) Operation of law.

(C) If estate recovery is deferred until the surviving spouse dies, the fair market value of the property subject to the Department's claim is determined based on the current *value* (see OAR 461-135-0832) of the property in the surviving spouse's estate.

(D) However, neither claim is enforceable until after the death of the surviving spouse (if any) and only when there is no surviving *child under age 21* (see OAR 461-135-0832), no surviving *blind child* (see OAR 461-135-0832) of any age, and no surviving *disabled child* (see OAR 461-135-0832) of any age.

(e) For a recipient who died on or after October 1, 2008:

(A) If there is a surviving spouse, the Department has a claim against the estate of the surviving spouse for public assistance paid to the surviving spouse.

(B) In addition, the Department has a claim against the estate of the surviving spouse for public assistance paid to the pre-deceased spouse, but only to the extent that the surviving spouse received property or other assets from the pre-deceased spouse through any of the following:

- (i) Probate.
- (ii) Operation of law.

(iii) An interspousal transfer, including one facilitated by a court order, which occurs:

(I) Before, on, or after October 1, 2008; and

(II) No earlier than 60 months prior to the first *date of request* (see OAR 461-135-0832) established from the pre-deceased spouse's and the surviving spouse's applications, or at any time thereafter, whether approved, withdrawn, or denied, for the public assistance programs referenced in section (2) of this rule.

(C) If estate recovery is deferred until the surviving spouse dies, the fair market value of the property subject to the Department's claim is determined based on the current *value* of the property in the surviving spouse's estate.

(D) However, neither claim is enforceable until after the death of the surviving spouse (if any) and only when there is no surviving *child under age 21*, no surviving *blind child* of any age, and no surviving *disabled child* of any age.

(2) The amount of the claim is as follows:

(a) Any payments made at any age under the General Assistance provisions of ORS Chapter 411, categorized as GA, are recoverable from the estate of any deceased recipient or the estate of the recipient's spouse. In the GA and GAM programs, the amount of the claim will not exceed the total amount of cash and medical benefits paid. The claim will include benefits provided under the Home and Community-Based Care Waiver program. This applies to all General Assistance programs, even those that are no longer active.

(b) In the BCCM, OSIP AD, OSIP OAA, OSIPM AD, OSIPM OAA, and QMB programs, the amount of the claim includes all GA category benefits paid at any age and all Title XIX benefits provided after the recipient reached age 55, except any QMB program payment. If the recipient was *permanently institutionalized* (see OAR 461-135-0832), the claim includes the total amount of all GA category benefits and Title XIX benefits paid at any age. This applies to all Old Age Assistance and Aid to the Disabled recipients, including those served by Home and Community-Based Care Waiver programs. It also includes recipients covered by programs that are no longer active.

(c) In the OHP, OSIP AB, and OSIPM AB programs, the claim includes the total amount of GA category benefits paid at any age and all Title XIX

benefits provided after the recipient reached age 55. If the recipient was *permanently institutionalized*, the claim includes the total amount of GA category and Title XIX benefits paid at any age. The claim shall include benefits provided under the Home and Community-Based Care Waiver program.

(d) In the OSIP, OSIPM-AB, OSIPM AD, and OSIPM-OAA programs, the amount of the claim also includes the total amount of GA category and Title XIX benefits provided to recipients who were age 55 to 64 on the date the GA category and Title XIX benefits were provided if the benefits were provided after July 18, 1995. GA category and Title XIX benefits will be considered to have been provided to a recipient on the day of provision of medical services for which medical assistance payments are made.

(3) The priority for payment of claims against the estate will be as established under ORS 115.125.

(4) EAU may nominate a personal representative for an estate if the Department has a claim and it appears that no person with a higher preference, as established in ORS 113.085, is willing to be the representative.

(5) Property disposal will be in accordance with OAR 461-135-0838.

Stat. Auth.: ORS 410.070, 411.060

Stats. Implemented: ORS 113.085, 115.525, 411.708, 411.795, 416.310, 2009 OL Ch. 529  
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

## 461-135-0990

### Specific Requirements; Reimbursement of Cost-Effective, Employer-Sponsored Health Insurance Premiums

Clients in the CEM, EXT, GAM, MAA, MAF, OHP (except OHP-CHP and OHP-OPU), OSIPM, and SAC programs are reimbursed for their share of the premiums for employer-sponsored health insurance if:

(1) The insurance is provided through a member of the *household group* (see OAR 461-110-0210);

(2) The insurance covers a member of the *benefit group* (see OAR 461-110-0750);

(3) The insurance coverage is a comprehensive plan (that is, includes basic or major medical services) or is a fully capitated health plan (FCHP) or physicians care organization (PCO); and

(4) The premium is cost-effective (see OAR 461-155-0360).

Stat. Auth.: ORS 411.060, 411.070, 414.042

Stats. Implemented: ORS 411.060, 411.070, 414.042  
Hist.: AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 28-1992, f. & cert. ef. 10-1-92; 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 10-1998, f. 6-29-98, cert. ef. 7-1-98; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 23-2008, f. & cert. ef. 10-1-08; 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

## 461-135-1100

### Specific Requirements; OHP

In addition to eligibility requirements applicable to the OHP program in other rules in chapter 461 of the Oregon Administrative Rules, this rule sets out specific eligibility requirements for the OHP program.

(1) For purposes of this rule and OAR 461-135-1149, the term *private major medical health insurance* refers to health insurance coverage that provides medical care for physician and hospital services, including major illnesses, with a limit of not less than \$10,000 for each covered individual. This term does not include coverage under the Kaiser Child Health Program.

(2) To be eligible for OHP, a person cannot:

(a) Be receiving, or deemed to be receiving, SSI benefits;

(b) Be eligible for Medicare, except that this requirement does not apply to OHP OPP;

(c) Be receiving Medicaid through another program; or

(d) Be enrolled in a health insurance plan subsidized by the Family Health Insurance Assistance program (FHIAP, see ORS 735.720 to 735.740).

(3) To be eligible for the OHP-OPU program, a person must be 19 years of age or older and must not be pregnant. A person eligible for OHP-OPU is referred to as a health plan new/noncategorical (HPN) client. In addition to all other OHP eligibility requirements, an HPN client:

(a) Must not be covered by *private major medical health insurance* and must not have been covered by *private major medical health insurance* during the six months preceding the effective date for starting medical benefits. The six-month waiting period is waived if:

(A) The person has a condition that, without treatment, would be life-threatening or would cause permanent loss of function or disability;

(B) The person's private health insurance premium was reimbursed under the provisions of OAR 461-135-0990;

(C) The person's private health insurance premium was subsidized through FHIAP; or

(D) A member of the person's filing group was a victim of domestic violence.

(b) Must meet the following eligibility requirements:

(A) The resource limit provided in OAR 461-160-0015.

(B) The higher education student requirements provided in OAR 461 135 1110.

# ADMINISTRATIVE RULES

(C) Payment of premiums determined in accordance with OAR 461-155-0235 and paid in accordance with OAR 461-135-1120.

(D) Selection of a medical, dental and mental health managed health care plan (MHCP) or primary care case manager (PCCM) if available, unless the HPN client is exempted by OAR 410-141-0060.

(E) The requirements in OAR 461-120-0345 related to obtaining medical coverage for members of the benefit group through the Family Health Insurance Assistance Program (FHIAAP), if applicable.

(4) To be eligible for the OHP-OPC program, a person must be less than 19 years of age.

(5) To be eligible for the OHP-OP6 program, a child must be less than six years of age and not eligible for OHP-OPC.

(6) To be eligible for the OHP-OPP program, a person must be pregnant or must be a newborn assumed eligible under OAR 461-135-0010(4).

(7) To be eligible for the OHP-CHP program, a person must be under 19 years of age and must:

(a) Not be eligible for OHP-OPC, OHP-OPP, or OHP-OP6;

(b) Meet budgeting requirements of OAR 461 160 0700;

(c) Select a medical, dental and mental health managed health care plan (MHCP) or primary care case manager (PCCM) if available, unless the client is exempted by OAR 410-141-0060; and

(d) Not be covered by *private major medical health insurance* or by any *private major medical health insurance* during the preceding two months. The two-month waiting period is waived if:

(A) The person has a condition that, without treatment, would be life threatening or cause permanent loss of function or disability;

(B) The loss of health insurance was due to the loss of or a change in employment;

(C) The person's private health insurance premium was reimbursed under OAR 461 135 0990;

(D) The person's private health insurance premium was subsidized by FHIAAP; or

(E) A member of the person's filing group was a victim of domestic violence.

(8) A child who becomes ineligible for OHP because of age while receiving in patient medical services remains eligible until the end of the month in which he or she no longer receives those services if he or she is receiving in patient medical services on the last day of the month in which the age requirement is no longer met.

Stat. Auth.: ORS 411.060, 414.042

Stats. Implemented: ORS 411.060, 414.042

Hist.: AFS 2-1994, f. & cert. ef. 2-1-94; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; 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 36-1996, f. 10-31-96, cert. ef. 11-1-96; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 10-1998, f. 6-29-98, cert. ef. 7-1-98; AFS 17-1998, f. & cert. ef. 10-1-98; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 8-2006, f. & cert. ef. 6-1-06; SSP 13-2008(Temp), f. 5-30-08, cert. ef. 6-1-08 thru 6-30-08; SSP 17-2008, f. & cert. ef. 7-1-08; SSP 29-2009(Temp), f. & cert. ef. 10-1-09 thru 3-30-10; SSP 36-2009(Temp), f. & cert. ef. 12-1-09 thru 12-31-09; SSP 38-2009, f. 12-31-09, cert. ef. 1-1-10

## 461-135-1125

### Reservation Lists and Eligibility; OHP-OPU

(1) The "OHP Standard Reservation List" means a list of individuals who may be considered for the OHP-OPU program as a new applicant at such times as the Department determines that new applicants may be added into the program. This list is used to manage enrollment of new applicants as defined by OAR 461-135-1102 into the program within the limits of program authority and funding.

(2) An "OHP Standard Reservation List Applicant" means an individual who has been selected randomly under section (6) of this rule and establishes a date of request (see OAR 461-115-0030) within 45 days from the date the Department mails notification that the individual's reservation number has been selected randomly.

(3) When the Department specifies that the OHP Standard Reservation List is open, an individual is placed on the OHP Standard Reservation List if all of the following requirements are met:

(a) The individual, or someone acting on behalf of the individual, may request placement on the OHP Standard Reservation List by calling the designated telephone number for the OHP Standard Reservation List or in writing. A written request must arrive through one of the following methods:

(A) By mail to the designated mailing address for the OHP Standard Reservation List.

(B) By fax or hand delivery to a local Department office that receives client applications for the Oregon Health Plan.

(C) By electronic submission from the OHP website or by e-mail to the OHP Standard Reservation List e-mail address.

(b) The full name, date of birth, and mailing address of each individual requesting placement on the OHP Standard Reservation List must be provided to the Department and received by the Department as described in subsection (a) of this section before the request is considered complete.

(c) If the address of an individual changes after the individual makes a request, the individual must provide an updated address to the Department using a method described in subsection (a) of this section. If the individual

reports an address change to the Department in a way other than that outlined in subsection (a) of this section, the Department cannot guarantee the address change will be reflected in the reservation list, but will make reasonable efforts to incorporate that address change.

(4) The following procedures apply to the OHP Standard Reservation List:

(a) Individuals completing a request for placement on the OHP Standard Reservation List are assigned a reservation number. All members of an OHP filing group (see OAR 461-110-0400 for filing group composition) requesting placement on the OHP Standard Reservation List are assigned the same reservation number.

(b) The Department may request that individuals voluntarily provide their social security number (prior to the OHP 7210R Application). The Department may use the social security number for purposes of identification to help prevent duplicate reservations. The Department may not deny placement on the OHP Standard Reservation List because an individual does not provide a social security number.

(c) The Department sends confirmation to individuals who are placed on the OHP Standard Reservation List. If there is already a reservation established, individuals who have received confirmation from the Department need not make an additional request unless the reservation was removed (see section (8) of this rule), already used, or withdrawn.

(5) Requesting placement on the OHP Standard Reservation List, receiving a reservation number, or being placed on the OHP Standard Reservation List does not constitute an application for OHP-OPU or any other medical program administered by the Department. Individuals placed or refused placement on the OHP Standard Reservation List are not evaluated for DHS medical program eligibility.

(6) At such times that the Department determines that it has the requisite authority and funding and that new applicants can be added to the OHP-OPU program, and after the Department determines the number of new applicants that can be added, a designated number of individuals on the OHP Standard Reservation List are selected randomly. Once an individual has been selected randomly, the reservation number assigned to that individual and its position on the list has been used and is no longer available.

(7) An OHP Standard Reservation List Applicant must file a Department application or amend a completed application (see OAR 461-115-0050) as a prerequisite of receiving OHP-OPU program benefits.

(8) When the Department determines that the OHP Standard Reservation List should be discontinued, all individuals currently on the list are removed except as provided in section (9) of this rule. If the Department establishes a new OHP Standard Reservation List, the Department determines when an individual may again request placement on the list according to sections (3) and (4) of this rule.

(9) The Department may opt to use the reservation number of an individual not selected randomly from a discontinued list to create a new OHP Standard Reservation List. To be added to the new OHP Standard Reservation List, the Department may require each individual not selected randomly from the discontinued OHP Standard Reservation List to request placement on the new OHP Standard Reservation List and be assigned a new reservation number.

(10) Nothing in this rule prevents any individual from applying for medical assistance at any time. However, new applicants as defined in OAR 461-135-1102 for OHP-OPU are managed by the OHP Standard Reservation List.

Stat. Auth.: ORS 409.050, 411.060, 414.042, 2009 OL Ch. 867

Stats. Implemented: ORS 409.010, 411.060, 414.042, 2009 OL Ch. 867

Hist.: SSP 2-2008(Temp), f. & cert. ef. 1-28-08 thru 6-30-08; SSP 12-2008(Temp), f. & cert. ef. 4-17-08 thru 6-30-08; SSP 17-2008, f. & cert. ef. 7-1-08; SSP 22-2009(Temp), f. & cert. ef. 8-28-09 thru 2-21-10; SSP 38-2009, f. 12-31-09, cert. ef. 1-1-10

## 461-135-1149

### Specific Requirements; Continuous Eligibility for Non-CAWEM Children; CEC, CEM

(1) "Continuous eligibility for non-CAWEM children" means a non-CAWEM child under 19 years of age the Department determines is eligible for Medicaid or OHP-CHP is deemed to be eligible for a total of 12 months regardless of any change in circumstances, other than:

(a) Moving out of state;

(b) Turning 19 years of age, however a pregnant individual who turns 19 years of age remains eligible for OHP-CHP through the last day of the month during which the pregnancy ends; or

(c) In the OHP-CHP program, receipt of private major medical health insurance.

(2) When a pregnant non-CAWEM child is eligible for and receiving OHP-CHP program benefits loses this eligibility, her medical assistance continues through the CEC program through the last day of the month in which the pregnancy ends as long as she is not a recipient of *private major medical health insurance* (see OAR 461-135-1100).

(3) To be eligible for the CEC program, a client must meet all of the following requirements:

(a) Be a U.S citizen or *qualified non-citizen* (see OAR 461-120-0125);

(b) Be under 20 years of age;

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(c) Lose eligibility for OHP-CHP program medical benefits while pregnant; and

(d) Not be a recipient of *private major medical health insurance*.

(4) CEC program eligibility ends:

(a) The last day of the month in which the pregnancy ends;

(b) When the client moves out of state;

(c) When the client voluntarily ends OHP-CHP program benefits;

(d) When the client becomes a recipient of *private major medical health insurance*; or

(e) If the client becomes eligible for Child Welfare (CW) medical, EXT, MAA, MAF, OHP, OSIPM, or SAC program benefits.

(5) When a non-CAWEM child who is eligible for and receiving CW medical, EXT, MAA, MAF, OHP (except OHP-CHP), OSIPM, or SAC program benefits loses this eligibility with time remaining in the 12-month continuous eligibility period, the child's medical assistance continues for the remainder of the 12-month eligibility period through the CEM program.

(6) The CEM program eligibility period is based on the most recent CW medical, EXT, MAA, MAF, OHP (except OHP-CHP), OSIPM, or SAC program approval date. A child losing eligibility for CW medical, EXT, MAA, MAF, OHP (except OHP-CHP), OSIPM, or SAC program benefits less than 12 months after having been approved for benefits qualifies for CEM program benefits for the balance of the 12 month period following that approval.

(7) To be eligible for the CEM program, a client must meet all of the following requirements:

(a) Be a U.S citizen or a *qualified non-citizen*;

(b) Be eligible for and receiving CW medical, EXT, MAA, MAF, OHP (except OHP-CHP), OSIPM, or SAC program medical benefits;

(c) Be under 19 years of age; and

(d) Lose eligibility for CW medical, EXT, MAA, MAF, OHP (except OHP-CHP), OSIPM or SAC program medical benefits less than 12 months after having been approved for benefits, including approvals resulting from redeterminations.

(8) CEM program eligibility ends when the client:

(a) Becomes 19 years of age;

(b) Moves out of state;

(c) Voluntarily ends benefits; or

(d) Becomes eligible for CW medical, EXT, MAA, MAF, OHP, OSIPM, or SAC program benefits.

Stat. Auth.: ORS 409.050, 411.060, 411.070, 414.042

Stats. Implemented: ORS 409.050, 411.060, 411.070, 414.042, 2009 OL Ch. 756

Hist.: 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

## 461-135-1185

### Low-Income Subsidy Program (LIS)

The Low-Income Subsidy (LIS) program is a federal assistance program for Medicare clients who need extra help meeting their Medicare Part D prescription drug costs. The LIS program helps Medicare clients pay their monthly premium, deductible, and co-insurance costs under Part D. The LIS program is a means-tested program. All clients must qualify on the basis of household income, resources, and size as defined by the Social Security Administration.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: SSP 8-2005(Temp), f. & cert. ef. 7-1-05 thru 10-1-05; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 38-2009, f. 12-31-09, cert. ef. 1-1-10

## 461-135-1225

### TA-DVS; Eligibility and Verification Requirements

In the TA-DVS program:

(1) Eligibility requirements are the same as for the TANF program, except as provided otherwise in OAR 461-135-1200 to 461-135-1235.

(2) The financial eligibility requirements are the same as for the TANF program except that:

(a) A TANF grant does not count as income.

(b) Income received during the budget month is not counted if the client does not have reasonable access to the money or cannot access the money independently of the abuser.

(c) Income received during the budget month is not counted if the client needs the money for expenses made necessary by a flight from abuse, for instance an expense for temporary lodging.

(d) There is no resource limit.

(e) The income limit is the applicable TANF Countable Income Limit Standard amount in OAR 461-155-0030, but uses *net income* instead of *countable* (see OAR 461-001-0000) income. For purposes of this subsection, *net income* means the income *countable* for TA-DVS minus income and FICA (Federal Insurance Contributions Act) taxes, and other mandatory payroll deductions.

(f) Other financial requirements may be waived in accordance with OAR 461 135 1200.

(g) SSI income is *countable* (see OAR 461-001-0000), if available in time to meet the emergent need (the immediate safety need) of the client.

(3) The non-financial requirements are the same as for the TANF program except that:

(a) Citizenship and alien status requirements (OAR 461-120-0110) are waived.

(b) The requirements to assign support and obtain assets (see OAR 461-120-0310 to 0350) are waived, but the Department will assist the client obtain support at the client's request.

(c) The requirement of regular school attendance (OAR 461-120-0530) is waived.

(d) The client is not required to participate in an employment program (see divisions 130 and 190 of this chapter of rules).

(e) The TANF program requirement for a caretaker relative in the *need group* (see OAR 461-110-0630) to not have been separated from his or her most recent employment for a reason that would result in a denial of TANF program benefits under OAR 461-135-0070 is waived when there is risk of further or future *domestic violence* (see OAR 461-001-0000) against the *need group*.

(f) Other non-financial requirements may be waived in accordance with OAR 461 135 1200.

(4) Verification is required as in the TANF program except:

(a) No verification is required that the client is a victim of domestic violence or needs to flee from abuse.

(b) If the individual has been arrested for or convicted of an act of *domestic violence* in the past and if it is uncertain whether the individual is a victim of *domestic violence*, the Department verifies that the individual is not or was not a perpetrator of *domestic violence*. A statement from a law enforcement officer, a district attorney, the court, a batterer intervention program, a victim's advocate, a Child Welfare staff person, a mental health provider, a health care or other medical provider, a member of the clergy, or other professional from whom the individual has requested assistance to address the alleged *domestic violence* indicating that the individual is not a perpetrator of *domestic violence* or is a self-defending victim is adequate verification. If no verification is available, the Department's central office DV Policy Analyst may assist field in determining what other verification is acceptable.

(c) Verification of other financial or non-financial eligibility factors is postponed if the delay in finding the client eligible would prevent the client from meeting an emergent need.

Stat. Auth.: ORS 411.060, 412.049

Stats. Implemented: ORS 411.060, 411.117, 412.049

Hist.: AFS 9-1999, f. & cert. ef. 7-1-1999; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; SSP 7-2007, f. 6-29-07, cert. ef. 7-1-07; SSP 38-2009, f. 12-31-09, cert. ef. 1-1-10

## 461-135-1230

### Benefits; TA-DVS

In the TA-DVS program:

(1) A client may receive benefits of the program for 90 days from the date the client was found eligible. A client may receive benefits simultaneously from the TA-DVS and TANF programs. A client may receive benefits under the TA-DVS program not to exceed \$1,200 during the 90-day period of eligibility.

(2) Two 90-day eligibility periods may not overlap. Once a 90-day eligibility period has expired, the client may reapply for TA-DVS program benefits under section (4) of this rule.

(3) TA-DVS benefits address a specific crisis situation or episode of need related to the client's *domestic violence* (see OAR 461-001-0000) situation (such as securing new or temporary housing, payment of security deposit, first month's rent, moving expenses, furniture, and clothing replacement). TA-DVS benefits are not utilized to meet current ongoing or recurrent needs expected to continue beyond 90 days and are not used for the following items even if the client believes the item would contribute to the client's safety:

(a) Payment of attorney or other legal fees;

(b) Payment of a fine or other penalty;

(c) Payment of outstanding or past due costs such as rent or utilities when the client does not intend to stay in the residence or the need for the payment was not related to the current *domestic violence* situation;

(d) Payment of a pet fee (unless the pet is a service animal, and only when the service status has been verified by a medical or counseling professional);

(e) Payment for relocation of household or personal belongings from another state;

(f) Purchase of a car (including making car payments) or recreational vehicle, including a travel trailer;

(g) Purchase of a firearm or other weapon;

(h) Purchase of new furniture unless:

(A) The new furniture is not available through a community resource;

(B) A less costly alternative for acquiring the new furniture is not available;

(C) The old furniture was left behind when the client fled *domestic violence*; and

(D) The new furniture is essential to setting up a household (such as beds, dressers, a dining room table and chairs, a couch).

(i) Purchase of a non-essential item such as a television or computer, or service such as cable, satellite, internet, even if such an item or service was left behind when the client fled the domestic violence situation; or

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(j) Purchase of a pet or guard animal.

(4) If a client submits an application meeting all eligibility criteria set forth in OAR 461-135-1215 and 461-135-1225 less than 12 months after the ending of a 90-day period of eligibility in which the client received benefits under this program, that application must be jointly staffed and approved or denied by the Department's field and central offices.

(5) The client and the Department prepare a case plan that identifies activities necessary to enhance the client's safety. The case plan specifies the payments the Department makes to meet the client's needs for shelter and food and for relocation or other services that will enhance the client's safety.

(6) A client's available liquid resources may be considered when developing the case plan.

(7) A payment issued for an item in the client's case plan is issued as a dual-payee or vendor-pay check unless the use of a dual-payee or vendor-pay check is likely to put the client at risk of harm.

Stat. Auth.: ORS 411.060, 411.070, 412.049

Stats. Implemented: ORS 411.060, 411.070, 411.117, 412.049

Hist.: AFS 9-1999, f. & cert. ef. 7-1-99; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; SSP 8-2004, f. & cert. ef. 4-1-04; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 5-2009, f. & cert. ef. 4-1-09; SSP 38-2009, f. 12-31-09, cert. ef. 1-1-10

## 461-145-0130

### Earned Income; Treatment

(1) Earned income (see OAR 461-145-0120) is countable in determining eligibility for programs, subject to sections (2) to (9) of this rule.

(2) JOBS Plus income is earned income and is treated as follows:

(a) In the SNAP program:

(A) JOBS Plus income earned by a TANF-PLS client:

(i) Is counted in determining initial SNAP program eligibility.

(ii) Is excluded in determining ongoing eligibility.

(B) JOBS Plus wages received after the client's last month of work under a TANF-PLS JOBS Plus agreement are counted.

(b) In the TANF program:

(A) JOBS Plus income earned by an NCP-PLS client is counted in determining initial TANF eligibility.

(B) When determining the need for a TANF supplement for a TANF-PLS client, the income is treated as follows:

(i) It is excluded in determining the countable income limit and in calculating the benefit equivalency standards.

(ii) It is counted in calculating the wage supplement.

(C) JOBS Plus wages received after the client's last month of work under a JOBS Plus agreement are counted.

(c) In all programs other than the SNAP and TANF programs, TANF-PLS income is counted.

(d) In all programs other than the TANF program, NCP-PLS income is counted as earned income.

(e) In all programs, client wages received under the Oregon Employment Department UI JOBS Plus or the Tribal TANF JOBS programs are counted as earned income.

(3) Welfare-to-Work work experience income is treated as follows:

(a) In the EXT, MAA, MAF, REF, REFM, and TANF programs, the income is earned income, and the first \$260 is excluded each month.

(b) In the OHP and SNAP programs, the income is earned income.

(4) In the ERDC and OHP programs, earned income of a child is excluded.

(5) In the EXT, MAA, MAF, REF, REFM, SAC, and TANF programs:

(a) Earned income of the following children is excluded:

(A) Dependent children under the age of 19 years, and minor parents under the age of 18 years, who are full-time students in grade 12 or below (or the equivalent level of vocational training, in GED courses), or in home schooling approved by the local school district.

(B) Dependent children under the age of 18 years who are attending school part-time (as defined by the institution) and are not employed full-time.

(C) Dependent children too young to be in school.

(b) Income remaining after the month of receipt is a resource.

(c) In-kind earned income is excluded (see OAR 461-145-0280 and 461-145-0470).

(6) In the SNAP program:

(a) If a *cafeteria plan* (see OAR 461-001-0000) benefit that the employee cannot elect to receive as a cash payment is designated and used to pay for child care, medical care, or health insurance, the benefit is excluded unless it is reimbursed by the Department or allowed as an earned income deduction.

(b) The following types of income are excluded:

(A) The earned income of an individual under the age of 18 years who is under the parental control of another member of the household and is:

(i) Attending elementary or high school;

(ii) Attending GED classes recognized by the local school district;

(iii) Completing home-school elementary or high school classes recognized by the local school district; or

(iv) Too young to attend elementary school.

(B) In-kind earned income, except as provided in section (7) of this rule.

(C) Deductions from base pay for future educational costs under Pub. L. No. 99-576, 100 Stat. 3248 (1986), for clients on active military duty.

(D) Income remaining after the month of receipt is a resource.

(7) In the OHP and SNAP programs, earned in-kind income (see OAR 461-145-0280) is excluded unless it is an expenditure by a business entity that benefits a *principal* (see OAR 461-145-0088).

(8) In all programs except the EXT and SNAP programs, and for an OSIPM client in *nonstandard living arrangement* (see OAR 461-001-0000), the income of a temporary employee of the U.S. Census Bureau employed to assist in taking the census is excluded.

Stat. Auth.: ORS 411.060, 411.070, 411.816, 412.014, 412.049, 414.042

Stats. Implemented: ORS 411.060, 411.070, 411.816, 412.014, 412.049, 414.042  
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 9-1990, f. & cert. ef. 3-2-90; 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 1-1993, f. & cert. ef. 2-1-93; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 19-1994, f. & cert. ef. 9-1-94; 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 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 17-1996, f. 4-29-96, cert. ef. 5-1-96; AFS 27-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 32-1996(Temp), f. & cert. ef. 9-23-96; 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 10-1998, f. 6-29-98, cert. ef. 7-1-98; AFS 11-1999, f. & cert. ef. 10-1-99; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 7-2000(Temp), f. 3-10-00, cert. ef. 3-10-00 thru 9-1-00; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; AFS 12-2001, f. 6-29-01, cert. ef. 7-1-01; AFS 17-2001(Temp), f. 8-31-01, cert. ef. 9-1-01 thru 9-30-01; AFS 22-2001, f. & cert. ef. 10-1-01; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; 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 10-2007, f. & cert. ef. 10-1-07; SSP 23-2008, f. & cert. ef. 10-1-08; SSP 31-2009(Temp), f. & cert. ef. 10-1-09 thru 3-30-10; SSP 38-2009, f. 12-31-09, cert. ef. 1-1-10

## 461-145-0143

### Economic Recovery Payment

(1) The \$250 economic recovery payment authorized by the American Recovery and Reinvestment Act of 2009 is excluded income in the month of receipt and an excluded resource in the month of receipt and for the following nine months.

(2) In the GA, GAM, MAA, MAF, OHP, OSIPM, and QMB programs, a client qualifies for a \$33 earned income exclusion per month.

Stat. Auth.: ORS 411.060, 411.070, 411.816, 412.049, 414.042

Stats. Implemented: ORS 411.060, 411.070, 411.816, 412.049, 414.042  
Hist.: SSP 3-2009(Temp), f. & cert. ef. 3-3-09 thru 8-30-09; SSP 24-2009, f. & cert. ef. 8-31-09; SSP 25-2009(Temp), f. & cert. ef. 9-1-09 thru 2-28-10; SSP 38-2009, f. 12-31-09, cert. ef. 1-1-10

## 461-145-0220

### Home

(1) **Home defined:** A home is the place where the filing group lives. A home may be a house, boat, trailer, mobile home, or other habitation. A home also includes the following:

(a) Land on which the home is built and contiguous property.

(A) In all programs except the GA, GAM, OSIP, OSIPM, QMB, and SNAP programs property must meet all the following criteria to be considered contiguous property:

(i) It must not be separated from the land on which the home is built by land owned by people outside the *financial group* (see OAR 461-110-0530).

(ii) It must not be separated by a public right-of-way, such as a road.

(iii) It must be property that cannot be sold separately from the home.

(B) In the GA, GAM, OSIP, OSIPM, QMB, and SNAP programs, contiguous property is property not separated from the land on which the home is built by land owned by people outside the *financial group*.

(b) Other dwellings on the land surrounding the home that cannot be sold separately from the home.

(2) **Exclusion of home and other property:**

(a) For a client who has an *initial month* (see OAR 461-001-0000) of long-term care on or after January 1, 2006:

(A) For purposes of this subsection:

(i) The definition of "child" in OAR 461-001-0000 does not apply.

(ii) "Child" means a biological or adoptive child who is:

(I) Under age 21; or

(II) Any age and meets the Social Security Administration criteria for blindness or disability.

(B) The equity value of a home is excluded if one of the following requirements is met:

(i) The equity in the home is \$500,000 or less and one of the following:

(I) The client occupies the home.

(II) The spouse of the client occupies the home.

(III) The child of the client occupies the home.

(IV) The home equity is excluded under OAR 461-145-0250.

(V) The home is listed for sale per OAR 461-145-0420.

(ii) The equity in the home is more than \$500,000 and one of the following:

(I) The spouse of the client occupies the home.

(II) The child of the client occupies the home.

(III) Notwithstanding OAR 461-120-0330, the client is legally unable to convert the equity value in the home to cash.

(b) For all other filing groups, the value of a home is excluded when the home is occupied by any member of the filing group.

(c) In the SNAP program, the value of land is excluded while the group is building or planning to build their home on it, except that if the group owns

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(or is buying) the home they live in and has separate land they intend to build on, only the home in which they live is excluded, and the land they intend to build on is treated as real property in accordance with OAR 461 145 0420.

(3) **Exclusion during temporary absence:** If the value of a home is excluded under section (2) of this rule, the value of this home remains excluded in each of the following situations:

(a) In all programs except the GA, GAM, OSIP, OSIPM, and QMB programs, during the temporary absence of all members of the filing group from the property, if the absence is due to illness or uninhabitability (from casualty or natural disaster), and the filing group intends to return home.

(b) In the SNAP program, when the *financial group* is absent because of employment or training for future employment.

(c) In the GA, GAM, OSIP, OSIPM, and QMB programs, when the client is absent to receive care in a medical institution, if one of the following is true:

(A) The absent client has provided evidence that he or she will return to the home. The evidence must reflect the subjective intent of the client, regardless of the client's medical condition. A written statement from a competent client is sufficient to prove the intent.

(B) The home remains occupied by the client's spouse, child, or a relative dependent on the client for support. The child must be less than 21 years of age or, if over the age of 21, blind or an individual with a disability as defined by SSA criteria.

(d) In the MAA, MAF, REF, REFM, SAC, and TANF programs, when all members of the filing group are absent because:

(A) The members are employed in seasonal employment and intend to return to the home when the employment ends; or

(B) The members are searching for employment, and the search requires the members to relocate away from their home. If all members of the filing group are absent for this reason, the home may be excluded for up to six months from the date the last member of the filing group leaves the home to search for employment. After the six months, if a member of the filing group does not return, the home is no longer excluded.

Stat. Auth.: ORS 411.060, 411.070, 411.816, 412.049, 414.042

Stats. Implemented: ORS 411.060, 411.070, 411.816, 412.049, 414.042

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 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 5-2002, f. & cert. ef. 4-1-02; 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 38-2009, f. 12-31-09, cert. ef. 1-1-10

## 461-145-0260

### Indian (Native American) Benefits

(1) The following Indian (Native American) benefits are excluded:

(a) Indian lands held jointly with the tribe, or land that cannot be sold without the approval of the Bureau of Indian Affairs (BIA).

(b) Payments to Puyallup Tribe members from the trust funds established under Public Law 101-41.

(c) Payments from the Confederated Tribes of the Colville Reservation Grand Coulee Dam Settlement Act (Public Law 103-436).

(2) Payments from the BIA are treated as follows:

(a) In the SNAP program, payments from the General Assistance program are counted as unearned income.

(b) In all programs except the SNAP program, payments from the General Assistance program are excluded.

(c) The treatment of educational income is covered by OAR 461-145-0150.

(3) In the GA and GAM programs, Indian benefits described in sections (4) to (12) of this rule are counted as periodic or lump-sum income (see OAR 461-140-0110 and 461-140-0120), unless the client verifies that such benefits are excluded by the public law for state-funded programs.

(4) In all programs except the GA and GAM programs, payments under Public Law 92-203 (Alaska Native Claim Settlement Act) are treated as follows:

(a) In the SNAP program, the entire payment is excluded.

(b) In all programs except the GA, GAM, and SNAP programs:

(A) Only the tax-exempt portion of the payment is excluded.

(B) The remainder of the payment is counted as unearned income.

(5) In all programs except the GA and GAM programs, the following types of distributions provided under Public Law 100-241 (Alaska Native Claim Settlement Act) are excluded:

(a) Stock.

(b) A partnership interest.

(c) Land or interest in land.

(d) An interest in a settlement trust.

(e) The first \$2,000 of each per-capita payment per year for each member of the *financial group* (see OAR 461-110-0530) who receives the payment. The amount over \$2,000 paid to each member of the *financial group* who receives the per-capita payment is counted as lump-sum income (see OAR 461-140-0120).

(6) In all programs except the GA and GAM programs, the Department excludes Indian benefit payments when federal law requires an exclusion. These include payments under each of the following federal laws:

(a) The Aroostook Band of Micmacs under Public Law 102-171.

(b) Blackfeet, Cherokee, Cheyenne, Chippewa, and Sioux tribes under Public Law 94-114, when the payment is from submarginal land held in trust by the United States.

(c) Blackfeet Indians under Public Law 92-254.

(d) Grand River Ottawa Indians under Public Law 94-540.

(e) Hopi or Navajo Indians under Public Law 93-531.

(f) Passamaquoddy Tribe and Penobscott Nation, including the Holton Band of Maliseet Indians, under the Indian Claims Settlement Act (Public Law 96-420).

(g) Umpqua Tribe Cow Creek Band under Public Law 100-139.

(h) Yakima Nation Confederated Tribes and Bands of the Mescalero Reservation Apache Tribe under Public Law 95-433.

(7) In all programs except the GA and GAM programs, payments received from trust or restricted lands under Public Law 93-134, Public Law 97-458, and Public Law 103-66 are excluded.

(8) In all programs except the GA and GAM programs, payments to Seminole Tribe members under Public Law 101-277 are treated as follows:

(a) The first \$2,000 of each per-capita payment per year is excluded for each member of the *financial group* who receives the payment.

(b) The amount over \$2,000 paid to each member of the *financial group* who receives the per-capita payment is counted as lump-sum income (see OAR 461-140-0120).

(9) In all programs except the GA and GAM programs, payments from the distribution of judgment funds to members of the Confederated Tribes of the Umatilla under Public Law 91-259 are treated as follows:

(a) The first \$2,000 of each per-capita payment per year is excluded for each member of the *financial group* who receives the payment.

(b) The amount over \$2,000 paid to each member of the *financial group* who receives the per-capita payment is counted as lump-sum income (see OAR 461-140-0120).

(10) In all programs except the GA and GAM programs, payments for assets held in trust to the Sac and Fox Tribe of Oklahoma and Sac and Fox Tribe of the Mississippi in Iowa by the Indian Claims Commission under Public Law 94-189, Section 6 (The Sac and Fox Indian Claims Agreement) are treated as follows:

(a) The first \$2,000 of each per-capita payment per year is excluded for each member of the *financial group* who receives the payment.

(b) The amount over \$2,000 paid to each member of the *financial group* who receives the per-capita payment is counted as lump-sum income (see OAR 461-140-0120).

(11) In all programs except the GA and GAM programs, payments from judgment funds held in trust by the U.S. Secretary of the Interior under Public Law 98-64 are excluded.

(12) In all programs except the GA and GAM programs, Indian Child Welfare payments under Public Law 95-608 are excluded.

(13) Tribal payments for child care are treated as follows:

(a) Provider-direct payments are counted as the provider's earned income.

(b) All client-direct payments are excluded.

(14) In each program, any Indian benefit payments distributed by the tribe and not excluded for that program by public law are counted as unearned income.

(15) Payments in the tribal-TANF program are counted in the same manner as TANF program payments under OAR 461-145-0410.

(16) In the GA, GAM, OSIP, OSIPM, and QMB programs, Individual Indian Money (IIM) accounts are treated as follows:

(a) For a restricted account:

(A) A deposit required by the BIA is excluded as income and as a resource.

(B) A deposit not required by the BIA is counted or excluded as income in accordance with this chapter of rules based on the source of the deposit. The deposit is excluded as a resource.

(C) A withdrawal is treated in accordance with this chapter of rules based on the source of the funds withdrawn. When funds in the account include both excluded and non-excluded funds, the Department presumes that the non-excluded funds are withdrawn first.

(b) For an unrestricted account: Deposits and withdrawals are treated in accordance with this chapter of rules based on the source of the deposit or withdrawal. When funds in the account include both excluded and non-excluded funds, the Department presumes that the non-excluded funds are withdrawn first.

Stat. Auth.: ORS 411.060, 411.070, 411.816, 412.049, 414.042

Stats. Implemented: ORS 411.060, 411.070, 411.816, 412.049, 414.042

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 2-1992, f. 1-30-92, cert. ef. 2-1-92; 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 16-1996, f. 4-29-96, cert. ef. 5-1-96; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 38-2009, f. 12-31-09, cert. ef. 1-1-10

## 461-145-0405

### Plan for Self-support

(1) This rule covers two types of plans for self support.

(a) A plan for self support approved by the Social Security Administration.







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(C) The client will be able to return home within six months of leaving, according to a written statement from a primary practitioner, RN, or PAS (pre-admission screening) RN; and

(D) The home will accommodate the service plan of the client when the client returns.

(b) The allowance may be authorized for six months. If, after six months, the client continues to meet the criteria in subsection (a) of this section, an extension may be approved in writing by a supervisor.

(c) The accommodation allowance equals the total of the client's housing cost, including taxes and insurance, plus the limited standard utility allowance for the SNAP program provided in OAR 461-160-0420.

(3) Additional cost for accommodation. A client meeting the criteria in section (1) of this rule may receive an accommodation allowance if the client's shelter cost exceeds the shelter standard in OAR 461-155-0250(2) and the requirements of one of the following subsections are met:

(a) The client has a documented increase in rent associated with access by an individual with a disability; or

(b) The client has been assessed to need a live-in provider, has accepted the services of a live-in provider, and requires an additional bedroom for the live-in provider.

(4) The accommodation allowance is determined as follows:

(a) For a client who receives an accommodation allowance based on increased costs associated with access by an individual with a disability, only the additional increase in cost for the accommodation is allowed.

(b) For a client who receives an accommodation allowance based on the need for an additional bedroom for a live-in provider, the amount of the accommodation allowance is the limited standard utility allowance for the SNAP program under OAR 461-160-0420 plus:

(A) One-third of the monthly rental cost; or

(B) One-third of the monthly payment on the property agreement (including mortgage, trust deed, or land sale contract). The property agreement is the agreement existing at the time the client is approved for the accommodation allowance. The accommodation allowance for the housing portion ends if the debt is refinanced, unless the refinancing was done only to reduce the original property agreement's interest rate or total monthly payment amount and the owner realized no direct or indirect payment of the home's equity value from the refinancing.

(i) If the refinancing requirement under this paragraph is met, the amount of the accommodation allowance is one-third of the refinanced property agreement amount plus the limited standard utility allowance under OAR 461-160-0420.

(ii) If the refinancing requirement under this paragraph is not met and the housing portion of the accommodation allowance ends, the client remains eligible only for the limited standard utility allowance portion under OAR 461-160-0420.

(5) Special requirements.

(a) A client who rents and qualifies for an allowance under section (3) of this rule must take the steps necessary to obtain subsidized housing under any federal or state housing program. A client who fails, at any time, to take the steps necessary to obtain subsidized housing reasonably available is ineligible for the allowance. A client, who has been denied or revoked from participation in any rent subsidy program based on the client's own actions is ineligible for benefits under this rule.

(b) A client who rents housing and refuses subsidized housing will no longer be eligible for an accommodation allowance, except that if the housing that is offered is not suitable, related to accommodations, and the client continues to have increased costs related to accommodations in the client's current living situation, the accommodation allowance may continue until such time as appropriate subsidized housing is found.

Stat. Auth.: ORS 411.060, 411.070, 414.042

Stats. Implemented: ORS 411.060, 411.070, 411.706, 414.042

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 12-1993, f. & cert. ef. 7-1-93; AFS 23-1995, f. 9-20-95, cert. ef. 10-1-95; 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 9-1999, f. & cert. ef. 7-1-99; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 23-2008, f. & cert. ef. 10-1-08; SSP 13-2009, f. & cert. ef. 7-1-09; SSP 38-2009, f. 12-31-09, cert. ef. 1-1-10

## 461-155-0670

### Special Need; Special Diet Allowance

(1) In the EXT, GA, GAM, MAA, MAF, OSIP, OSIPM, REF, REFM, SAC, SFPSS, and TANF programs, a client is not eligible for a special diet allowance if receiving any of the following:

(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 EXT, GA, GAM, MAA, MAF, REF, REFM, SAC, SFPSS, or TANF client, or an OSIP or 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 is eligible for a special diet allowance if the client meets the following requirements:

(a) The client would be in an imminent life-threatening situation without the diet, as verified by medical documentation from a Department-approved medical authority (see OAR 461-125-0830); and

(b) A nutritionist verifies that the special diet needed exceeds the cost of a regular diet.

(3) The amount of a special diet allowance is calculated as follows:

(a) In the EXT, MAA, MAF, REF, REFM, SAC, SFPSS, and TANF programs, the difference between the actual cost of the special diet and a prorated share of the SNAP program benefit for the appropriate number of clients in the *benefit group* (see OAR 461-110-0750).

(b) In the GA, GAM, OSIP, and OSIPM programs, the lesser of the following:

(A) The difference between the actual cost of the special diet and the amount provided in the basic standard for food (see OAR 461-155-0250).

(B) A maximum of \$300 per month, or an exceptional amount, authorized by the SPD Program Assistance Section, which will not exceed the cost of home IV therapy.

(4) Local management staff must approve the request for a special diet allowance.

(5) Each special diet allowance must be reviewed at six-month intervals.

Stat. Auth.: ORS 411.060, 411.070, 412.014, 412.049

Stats. Implemented: ORS 411.060, 411.070, 411.706, 412.014, 412.049

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

## 461-155-0680

### Special Need — Supplemental Telephone Allowance; OSIPM

In the OSIPM program:

(1) The Department provides a telephone allowance for a client receiving SSI, a client with an adjusted income less than the OSIPM program standard under OAR 461-155-0250, and a client receiving in-home services if the client is unable to leave his or her residence without assistance due to a documented medical condition.

(2) The telephone allowance may cover the following costs:

(a) The least expensive appropriate telephone service or the basic rate, whichever is less.

(b) The cost of telephone adaptive equipment, if the client has a medically documented need (for instance, TDD, a special headset, dialing mechanism, or emergency response system).

(c) Necessary installation charges.

(3) An SSI-eligible client or a client with an adjusted income less than the OSIPM program standard granted a telephone allowance must apply for a payment through the Oregon Telephone Assistance Program (OTAP). In addition, an SSI-eligible client or a client with an adjusted income less than the OSIPM program standard requesting payment for telephone installation must apply for Link-Up America. If the Link-Up America credit does not cover the installation cost, the Department provides the difference up to a maximum supplement payment of \$30.

Stat. Auth.: 411.060, 411.070

Stats. Implemented: 411.060, 411.070, 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; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 22-2002, f. 12-31-02, cert. ef. 1-1-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 38-2009, f. 12-31-09, cert. ef. 1-1-10

## 461-155-0688

### Prescription Drug Co-pay Coverage

In the OSIPM program for a client who is receiving SSI as his or her only income:

(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 Seniors and People with Disabilities Division central office staff.

Stat. Auth.: ORS 411.060, 411.706

Stats. Implemented: ORS 411.060, 411.704, 411.706

Hist.: SSP 38-2009, f. 12-31-09, cert. ef. 1-1-10

## 461-155-0693

### Transportation Services Payment; OSIPM

In the OSIPM program:

(1) The following individuals may be eligible for a transportation services payment:

(a) A client who receives SSI as his or her only income; or

(b) A client who the Department determines meets the requirements of OAR 461-125-0370(1)(c) and has adjusted income less than the OSIPM standard (see OAR 461-155-0250).

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(2) These services are for transportation to non-medical and non-waivered activities and resources approved by the Department. Examples of such transportation services include, but are not limited to: transportation provided by common carriers, taxicab, or bus; and assistance with purchase of a pass for public transportation.

(3) Transportation services do not include purchase of a vehicle, vehicle maintenance or repair, reimbursement for travel expenses, or transportation services that may be obtained through other means, such as the State Medicaid Plan, waiver, or other public or private resources available to the individual, including natural supports.

(4) Payment for services authorized by this rule may not exceed \$25 per month.

(5) Service costs must be verified annually or when questionable.

Stat. Auth.: ORS 411.060, 411.706

Stats. Implemented: ORS 411.060, 411.704, 411.706

Hist.: SSP 38-2009, f. 12-31-09, cert. ef. 1-1-10

## 461-160-0015

### Resource Limits

(1) In the EA program, all *countable* (see OAR 461-001-0000) resources must be used to meet the emergent need.

(2) In the ERDC, EXT, and REFM programs, and for an individual whose eligibility is determined under the OHP-CHP, OHP-OPC, OHP-OP6, or OHP-OPP programs, there is no resource limit.

(3) In the GA, GAM, OSIP, and OSIPM programs, the resource limit is as follows:

(a) \$2,000 for a one-person *need group* (see OAR 461-110-0630) and \$3,000 for a two-person *need group*.

(b) \$1,000 for an OSIP *need group* eligible under OAR 461 135 0771. The total cash resources may not exceed \$500 for a one-person *need group* or \$1,000 for a two-person *need group*.

(c) \$5,000 is the limit for the OSIP-EPD and OSIPM-EPD programs (see OAR 461-001-0035 and 461-145-0025 for funds that may be excluded as approved accounts).

(4) In the MAA, MAF, REF, SAC, and TANF programs, the resource limit is:

(a) \$10,000 for a *need group* with at least one JOBS participant who is progressing in a case plan.

(b) \$10,000 for a *need group* with at least one member who is working under a JOBS Plus agreement.

(c) \$2,500 for all other *need groups*, including all TANF applicants.

(5) In the OHP program, the resource limit for an individual whose eligibility is determined under the OHP-OPU program is \$2,000.

(6) In the QMB program, the resource limit is \$4,000 for a one-person *need group* and \$6,000 for a *need group* containing two or more individuals.

(7) In the SNAP program, the resource limit is:

(a) \$3,000 for a *financial group* (see OAR 461-110-0530) with at least one member who is *elderly* (see OAR 461-001-0015) or an individual with a disability (see OAR 461-001-0015).

(b) \$2,000 for all other financial groups.

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.816, 412.049, 414.042

Stats. Implemented: ORS 411.060, 411.070, 411.816, 412.049, 414.042

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 13-1991, f. & cert. ef. 7-1-91; AFS 20-1991, f. & cert. ef. 10-1-91; 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 23-1994, f. 9-29-94, cert. ef. 10-1-94; 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 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 22-1995,

f. 9-20-95, cert. ef. 10-1-95; AFS 27-1996, f. 6-27-96, cert. ef. 7-1-96; 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 10-1998, f. 6-29-98,

cert. ef. 7-1-98; 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 16-1999, f. 12-29-99, cert. ef. 1-1-00; 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 17-2003, f. & cert. ef. 7-1-03; SSP 29-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 3-

31-04; SSP 6-2004, f. & cert. ef. 4-1-04; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 22-2004, f.

& cert. ef. 10-1-04; 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 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

## 461-160-0580

### Excluded Resource; Community Spouse Provision (OSIPM except OSIPM-EPD)

In the OSIPM (except OSIPM-EPD) program:

(1) This rule applies to an *institutionalized spouse* (see OAR 461-001-0030) who has applied for benefits because he or she is in or will be in a *continuous period of care* (see OAR 461-001-0030).

(2) Whether a *legally married* (see OAR 461-001-0000) couple lives together or not, the determination of whether the value of the couple's resources exceeds the eligibility limit for the institutionalized spouse for OSIPM program is made as follows:

(a) The first step is the determination of what the couple's combined countable resources were at the beginning of the most recent *continuous period of care*. (The beginning of the *continuous period of care* is the first month of that continuous period.)

(A) Division 461-140 and 461-145 rules applicable to OSIPM describe which of the couple's resources are countable resources, and are applicable to determine whether a community spouse's resources are countable, even if the rule only applies to OSIPM clients.

(B) The countable resources of both spouses are combined.

(C) At this point in the computation, the couple's combined countable resources are considered available equally to both spouses.

(b) The second step is the calculation of one half of what the couple's combined countable resources were at the beginning of the *continuous period of care*. The community spouse's half of the couple's combined resources is treated as a constant amount when determining eligibility.

(c) The third step is the determination of the community spouse's resource allowance. The community spouse's resource allowance is the largest of the four following amounts:

(A) The community spouse's half of what the couple's combined countable resources were at the beginning of the *continuous period of care*, but not more than \$109,560.

(B) \$21,912 (the state community-spouse resource allowance).

(C) A court-ordered community spouse resource allowance. In this paragraph and paragraph (2)(f)(C) of this rule, the term *court-ordered community spouse resource allowance* means a court-ordered community spouse resource allowance that, in relation to the income generated, would raise the community spouse's income to a court-approved monthly maintenance needs allowance. In cases where the client became an institutionalized spouse on or after February 8, 2006, this resource allowance must use all of the client's available income and the community spouse's income to meet the community spouse's monthly maintenance needs allowance before any resources are used to generate interest income to meet the allowance.

(D) After considering the income of the community spouse and the income available from the institutionalized spouse, an amount which, if invested, would raise the community spouse's income to the monthly maintenance needs allowance. The amount described in this paragraph is considered only if the amount described in subparagraph (i) of this paragraph is larger than the amount described in subparagraph (ii); it is the difference between the following:

(i) The monthly income allowance computed in accordance with OAR 461-160-0620.

(ii) The difference between:

(I) The sum of gross countable income of the community spouse and the institutionalized spouse; and

(II) The applicable need standard under OAR 461-160-0620(3)(c).

(d) The fourth step is the determination of what the couple's current combined countable resources are when a resource assessment is requested or the institutionalized spouse applies for OSIPM. The procedure in subsection (2)(a) (first step) of this rule is used.

(e) The fifth step is the subtraction of the community spouse's resource allowance from the couple's current combined countable resources. The resources remaining are considered available to the institutionalized spouse.

(f) The sixth step is a comparison of the value of the remaining resources to the OSIPM resource standard for one person (under OAR 461-160-0015(4)(a)). If the value of the remaining resources is at or below the standard, the institutionalized spouse meets this eligibility requirement. If the value of the remaining resources is above the standard, the institutionalized spouse cannot be eligible until the value of the couple's combined countable resources is reduced to the largest of the four following amounts:

(A) The community spouse's half of what the couple's combined countable resources were at the beginning of the *continuous period of care* (but not more than \$109,560) plus the OSIPM resource standard for one person.

(B) \$21,912 (the state community-spouse resource allowance), plus the OSIPM resource standard for one person.

(C) A *court-ordered community spouse resource allowance* plus the OSIPM resource standard for one person. (See paragraph (2)(c)(C) of this rule for a description of the *court-ordered community spouse resource allowance*.)

(D) The OSIPM resource standard for one person plus the amount described in the remainder of this paragraph. After considering the income of the community spouse and the income available from the institutionalized spouse, add an amount which, if invested, would raise the community spouse's income to the monthly maintenance needs allowance. Add this amount only if the amount described in subparagraph (i) of this paragraph is larger than the amount described in subparagraph (ii); it is the difference between the following:

(i) The monthly income allowance computed in accordance with OAR 461-160-0620.

(ii) The difference between:

(I) The sum of gross countable income of the community spouse and the institutionalized spouse; and

(II) The applicable need standard under OAR 461-160-0620(3)(c).

(3) Once eligibility has been established, resources equal to the community spouse's resource allowance (under subsection (2)(c) of this rule) must be transferred to the community spouse if those resources are not already in that spouse's name. The institutionalized spouse must indicate his or her intent to transfer the resources and must complete the transfer to the community spouse within 90 days. This period may be extended for good cause. These resources are excluded during this period. After this period, resources owned by the institutionalized spouse but not transferred out of that spouse's name will be countable and used to determine ongoing eligibility.

# ADMINISTRATIVE RULES

(4) The provisions of paragraph (2)(c)(C) of this rule requiring income to be considered first may be waived if the Department determines that the resulting community resource allowance would create an undue hardship on the spouse of the client.

Stat. Auth.: ORS 411.060, 411.070, 411.700, 414.042  
Stats. Implemented: ORS 411.060, 411.070, 411.700, 414.042  
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 3-1991(Temp), f. & cert. ef. 1-17-91; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 5-1993, f. & cert. ef. 4-1-93; AFS 29-1993, f. 12-30-93, cert. ef. 1-1-94; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 41-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 25-1998, f. 12-28-98, cert. ef. 1-1-99; AFS 1-1999(Temp), f. & cert. ef. 2-1-99 thru 7-31-99; AFS 7-1999, f. 4-27-99, cert. ef. 5-1-99; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 11-1999, f. & cert. ef. 10-1-99; AFS 16-1999, f. 12-29-99, cert. ef. 1-1-00; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; 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 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06; SSP 5-2006(Temp), f. & cert. ef. 3-6-06 thru 8-31-06; 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 4-2007, f. 3-30-07, cert. ef. 4-1-07; SSP 14-2007, f. 12-31-07, cert. ef. 1-1-08; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09; SSP 38-2009, f. 12-31-09, cert. ef. 1-1-10

## 461-160-0610

### Client Liability; OSIPM (except OSIPM-EPD)

(1) A client in the OSIPM (except OSIPM-EPD) program who receives *long-term care* (see OAR 461-001-0000) services must, in order to remain eligible, make the payment required by this rule, except as provided in sections (2) to (6) of this rule. The client must apply his or her adjusted income to the cost of the care or service. This amount is the client liability. If the client's adjusted income exceeds the cost of care or service, the client must pay the full cost of care but has no additional liability.

(2) A client who receives SSI, or is deemed to receive SSI under section 1619(b) of the Social Security Act (42 U.S.C. § 1382h(b)), is eligible for OSIPM program benefits without having to make a payment.

(3) The IC service payment of a client in the OSIPM-IC program is reduced by the amount of his or her liability.

(4) The following clients, if they receive the services described in section (5) of this rule, are exempt from payments required by this rule:

- (a) A disabled adult child under OAR 461-135-0830.
- (b) A widow or widower under OAR 461-135-0820.
- (c) A Pickle amendment client under OAR 461-135-0780.

(5) A client identified in section (4) of this rule is exempt from payments required by this rule if the client receives:

- (a) *Waivered services* (see OAR 461-001-0030); or
- (b) Mental health services and lives in a *mental health residential treatment facility*. For purposes of this rule, only the following types of treatment centers qualify as a *mental health residential treatment facility*:

- (A) A mental health adult foster home.
- (B) A mental health residential treatment home.
- (C) A mental health residential treatment facility.
- (D) A mental health secure residential treatment facility.

(6) In the initial month of placement, a client may be exempt from payments required under this rule if the Department determines that the client's income has been exhausted prior to placement. If any income remains, the client must contribute to the cost of care or service.

(7) A client residing in an acute care hospital is exempt from payments required by this rule while residing in the acute care hospital. If a service benefit was received prior to admission to the acute care hospital, payment must be made for that service.

Stat. Auth.: ORS 411.060, 411.070, 414.042  
Stats. Implemented: ORS 411.060, 411.070, 414.042  
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; 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 10-2002, f. & cert. ef. 7-1-02; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 22-2004, f. & cert. ef. 10-1-04; 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 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 23-2008, f. & cert. ef. 10-1-08; SSP 38-2009, f. 12-31-09, cert. ef. 1-1-10

## 461-160-0700

### Use of Income; OHP

Income is used to determine eligibility for OHP as follows:

(1) The average countable income of the *financial group* (see OAR 461-110-0530) assigned to the *budget month* (see OAR 461-001-0000) is determined in accordance with OAR 461-150-0055.

(2) For each member of the *need group* (see OAR 461-110-0630), the average *countable* (see OAR 461-001-0000) income of the *financial group* assigned to the budget month is compared to the applicable OHP program income standard. If the average *countable* income of the *financial group* is below the applicable income standard for the *need group* size and all other financial and non-financial eligibility requirements are met, the *need group* member is eligible for OHP program benefits. If the average *countable* income of the *financial group* equals or exceeds the applicable OHP program income standard, the *need group* member is ineligible for OHP program benefits except as provided by section (3) of this rule.

(3) The following members of the *need group* who are not eligible under section (2) of this rule are eligible for OHP program benefits if all other

financial and non-financial eligibility requirements are met and the *countable* income of the *financial group*, received or anticipated to be received in the *budget month*, is below the applicable OHP program income standard:

- (a) OHP-CHP program clients.
- (b) OHP-OPC program clients.
- (c) OHP-OP6 program clients.
- (d) OHP-OPP program clients.
- (e) Victims of domestic violence.

Stat. Auth.: ORS 411.060  
Stats. Implemented: ORS 411.060, 411.700  
Hist.: AFS 2-1994, f. & cert. ef. 2-1-94; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 8-1998, f. 4-28-98, cert. ef. 5-1-98; AFS 10-1998, f. 6-29-98, cert. ef. 7-1-98; AFS 24-1998(Temp), f. 11-30-98, cert. ef. 12-1-98 thru 3-31-99; AFS 2-1999, f. 3-26-99, cert. ef. 4-1-99; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06; 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

## 461-165-0010

### Legal Status of Benefit Payments

(1) Under Oregon law, cash benefits are not subject to assignment, transfer, garnishment, levy, or execution, as long as they can be identified as program payments and are separate from other money in the client's possession.

(2) A cash payment accrues to and becomes vested in the client when issued.

(3) Except for EBT, the Department considers a benefit issued if the check has been handed to the client in the branch office, or mailed to the client. The Department considers a benefit issued, and received by the client, when a direct check deposit is made to the client's bank account.

(4) For EBT, the Department considers benefits issued and received when an EBT card and personal identification number (PIN) have been issued in person to the client, or the EBT card and PIN have been received by the client in the mail during conversion, and the benefits have been deposited to the client's EBT account.

(5) FS benefits issued by EBT remain available for client access for 12 calendar months from the date of issuance. The EBT system expunges unused benefits after 12 calendar months.

(6) Benefits to the client are unrestricted and do not require accountability for individual expenditures or amounts.

(7) In the TA-DVS program, a payment issued on behalf of a client as a vendor or dual payee payment or directly to the client becomes vested in the client when issued. The Department considers the benefit to be issued if the Department has mailed the payment to the vendor or has hand delivered or mailed a dual payee check to the client. Benefits in the TA-DVS program are restricted to uses outlined in OAR 461-135-1230.

Stat. Auth.: ORS 411.060, 411.816, 412.014, 412.049, 414.042  
Stats. Implemented: ORS 411.060, 411.117, 411.816, 412.014, 412.049, 412.151, 414.042  
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 11-1991, f. 4-30-91, cert. ef. 5-1-91; AFS 6-1994, f. & cert. ef. 4-1-94; AFS 13-1997, f. 8-28-97, cert. ef. 9-1-97; SSP 13-2009, f. & cert. ef. 7-1-09; SSP 38-2009, f. 12-31-09, cert. ef. 1-1-10

## 461-165-0200

### Restoring Benefits

(1) A client is entitled to a supplemental payment of benefits for the current month or restoration of benefits lost in a previous month if the client received a lower benefit than he or she was entitled to for the reasons given in this rule. A client may receive a restoration of lost benefits even if no longer eligible.

(2) A client may receive a supplemental payment if there was a change in the client's circumstances that would cause an increase in benefits, if the report of change was made before the first day of the payment month but too late for the Department to adjust the next payment.

(3) A client may receive a supplemental or restorative benefit if the Department caused an administrative underpayment. An administrative underpayment includes, but is not limited to, an underpayment caused by the following:

- (a) Failure to take action on information reported to the Department.
- (b) Use of an incorrect effective date.
- (c) Denial, closure or reduction of benefits in error and a failure to send the client a required notice of proposed action.
- (d) Making a calculation error.
- (4) A client is entitled to a restoration of lost benefits if:
  - (a) The restoration results from a final order in a contested case.
  - (b) The Department withheld too much of the client's grant in the collection of an overpayment.
  - (c) The restoration results from a court order.
  - (d) SNAP program benefits deposited in an EBT account were returned because the benefits aged off.
  - (e) After receiving proper notification, the Department failed to cancel the EBT card of an individual leaving a SNAP program household and that individual continues to access the household's SNAP program benefits in subsequent months.

(5) Restored benefits are added to the benefits of a currently eligible client. In the SNAP program, the Department will honor a reasonable request by a client to restore benefits in monthly installments.

# ADMINISTRATIVE RULES

(6) A client who moves from Oregon remains eligible for a restoration of benefits.

Stat. Auth.: ORS 411.060, 411.816, 412.014, 412.049, 414.042  
Stats. Implemented: ORS 411.060, 411.816, 412.014, 412.049, 414.042  
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 6-1994, f. & cert. ef. 4-1-94; AFS 13-1997, f. 8-28-97, cert. ef. 9-1-97; AFS 10-2002, f. & cert. ef. 7-1-02; SSP 38-2009, f. 12-31-09, cert. ef. 1-1-10

## 461-165-0210

### Calculating Restored and Supplemental Benefits

(1) Supplemental and restorative benefits are calculated and paid as follows:

- (a) The effective date of the lost benefits is determined.
- (b) The benefit group is not eligible for restored benefits in any month that eligibility for the benefits cannot be established. The benefit group has an opportunity to prove eligibility for any months in question.
- (c) The correct benefits for the months in question are calculated.
- (d) The amount the benefit group actually received is subtracted from the amount they should have received.
- (e) The restoration amount for EBT aged-off FS benefits is the full amount of inaccessible benefits, if the request for restoration is made within nine months of the date the benefits were aged off.
- (f) The amount of restored benefits is offset against overdue or suspended overpayments.

(g) The group with the largest number of people who were in the benefit group at the time the loss occurred is entitled to the restorative payment. If the location of that group is unknown, the benefit is paid to the benefit group containing the primary person at the time the loss occurred.

(2) When, after receiving proper notification, the Department failed to cancel the EBT card of an individual leaving a SNAP program household and that individual continues to access the household's SNAP program benefits in subsequent months, the amount of SNAP program benefits to be restored is the amount used by the former household member.

Stat. Auth.: ORS 411.060, 411.816, 412.014, 412.049, 414.042  
Stats. Implemented: ORS 411.060, 411.816, 412.014, 412.049, 414.042  
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1997, f. 8-28-97, cert. ef. 9-1-97; AFS 10-2002, f. & cert. ef. 7-1-02; SSP 38-2009, f. 12-31-09, cert. ef. 1-1-10

## 461-165-0230

### Replacing FS Benefits and EBT Cards

(1) The Department does not replace SNAP program benefits after they are delivered to the EBT account unless the Department failed to cancel the EBT card of an individual leaving a SNAP program household and that individual continues to access SNAP program benefits in subsequent months.

(2) The Department will replace the value of food purchased with SNAP program benefits if the food is destroyed by a verified household misfortune and the benefit group reports the loss within ten days of occurrence. The amount of the replacement may not exceed one month's allotment. The Department will replace the loss within ten days after the household provides sufficient verification.

(3) The Department will replace an EBT card reported lost, stolen, or not received only after the current card has been deactivated. An EBT card that is damaged or not functioning properly is replaced only after the card's status is changed to "card damaged" and the card is destroyed.

Stat. Auth.: ORS 411.060, 411.816, 412.014, 412.049  
Stats. Implemented: ORS 411.060, 411.816, 412.014, 412.049  
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 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 6-1994, f. & cert. ef. 4-1-94; AFS 13-1997, f. 8-28-97, cert. ef. 9-1-97; AFS 10-2002, f. & cert. ef. 7-1-02; SSP 38-2009, f. 12-31-09, cert. ef. 1-1-10

## 461-175-0270

### Notice Situation; MRS, SRS, or TBA

(1) When a *benefit group* (see OAR 461-110-0750) is entered into the MRS (see OAR 461-170-0100), the Department sends a *basic decision notice* (see OAR 461-001-0000) for the GA, GAM, OSIP, OSIPM, and QMB programs and a *continuing benefit decision notice* (see OAR 461-001-0000) for all other programs.

(2) When the Department takes action on information reported on the Monthly Change Report or Interim Change Report form, the Department sends a *continuing benefit decision notice* for clients in the ERDC, MAA, MAF, OSIP, OSIPM, QMB, REF, REFM, SNAP, and TANF programs. The notice includes the amount of income used to determine the benefits or ineligibility.

(3) For all changes not reported on the Monthly Change Report or Interim Change Report form, which result in a closure or reduction in benefits, the Department sends a *timely continuing benefit decision notice*.

(4) For a *benefit group* in the MRS, when ending TANF benefits because of information acquired through the information match with the Child Support program, the Department sends a *continuing benefit decision notice*.

(5) When the Department changes the reporting system from one reporting system to another reporting system, the Department provides a *continuing benefit decision notice* if the change occurs at a time other than at the start of a *certification period* (see OAR 461-001-0000).

Stat. Auth.: ORS 411.060, 411.816, 412.049, 414.042

Stats. Implemented: ORS 411.060, 411.111, 411.816, 412.049, 414.042  
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 19-1993, f. & cert. ef. 10-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; SSP 13-2003, f. 6-12-03, cert. ef. 6-16-03; SSP 20-2003, f. & cert. ef. 8-15-03; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07; SSP 14-2007, f. 12-31-07, cert. ef. 1-1-08; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09; SSP 28-2009, f. & cert. ef. 10-1-09; SSP 38-2009, f. 12-31-09, cert. ef. 1-1-10

## 461-180-0085

### Effective Dates; Redeterminations of CEC, CEM, EXT, MAA, MAF, OHP, OSIPM, QMB, SAC

In the CEC, CEM, EXT, MAA, MAF, OHP, OSIPM, QMB, and SAC programs, when the Department initiates a redetermination of eligibility, the Department must review each individual in the filing group for eligibility for the other medical programs listed in this rule prior to reducing or ending medical benefits. If additional information is needed to redetermine eligibility, members of the benefit group (see OAR 461-110-0750) remain eligible from the date the review is initiated until the Department determines their eligibility in accordance with the application processing time frames in OAR 461-115-0190.

Stat. Auth.: ORS 409.050, 411.060, 414.042  
Stats. Implemented: ORS 409.010, 411.060, 414.042  
Hist.: SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 9-2006(Temp), f. & cert. ef. 6-1-06 thru 9-30-06; 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 14-2007, f. 12-31-07, cert. ef. 1-1-08; 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

## 461-180-0090

### Effective Dates; Initial Month Medical Benefits

The effective date for starting medical benefits for an eligible client is as follows:

(1) In the CEC and CEM programs, it is the first of the month following the month that eligibility for Child Welfare medical, EXT, MAA, MAF, OHP, OHP-CHP, OSIPM, or SAC program benefits ends.

(2) In the EXT program, it is the first of the month following the month that MAA or MAF program eligibility ends.

(3) In the GAM, MAA, MAF, OHP, OSIPM, QMB-DW, REFM, and SAC programs:

(a) Except as provided for in sub-section (b) of this section:

(A) If the client meets all eligibility requirements on the *date of request* (see OAR 461-115-0030), it is the *date of request*. An OSIPM client who is *assumed eligible* under OAR 461-135-0010(7) meets "all eligibility requirements" for the purposes of this section as follows:

(i) Effective the first day of the month of the initial SSI payment if the client is age 21 or older.

(ii) Effective the first day of the month prior to the month of the initial SSI payment if the client is under the age of 21.

(B) If the client does not meet all eligibility requirements on the *date of request*, it is the first day following the *date of request* that all eligibility requirements are met.

(b) If the client does not complete the application within the time period described in OAR 461-115-0190 (including the authorized extension), the determination of an effective date requires a new *date of request*.

(4) In the QMB-BAS program, it is:

(a) The first of the month after the *benefit group* (see OAR 461-110-0750) has been determined to meet all QMB-BAS eligibility criteria and the Department receives the required verification; or

(b) The first of the month after the Low Income Subsidy (LIS) information is received, if the QMB-BAS application was generated by the electronic transmission of LIS data from the Social Security Administration.

(5) In the QMB-SMB and QMB-SMF programs, it is:

(a) The first of the month in which the *benefit group* meets all program eligibility criteria and the Department receives the required verification; or

(b) The first of the month in which the Low Income Subsidy (LIS) information is received, if the SMB or SMF application was generated by the electronic transmission of LIS data from the Social Security Administration.

(6) Retroactive eligibility is authorized under certain circumstances in some medical programs (see paragraph (2)(a)(A) of this rule, OAR 461-135-0875, and 461-180-0140).

Stat. Auth.: ORS 411.060, 411.070, 414.042  
Stats. Implemented: ORS 411.060, 411.070, 414.042  
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 1-1993, f. & cert. ef. 2-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 5-2000, f. 2-29-00, cert. ef. 3-1-00; SSP 5-2003, f. 2-26-03, cert. ef. 3-1-03; SSP 23-2003, f. & cert. ef. 10-1-03; 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 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09; 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

## 461-190-0199

### Parents as Scholars

(1) Parents as Scholars (PAS) is a JOBS program component that assists TANF parents who are or will be undergraduates to begin or continue their education at a two- or four-year educational institution.

(2) The following definitions apply to PAS:

# ADMINISTRATIVE RULES

(a) "Educational institution" means any post-secondary educational institution approved or accredited by the Northwest Commission on Colleges and Universities, by its regional equivalent, or by the appropriate official, department, or agency of the state or nation in which the institution is located and that is:

- (A) A four-year college or university;
- (B) A junior college or community college; or
- (C) A technical, professional or career school.

(b) "Participant" refers to a participant in the PAS component of the JOBS program.

(c) "PAS" means the Parents as Scholars component of the JOBS program.

(3) The number of participants in PAS in a calendar year is limited as follows:

(a) The number of participants in PAS in a calendar year may not exceed one percent of the number of households receiving TANF on January 1 of that calendar year.

(b) If one percent of the number of households receiving TANF on January 1 of the current calendar year is less than one percent of the number of households receiving TANF on January 1 of the previous calendar year, the Department will not fill PAS slots vacated on or after January 1 of the current calendar year until the total number of slots is equal to one percent of the households receiving TANF for the current calendar year.

(4) A PAS participant receives TANF cash assistance as well as necessary support services provided through the JOBS program. JOBS support services:

(a) May not be used to pay for the cost of tuition and fees associated with enrollment by a participant at an educational institution.

(b) Notwithstanding OAR 461-190-0211, may be used to pay for books and supplies associated with enrollment by a participant at an educational institution subject to the following provisions:

(A) The books and supplies are required for completion of the participant's coursework at an educational institution;

(B) There is no other funding available to the PAS participant for books and supplies; and

(C) No more than \$100 per academic term or semester may be paid per PAS participant for books and supplies.

(5) Applying for PAS. A parent who is applying for or receiving TANF may apply for PAS by completing and signing the PAS application and submitting it to the Department. The application and other documentation required by this rule must be submitted to Department of Human Services JOBS Unit (PAS), 2nd Floor, 500 Summer Street NE E48, Salem, Oregon 97301.

(6) PAS Selection Process; Wait List.

(a) PAS applications received from PAS applicants will be processed in the order in which the Department receives the applications.

(b) If the maximum number of PAS slots for a calendar year has not been filled, the Department will notify an applicant when he or she has been approved.

(c) When the maximum number of PAS slots for a calendar year has been filled and there is a wait list, the Department will notify an applicant when he or she has been added to the wait list.

(d) Once each year, the Department will contact PAS applicants on the wait list to determine if the PAS applicant's name should be removed from the wait list.

(e) When the maximum number of PAS slots for a calendar year has been filled and there is a wait list and a PAS slot becomes available, the Department will notify the next applicant on the wait list that an opening has become available.

(f) The Department will inform an applicant for PAS who does not qualify or no longer qualifies for placement on the wait list because the applicant becomes ineligible for TANF or no longer meets the requirements of this rule.

(7) Selection Requirements.

(a) A PAS applicant must meet the financial and nonfinancial eligibility requirements for TANF.

(b) A PAS applicant who is not applying for or receiving TANF at the time of selection may not participate in PAS or remain on the wait list.

(c) A PAS applicant must include documentation that the PAS applicant is an undergraduate who has been accepted for full-time attendance into or is enrolled full-time at an educational institution.

(d) A PAS applicant must demonstrate as part of the PAS application that completion of the educational program is likely to result in employment that provides the wages and benefits necessary for the applicant to support the applicant's family without TANF.

(8) Requirements of Participants; Limitations.

(a) A participant must provide documentation to the Department quarterly, or following completion of each academic term at the *educational institution*, that the participant is making satisfactory academic progress, as defined by the *educational institution*, toward a degree.

(b) A participant must provide documentation to the Department, prior to the start of each new academic term or semester, that the PAS applicant is an undergraduate who is enrolled full-time at an educational institution.

(c) A participant must attend classes full-time as defined by the *educational institution*, unless there is *good cause* (see OAR 461-130-0327) to limit attendance to less than full-time.

(d) Unless there is *good cause* for not attending year round, a participant must either:

(A) Attend classes year round, including during the summer if classes are offered by the *educational institution*; or

(B) If not attending classes year round, participate in work experience related to the field of study of the participant when not attending classes. If a work experience related to the participant's field of study is not available, participate in another appropriate work experience.

(e) During the first twelve months of participation in PAS, a participant must record attendance and homework time weekly and must provide this information to the Department no less frequently than monthly.

(f) Except as provided in subsection (g) of this section, a participant must remain eligible for TANF.

(g) If a participant becomes temporarily ineligible for TANF during a period of four or fewer months due to income from a paid work experience, the applicant may retain their PAS slot when school resumes if:

(A) The participant regains TANF eligibility; and

(B) PAS is still an appropriate activity for the participant.

(9) Ending PAS. PAS is ended for a PAS participant when:

(a) The PAS participant completes his or her degree program;

(b) Except as provided in subsection (8)(g) of this rule, the PAS participant becomes ineligible for TANF; or

(c) All of the following are true:

(A) The PAS participant fails to meet one or more of the requirements of subsections (8)(a) through (8)(e) of this rule;

(B) Attempts to re-engage the PAS participant pursuant to OAR 461-190-0231 are unsuccessful; and

(C) There is a determination that the PAS participant does not have *good cause* (see OAR 461-130-0327) for failure to meet one or more requirements of subsections (8)(a) through (8)(e) of this rule.

Stat. Auth.: ORS 411.060, 412.016, 412.049, 12.124

Stats. Implemented: ORS 411.060, 412.016, 412.017, 412.049 & 412.124

Hist.: SSP 20-2008(Temp), f. & cert. ef. 9-5-08 thru 3-4-09; SSP 23-2008, f. & cert. ef. 10-1-08; SSP 28-2009, f. & cert. ef. 10-1-09; SSP 38-2009, f. 12-31-09, cert. ef. 1-1-10

## 461-193-0031

### Eligibility Requirements; Refugee Case Services Project (RCSP)

In the RCSP program, to be eligible an applicant must meet the requirements of sections (1) to (6) of this rule, and section (7) if section (7) applies:

(1) Meet all REF or TANF program *eligibility* (see OAR 461-001-0000) requirements.

(2) Meet the alien status requirements under OAR 461-120-0120.

(3) Reside in Clackamas, Multnomah, or Washington County.

(4) Have resided in the U.S. for eight months or less. The first month is, for an individual meeting the alien status requirements of OAR 461-120-0120:

(a) Section (1), (3), (4), or (5), the month the individual entered the United States.

(b) Section (2), (6), or (7), the month the individual was granted the individual's immigration status.

(c) Section (8):

(A) If the individual entered the U.S. with special immigrant status, the month the individual entered the United States.

(B) If the individual is granted special immigrant status after entering the U.S., the month in which the special immigrant status was granted.

(d) Each month in the U.S. is counted as a whole month, there is no prorating of any month.

(5) Be 64 years old or younger.

(6) Not be enrolled as a full-time student or intending to enroll as a full-time student within six months of RCSP program intake.

(7) For a newborn, a parent must provide verification of the child's birth, including the date of birth. The newborn child's U.S. arrival date and *eligibility* period are the same as those for the child's mother.

Stat. Auth.: ORS 411.060, 411.116

Stats. Implemented: ORS 411.060, 411.116

Hist.: AFS 9-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 24-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 34-1996, f. 9-26-96, cert. ef. 10-1-96; AFS 19-1997, f. & cert. ef. 10-1-97; AFS 13-2001, f. 6-29-01, cert. ef. 7-1-01; SSP 7-2009, f. & cert. ef. 4-1-09; SSP 9-2009(Temp), f. & cert. ef. 5-1-09 thru 10-28-09; SSP 28-2009, f. & cert. ef. 10-1-09; SSP 38-2009, f. 12-31-09, cert. ef. 1-1-10

## 461-193-0240

### Exemption From Participating; New Arrival Employment Services (NAES)

(1) Participation in the NAES program is limited to RCSP program adult clients and refugees who would be eligible for the RCSP program, but have been in the U.S. for more than eight months and less than 13 months. A RCSP program client who meets the requirements of OAR 461-120-0120(8) may not be in the NAES program beyond his or her first eight months in the United States.

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(2) An adult client is exempt from participation in or disqualification from the NAES program when the requirements of one of the following subsections are met:

(a) In the ninth month of pregnancy or when experiencing medical complications due to pregnancy that prevent participation in the NAES program.

(b) During the first six months after giving birth, except that the client may be required to participate in parenting classes or family stability activities.

(c) Under 20 years of age during the first 16 weeks after giving birth, except that the client may be required to participate in suitable activities with a preference for educational activities, parenting classes, and family stability activities.

(d) A parent providing care for a family member who lives in the home and has a *disability* (see OAR 461-001-0000).

(e) Sixty-five years of age or older.

(f) Receiving supplemental security income (SSI) from the Social Security Administration.

(g) Participation likely would cause undue hardship or is contrary to the best interest of a child or needy caretaker relative.

(h) Volunteering, except that a client may not be disqualified for conduct that occurred while a volunteer. Volunteering, as used in the NAES program rules, means that a client who is otherwise exempt from participating in the NAES program chooses to participate in an employment program nevertheless.

(i) A medical condition documented by a licensed medical professional.

(3) An adult client is exempt from disqualification from the NAES program when participating more than 10 hours per week during the seventh and eighth months of pregnancy.

Stat. Auth.: ORS 411.060, 411.116, 412.006

Stats. Implemented: ORS 411.060, 411.116, 412.006

Hist.: AFS 25-1991, f. 12-30-91, cert. ef. 1-1-92; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 8-1995(Temp), f. 3-30-95, cert. ef. 4-1-95; AFS 37-1995, f. 11-28-95, cert. ef. 12-1-95; AFS 34-1996, f. 9-26-96, cert. ef. 10-1-96; AFS 19-1997, f. & cert. ef. 10-1-97; SSP 7-2009, f. & cert. ef. 4-1-09; SSP 38-2009, f. 12-31-09, cert. ef. 1-1-10

## 461-193-1380

### Standards for NAES Support Service Payments

(1) The Department helps an individual comply with the individual's *case plan* (see OAR 461-001-0025) by providing payments for child care, housing, transportation, and other needs to make participation in required activities (see OAR 461-001-0025) successful. These payments are provided for costs directly related to participation in *activities*, for costs necessary to obtain and retain a job, and for enhancing wages and benefits.

(a) In approving NAES support service payments, the Department must consider lower-cost alternatives.

(b) It is not the intent of the Department or of this rule to use Department funding when other funding is available in the community. It is the Department's expectation that case managers and clients work collaboratively to seek resources that reasonably are available to the client to facilitate participation in required *activities*.

(c) An NAES program client is not eligible to receive any support service payment, except for child care or transportation, during his or her first 30 days in the United States.

(2) An NAES program support service payment must be authorized in advance and is subject to the limitations of this rule.

(3) Subject to the limitations of state funding and this rule, an NAES program *support services* (see OAR 461-001-0025) payment is made available to an individual if all of the following requirements are met:

(a) The individual is an NAES participant.

(b) The individual has agreed to participate in a NAES *activity* or other approved *activities* as specified in the individual's *case plan*.

(4) **Denials and Reductions.** The Department may reduce, close, or deny in whole or in part an individual's request for an NAES support service payment in each of the following circumstances:

(a) If the individual is disqualified for failing to comply with a *case plan*, unless the payment in question is necessary for the client to comply with his or her *case plan*.

(b) If the purpose for the payment is not related to the individual's *case plan*.

(c) If the client disagrees with a support service payment offered or made by the Department as outlined in the client's *case plan*.

(5) **Required Verification.**

(a) The Department may require the individual to provide verification of a need for the support service prior to approval and issuance of payment if verification is reasonably available.

(b) The Department may require the individual to provide verification of costs associated with a support service if verification is reasonably available.

(6) **Child Care.** Payments for child care are authorized, as limited by OAR 461 160 0040, if necessary to enable the individual to participate in NAES program *activities* or other approved *activities* specified in the individual's *case plan*. If authorized, payment for child care will be made for:

(a) The lesser of the actual rate charged by the care provider and the rate established in OAR 461-155-0150. The Department rate for children in care less than 158 hours in a month is limited by OAR 461-155-0150, except that the cost of child care may be paid up to the monthly maximum when a child is in care less than 158 hours per month and:

(A) Appropriate care is not accessible to the individual at the hourly rate; or

(B) The individual is a teen parent using on-site care while attending education *activities*.

(b) The minimum hours necessary, including meal and commute time, for the individual to participate in NAES program *activities*, other approved *activities*, or to obtain and maintain employment.

(7) Child care payments may be provided when an individual is not participating in NAES program *activities* or other approved *activities* if payment is necessary for the client to retain his or her child care provider. Only the minimum amount necessary to maintain the child care slot with the provider may be covered as established in OAR 461-155-0150. Not more than 30 days between scheduled NAES program *activities* or other approved *activities* may be covered.

(8) Unless good cause (see OAR 461-193-0890) has been determined, an NAES program client must attend an NAES program child care orientation to receive on-going child care payments.

(9) **Housing and Utilities.** In addition to a payment for basic living expenses under OAR 461-135-0475, a payment may be provided to an NAES program participant to secure or maintain housing and utilities in the following situations:

(a) To prevent an eviction or utility shut-off, secure housing to find or maintain employment, or participate in *activities* listed in the individual's *case plan*. Payment is available when all of the following requirements are met:

(A) The individual cannot make a shelter or utility payment due to a lack of assets.

(B) The lack of assets did not result from an NAES program or Child Support disqualification, a reduction due to an IPV recovery, overpayment recovery (other than administrative error), or failure by the individual to pay shelter or utility expenses when funds were reasonably available.

(C) The individual's *case plan* addresses how subsequent shelter or utility payments are to be made.

(b) The shelter need results from *domestic violence* (see OAR 461-001-0000) and all of the following requirements are met:

(A) The individual is not eligible for the TA-DVS program.

(B) The individual is able to pay all subsequent shelter costs, either through the individual's own resources or through other resources available in the community.

(C) The individual's *case plan* addresses how subsequent shelter costs are to be paid.

(c) An NAES program client who receives a cash grant through the RCSP program is expected to meet the housing and utility expenses out of the amount received each month in the cash grant. A NAES program client who receives an RCSP program cash grant may receive a housing and utility support services payment on a case-by-case basis, if the client otherwise meets the support service payment eligibility criteria of this section.

(10) **Transportation.** The Department provides support services payments for transportation costs incurred in travel to and from NAES program *activities* or other approved *activities*. Payment is made only for the cost of public transportation or the cost of vehicle insurance, repairs, and fuel for a personally owned vehicle. The Department may not authorize payment for repair of a vehicle owned by an individual who is not in the *filing group* (see OAR 461-110-0330). A transportation support service payment is subject to the following considerations:

(a) A payment for public transportation is given priority over a payment for a privately owned vehicle.

(b) A payment for a privately owned vehicle is provided if the client or driver has a valid license and one of the following requirements is met:

(A) No public transportation is available or the client is unable to use public transportation because of a verifiable medical condition or disability for which no accommodation is available; or

(B) Public transportation is available but is more costly than the cost of car repair or fuel.

(11) Unless *good cause* has been determined, an NAES program client must attend an NAES program mass transit training to receive on-going transportation payments.

(12) **Other Payments.** The Department provides support services payments for other items directly related to participation in NAES program *activities*. A payment under this section may be authorized for:

(a) Reasonable accommodation of a client's *disability* (see OAR 461-001-0000).

(b) Costs necessary in obtaining and retaining a job or enhancing wages and benefits, such as:

(A) Clothing and grooming for participation in NAES program *activities* or job interviews.

(B) Moving expenses necessary to accept employment elsewhere.

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(C) Tools, bonding, and licensing required to accept or retain employment.

(c) Tuition for *vocational training* (see OAR 461-001-0025) through the NAES program only:

(A) After the client has been approved for *vocational training*;

(B) When no other funding is available;

(C) To the extent that Department funding designated for this purpose is available; and

(D) When the training is necessary for a job leading to a higher wage and high demand occupation, as defined by the Workforce Investment Act (WIA).

Stat. Auth.: ORS 411.060, 411.116, 411.135

Stats. Implemented: ORS 411.060, 411.070, 412.006, 412.049, 414.025

Hist.: AFS 34-1996, f. 9-26-96, cert. ef. 10-1-96; AFS 19-1997, f. & cert. ef. 10-1-97; AFS 16-2000(Temp), f. 6-28-00, cert. ef. 7-1-00 thru 9-30-00; AFS 24-2000, f. 9-29-00, cert. ef. 10-1-00; SSP 38-2009, f. 12-31-09, cert. ef. 1-1-10

## 461-195-0501

### Definitions and Categories of Overpayments

This rule applies to benefits and services delivered under chapters 410, 411 and 461 of the Oregon Administrative Rules.

(1) "Overpayment" means:

(a) A benefit or service received by or on behalf of a client, or a payment made by the Department on behalf of a client, that exceeds the amount for which the client is eligible.

(b) A payment made by the Department and designated for a specific purpose which is spent by a person on an expense not approved by the Department.

(c) A payment for child care made by the Department to, or on behalf of, a client that:

(A) Is paid to an ineligible provider;

(B) Exceeds the amount for which a provider is eligible;

(C) Is paid when the client was not engaged in an activity that made the client eligible for child care, such as an activity of the JOBS program (see OAR 461-001-0025 and OAR 461-190-0151 to OAR 461-190-0401); or

(D) Is paid when the client was not eligible for child care benefits.

(d) A misappropriated payment when a person cashes and retains the proceeds of a check from the Department on which that person is not the payee and the check has not been lawfully endorsed or assigned to the person.

(e) A benefit or service provided for a need when that person is compensated by another source for the same need and the person fails to reimburse the Department when required to do so by law.

(f) A cash benefit received by an individual in the GA or SFPSS programs for each month for which the client receives a retroactive SSI lump sum payment.

(g) In the TA-DVS program, only when an IPV in the TA-DVS program is established.

(2) The Department may establish an *overpayment* for the *initial month* (see OAR 461-001-0000) of eligibility under circumstances including but not limited to:

(a) The filing group, ineligible student, or *authorized representative* (see OAR 461-115-0090) withheld information;

(b) The filing group, ineligible student, or *authorized representative* provided inaccurate information;

(c) The Department fails to use income reported as received or anticipated in determining the benefits of the filing group; or

(d) The error was due to an error in computation or processing by the Department.

(3) Overpayments are categorized as follows:

(a) An administrative error *overpayment* is an *overpayment* caused by any of the following circumstances:

(A) The Department fails to reduce, suspend, or end benefits after timely reporting by the filing group, ineligible student, or *authorized representative* of a change covered under OAR 461-170-0011 and that reported change requires the Department to reduce, suspend, or end benefits;

(B) The Department fails to use the correct benefit standard;

(C) The Department fails to compute or process a payment correctly based on accurate information timely provided by the filing group, ineligible student, or *authorized representative*;

(D) In the GA and SFPSS programs, the Department fails to require a client to complete an interim assistance agreement; or

(E) The Department commits a procedural error that was no fault of the filing group, ineligible student, or *authorized representative*.

(b) A client error *overpayment* is:

(A) An *overpayment* caused by the failure of a filing group, ineligible student, or *authorized representative* to declare or report information or a change in circumstances as required under OAR 461-170-0011, including information available to the Department, that affects the client's eligibility to receive benefits or the amount of benefits;

(B) A client's unreduced liability or receipt of unreduced benefits pending a contested case hearing decision or other final order favorable to the Department;

(C) A client's failure to return a benefit known by the client to exceed the correct amount;

(D) A client's use of a JOBS or SFPSS program support payment (see OAR 461-190-0211) for other than the intended purpose;

(E) A payment for child care when the client was not engaged in an activity that made the client eligible for child care, such as an activity of the JOBS program (see OAR 461-001-0025 and 461-190-0151 to 461-190-0401);

(F) A payment for child care when the client was not eligible for child care benefits; or

(G) The failure of a client to pay his or her entire share of the cost of services or the participant fee (see OAR 461-160-0610 and 461-160-0800) in the month in which it is due.

(c) A fraud *overpayment* is an *overpayment* determined to be an intentional program violation (see OAR 461-195-0601 and 461-195-0611) or substantiated through a criminal prosecution.

(d) In the SNAP program, a provider error *overpayment* is an *overpayment* made to a drug or alcohol treatment center or residential care facility that acted as a client's *authorized representative*.

(e) In the child care program, a provider error *overpayment* is a payment made by the Department on behalf of a client to a child care provider when:

(A) Paid to an ineligible provider;

(B) The payment exceeds the amount for which a provider is eligible.

(4) When an *overpayment* is caused by both an administrative and client error in the same month, the Department determines the primary cause of the *overpayment* and assigns as either an administrative or client error *overpayment*.

(5) In the SNAP program, the trading of a controlled substance (as defined in section 102 of the Controlled Substances Act in 21 U.S.C. 802) is the buying or selling of SNAP program benefits for cash or consideration other than eligible food; or the exchange for SNAP program benefits of firearms, ammunition, explosives, or controlled substances.

(6) In the TANF program, when an *overpayment* puts the client at greater risk of *domestic violence* (see OAR 461-001-0000), the *overpayment* is waived (see OAR 461-135-1200).

Stat. Auth.: ORS 411.060, 411.070, 411.105, 411.816, 412.001, 412.049, 414.042

Stats. Implemented: ORS 411.060, 411.070, 411.105, 411.117, 411.620, 411.640, 411.690, 411.816, 411.892, 412.001, 412.049, 414.025, 414.042

Hist.: AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 7-2001(Temp), f. & cert. ef. 4-4-01 thru 6-30-01; AFS 12-2001, f. 6-29-01, cert. ef. 7-1-01; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 14-2007, f. 12-31-07, cert. ef. 1-1-08; SSP 15-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08; SSP 13-2009, f. & cert. ef. 7-1-09; SSP 38-2009, f. 12-31-09, cert. ef. 1-1-10

## 461-195-0521

### Calculation of Overpayments

This rule specifies how the Department calculates an *overpayment* (see OAR 461-195-0501).

(1) The Department calculates an *overpayment* by determining the amount the client received or the payment made by the Department on behalf of the client that exceeds the amount for which the client was eligible.

(2) When a filing group, ineligible student, or *authorized representative* (see OAR 461-115-0090) fails to report income, the Department calculates and determines the *overpayment* by assigning unreported income to the applicable budget month without averaging the unreported income, except a client's earned income reported quarterly from the Employment Department is considered received by the client in equal amounts during the months identified in the report.

(3) When using prospective budgeting (see OAR Division 461-150) and the actual income differs from the amount determined under OAR 461-150-0020(2), there may be a *client error overpayment* only when the filing group, ineligible student, or *authorized representative* withheld information, failed to report a change, or provided inaccurate information. In such a case, the Department uses the actual income to determine the amount of an *overpayment*.

(4) When a filing group, ineligible student, or *authorized representative* fails to report all earned income within the reporting time frame, the earned income deduction (see OAR 461-145-0930, 461-160-0160, 461-160-0190, 461-160-0430, 461-160-0550, and 461-160-0552) is applied as follows:

(a) In the ERDC, OSIP, OSIPM, QMB, and REFM programs, the Department allows the earned income deduction.

(b) In the MAA, MAF, REF, and TANF programs, the Department allows the earned income deduction when *good cause* (see section (5) of this rule) exists.

(c) In the SNAP program, no deduction is applied to earned income not timely reported.

(5) For the purposes of OAR 461-195-0501 to 461-195-0561, "good cause" means circumstances beyond the client's reasonable control that caused the client to be unable to report income timely and accurately.

(6) When the Department retains support:

(a) In the TANF program, the amount of support (other than cash medical support) the Department retains as a current reimbursement each month is added to other income to determine eligibility. When a client is not eligible

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for TANF program benefits, the *overpayment* is offset by the support the Department retains as a current reimbursement.

(b) In the medical programs, the amount of the cash medical support the Department retains each month is excluded income and not used to determine eligibility for medical program benefits. When a client has incurred a medical program *overpayment*, the *overpayment* is offset by the amount of the cash medical support the Department retains during each month of the *overpayment*.

(7) In the REF and TANF programs, when a client directly receives support used to determine eligibility or calculate benefits, the *overpayment* is:

(a) If still eligible for REF or TANF program benefits, the amount of support the client received directly; or

(b) If no longer eligible for REF or TANF program benefits, the amount of program benefits the client received.

(8) When an *overpayment* occurs due to the failure of an individual to reimburse the Department, when required by law to do so, for benefits or services (including cash medical support) provided for a need for which that individual is compensated by another source, the *overpayment* is limited to the lesser of the following:

(a) The amount of the payment from the Department;

(b) Cash medical support; or

(c) The amount by which the total of all payments exceeds the amount payable for such a need under the Department's rules.

(9) Benefits paid during a required *notice period* (see OAR 461-175-0050) are included in the calculation of the *overpayment* when:

(a) The filing group, ineligible student, or *authorized representative* failed to report a change within the reporting time frame under OAR 461-170-0011; and

(b) Sufficient time existed for the Department to adjust the benefits to prevent the *overpayment* if the filing group, ineligible student, or *authorized representative* had reported the change at any time within the reporting time frame.

(10) In the SNAP program:

(a) If the *benefit group* (see OAR 461-110-0750) was categorically eligible, there is no *overpayment* based on resources.

(b) For a *filing group* (see OAR 461-110-0370) found eligible for SNAP program benefits under OAR 461-135-0505(1)(a) to (c), and the actual income made the group ineligible for the related program, the group remains categorically eligible for SNAP program benefits as long as the eligibility requirement under OAR 461-135-0505(1)(d) is met. A *benefit group* of one or two individuals would be entitled to at least the minimum SNAP program benefit allotment under OAR 461-165-0060.

(c) For a *filing group* found eligible for SNAP program benefits only under OAR 461-135-0505(1)(d), and the actual income equals or exceeds 185 percent of the Federal Poverty Level, the *filing group* is no longer categorically eligible. The *overpayment* is the amount of SNAP program benefits incorrectly received.

(11) In the OSIP and OSIPM programs, when a client does not pay his or her share of the cost of services or the EPD program participant fee (see OAR 461-160-0610 and 461-160-0800) in the month in which it is due, an *overpayment* is calculated as follows:

(a) All payments made by the Department on behalf of the client during the month in question are totaled, including but not limited to any payment for:

(A) Capitation;

(B) Long term care services;

(C) Medical expenses for the month in question;

(D) Medicare buy-in (when not concurrently eligible for an MSP);

(E) Medicare Part D;

(F) Mileage reimbursement;

(G) Special needs under OAR 461-155-0500 to 461-155-0710; and

(H) Waivered services, including home delivered meals and non-medical transportation.

(b) Any partial liability payment made by a client receiving in-home waived services or participant fee paid by an EPD program client is subtracted from the total calculated under subsection (a) of this section. The remainder, if any, is the amount of the *overpayment*.

(12) When a client's liability is unreduced pending the outcome of a contested case hearing about that liability the *overpayment* is the difference between the liability amount determined in the final order and the amount, if any, the client has repaid.

(13) When a client was not eligible for benefits under his or her medical program during the period in question, but during the period in question was eligible for another medical program with a lesser benefit level, the *overpayment* is the amount of medical program benefit payments made on behalf of the client exceeding the amount for which the client was eligible.

(14) When an *overpayment* is caused by *administrative error* (see OAR 461-195-0501), any *overpayment* of GA, OSIP, REF, SFPSS, or TANF program benefits is not counted as income when determining eligibility for the EXT, GAM, MAA, MAF, OSIPM, REFM, and SAC programs.

(15) Credit against an *overpayment* is allowed as follows:

(a) In the GA, REF, and TANF programs, a credit is allowed for a client's payment for medical services made during the period covered by the

*overpayment*, in an amount not to exceed the Department fee schedule for the service, but credit is not allowed for an elective procedure unless the Department authorized the procedure prior to its completion.

(b) In the SNAP program, if the *overpayment* was caused by unreported earned income, verified child care costs are allowed as a credit to the extent the costs would have been deductible under OAR 461-160-0040 and 461-160-0430.

(c) In the SFPSS and TANF programs, if the *overpayment* is caused by reported earned income, a credit is allowed for the Post-TANF grant if the client meets eligibility under OAR 461-135-1250 and the client has received less than 12 months of Post-TANF program benefits.

(d) In all programs, for an underpayment of benefits.

(16) In the SNAP program, in compliance with the American Recovery and Reinvestment Act of 2009, effective April 1, 2009 through September 30, 2009, the amount between the normal Thrifty Food Plan (TFP) benefit amount under this section and the increased TFP benefit amount under OAR 461-155-0190 is not counted in the *overpayment* amount unless the filing group was ineligible for SNAP program benefits. [Table not included. See ED. NOTE]

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

Stat. Auth.: ORS 411.060, 411.660, 411.816, 412.049

Stats. Implemented: ORS 411.060, 411.620, 411.630, 411.635, 411.640, 411.660, 411.690, 411.816, 412.049

Hist.: 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 27-2001, f. 12-21-01, cert. ef. 1-1-02; AFS 22-

2002, f. 12-31-02, cert. ef. 1-1-03; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 4-2005, f. & cert.

ef. 4-1-05; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 20-2003, f. & cert. ef. 8-15-03; 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 8-2008,

f. & cert. ef. 4-1-08; SSP 6-2009(Temp), f. & cert. ef. 4-1-09 thru 9-28-09; SSP 13-2009, f.

& cert. ef. 7-1-09; SSP 28-2009, f. & cert. ef. 10-1-09; SSP 38-2009, f. 12-31-09, cert. ef. 1-

1-10

## 461-195-0541

### Liability for Overpayments

(1) In all programs except the BCCM, CEC, CEM, EXT, GA, GAM, MAA, MAF, OHP, OSIP, OSIPM, QMB, REFM, SAC and SNAP programs or a child care program, the following persons are liable for repayment of an *overpayment* (see OAR 461-195-0501):

(a) Each individual in the filing group or required to be in the filing group and the payee when the *overpayment* was incurred, except an individual who did not reside with and did not know he or she was included in the filing group.

(b) A *caretaker relative* (see OAR 461-001-0000) and his or her *spouse* (see OAR 461-001-0000) who were not part of, but resided with, the filing group when the *overpayment* was incurred.

(c) A *parent* (see OAR 461-001-0000) or *caretaker relative* of a child (see OAR 461-001-0000) in the benefit group (see OAR 461-110-0750) and the *spouse* of the *parent* or *caretaker relative* if the *parent*, *caretaker relative*, or *spouse* was a member of or resided with the filing group when the *overpayment* was incurred.

(d) An individual determined liable for an *overpayment* remains liable when the individual becomes a member of a new filing group.

(e) An *authorized representative* (see OAR 461-115-0090) when the *authorized representative* gave incorrect or incomplete information or withheld information resulting in the *overpayment*.

(2) In the BCCM, CEC, CEM, EXT, MAA, MAF, OHP, REFM, and SAC programs, the following persons are liable for repayment of an *overpayment*:

(a) Each individual in the filing group or required to be in the filing group and the payee when the *overpayment* was incurred, except an individual who:

(A) Was a child or *dependent child* (see OAR 461-001-0000) at the time of the *overpayment*; or

(B) Did not reside with and did not know he or she was included in the filing group.

(b) A *caretaker relative* and his or her *spouse* who were not part of, but resided with, the filing group when the *overpayment* was incurred.

(c) A *parent* or *caretaker relative* of a child in the filing group and the *spouse* of the *parent* or *caretaker relative* if the *parent*, *caretaker relative*, or *spouse* was a member of or resided with the filing group when the *overpayment* was incurred.

(d) An *authorized representative* when the *authorized representative* gave incorrect or incomplete information or withheld information that resulted in the *overpayment*.

(3) In a child care program:

(a) An *overpayment* caused by administrative error is collectible as follows:

(A) The provider is liable for a provider *overpayment* made on behalf of a client eligible for child care payments.

(B) The client is liable for an *overpayment* if the client was not eligible for the payment.

(b) A client is liable for a client *overpayment*, and a provider is liable for an *overpayment* caused by the provider. The client and provider are jointly and severally liable for an *overpayment* caused by both. In the case of an alleged provider *overpayment*, a provider's failure to provide contemporane-



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ous records of care provided creates a rebuttable presumption that the care was not provided.

(c) An adult who cosigned an application with a minor provider applicant is liable for an *overpayment* incurred by the minor provider.

(4) In the GA, GAM, OSIP, OSIPM, and QMB programs, the following persons are liable for repayment of an *overpayment*:

(a) Each individual in the filing group or required to be in the filing group and the payee when the *overpayment* was incurred, except an individual who:

(A) Was a child or *dependent child* at the time of the *overpayment*; or  
(B) Did not reside with and did not know he or she was included in the filing group.

(b) A *caretaker relative* and his or her *spouse* who were not part of, but resided with, the filing group when the *overpayment* was incurred.

(c) A *parent* or *caretaker relative* of a child in the filing group and the *spouse* of the *parent* or *caretaker relative* if the *parent*, *caretaker relative*, or *spouse* was a member of or resided with the filing group when the *overpayment* was incurred.

(d) An *authorized representative* when the *authorized representative* knowingly gave incorrect or incomplete information or intentionally withheld information that resulted in the *overpayment*.

(5) In the SNAP program, the following persons are liable for repayment of an *overpayment* or a claim that results from the trading of a controlled substance (see OAR 461-195-0501(6)):

(a) The *primary person* (see OAR 461-001-0015) of any age, an ineligible student in the household, and all adults who were members of or required to be in the *filing group* (see OAR 461-110-0370) when excess benefits were issued.

(b) A sponsor of a non-citizen household member if the sponsor is at fault.

(c) A drug or alcohol treatment center or residential care facility that acted as the *authorized representative* of the client.

(6) In all programs, both a non-citizen and the sponsor of the non-citizen are liable for an *overpayment* incurred if the *overpayment* results from the failure of the sponsor to provide correct information (see OAR 461-145-0820 to 461-145-0840). If the sponsor had good cause (see OAR 461-195-0521(5)) for withholding the information, the sponsor is not liable for the *overpayment*.

Stat. Auth.: ORS 411.060, 411.816, 412.049  
Stats. Implemented: ORS 411.060, 411.630, 411.635, 411.640, 411.650, 411.690, 411.816, 412.049  
Hist.: AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; 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 38-2009, f. 12-31-09, cert. ef. 1-1-10

## 461-195-0551

### Methods of Recovering Overpayments

(1) In addition to judicial process, the Department may recover an *overpayment* (see OAR 461-195-0501) through an agreed repayment plan, reduction in benefits, voluntary payment from the client or *authorized representative* (see OAR 461-115-0090), and offset of the debt.

(2) The Department reduces current benefits to collect an *overpayment* only as follows:

(a) In the GA and OSIP programs, the Department may recover an *overpayment* by reducing cash benefit payments by the lesser of the following:

(A) The total *overpayment* amount;  
(B) The total benefit amount; or  
(C) Ten percent of the client's total benefit requirement at the standard of need.

(b) In the REF, SFPSS, and TANF programs, the Department:  
(A) Allows only half of the 50 percent earned income deduction described in OAR 461-160-0160.

(B) Reduces the benefit payment by 10 percent of the total benefit requirement of the *benefit group* (see OAR 461-110-0750) at the adjusted income payment standard. The reduced benefit payment after such reduction, when combined with all other income may not be less than 90 percent of the benefit group's adjusted income payment standard for a family with no income. In the TANF program, the cooperation incentive (see OAR 461-135-0210) is not included in the calculations prescribed by this paragraph.

(c) In the SNAP program, unless the Department and the client agree to a repayment plan and the *filing group* (see OAR 461-110-0370) meets the terms of the plan, the Department collects an *overpayment* from a liable member of a *filing group* participating in the SNAP program by reducing the SNAP program benefit allotment of the *benefit group* each month as follows:

(A) For an *overpayment* caused by *client error* (see OAR 461-195-0501) or *administrative error* (see OAR 461-195-0501), 10 percent of the group's monthly allotment or \$10 a month, whichever is greater.

(B) For an *overpayment* caused by an IPV (see OAR 461-195-0601), 20 percent of the group's monthly entitlement or \$20 a month, whichever is greater.

(3) In the child care programs:  
(a) The Department may not recover an *overpayment* through reduction of a client's child care program benefits.

(b) When a child care program provider is liable for a *child care overpayment* (see OAR 461-195-0501) the Department may recover the *child care overpayment* by reducing up to 100 percent any future child care payment for which the provider bills the Department.

(4) The Department may recover an *overpayment* by offset as follows:

(a) Using the collection services provided by the Department of Revenue and any other state or federal agency to collect a liquidated claim established by:

(A) A court judgment.  
(B) A confession of judgment.  
(C) A document signed or acknowledged by the debtor that acknowledges the debt, such as:

(i) The Department-designated form to acknowledge an IPV.  
(ii) A plea bargain agreement.  
(iii) Any other document acknowledging the *overpayment*.

(D) A written notification of *overpayment* from the Department to the debtor, advising the debtor of the basis and amount of the *overpayment* and the right to request a hearing, if the debtor has exhausted his or her rights of administrative appeal.

(E) A written communication from the debtor acknowledging the debt.

(b) The amount of any retroactive payment or restoration of lost benefits otherwise payable to the client, when the retroactive payment corrects a prior underpayment of benefits in the program in which the *overpayment* occurred.

(c) Through use of a warrant authorized by ORS 411.703. Upon issuance of the warrant, the Department may issue a notice of garnishment in accordance with ORS 18.854.

(d) In the SNAP program, by offsetting the full amount of the *overpayment* against restored benefits owed to the *benefit group* or to another *benefit group* that a liable member of the overpaid group has joined.

(5) A confession of judgment is used in the case of a *client error* (see OAR 461-195-0501) *overpayment*. The Department may not file a confession of judgment while the client receives public assistance and may file one only if the client has refused to agree to or has defaulted on a repayment plan.

(6) The Department may not take collection action against a filing group while a member of the filing group is working under a JOBS Plus agreement.

Stat. Auth.: ORS 411.060, 411.660, 411.816, 412.049  
Stats. Implemented: ORS 18.854, 18.900, 411.630, 411.635, 411.660, 411.703, 411.816, 412.049  
Hist.: AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 25-2001, f. & cert. ef. 11-1-01 thru 12-31-01; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; SSP 8-2004, f. & cert. ef. 4-1-04; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 14-2007, f. 12-31-07, cert. ef. 1-1-08; SSP 15-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 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

## 461-195-0561

### Compromise of an Overpayment Claim

This rule specifies when and how the Department may compromise an *overpayment* (see OAR 461-195-0501) claim.

(1) The Department may consider a request to compromise an *overpayment* claim only if the estimated administration and collection costs necessary to collect the account in full likely exceed the current balance of the *overpayment*.

(2) The following limitations apply to the compromise of an *overpayment* claim:

(a) The authority of the Department to compromise may be limited by federal or state law.

(b) The Department may compromise a claim only once it is a *liquidated claim* (see OAR 461-195-0551).

(c) The Department may compromise a claim only if the requester has made a good faith effort to repay the *overpayment*.

(d) The Department may not compromise:

(A) A fraud *overpayment* claim;  
(B) Any *overpayment* claim, unless 36 months have passed since the requester initially was notified of the *overpayment*;

(C) An *overpayment* claim if the debtor has the ability to repay the *overpayment* in full within 36 months of the request date.

(D) An *overpayment* claim for less than 75 percent of the total amount of the claim.

(E) An *overpayment* claim if the debtor is a member, currently or in the previous 12 months, of a filing group that received benefits under the program in which the *overpayment* occurred.

(F) A child care provider *overpayment* claim if the provider, currently or in the previous 12 months, received a direct provider payment for child care under division 165 of this chapter of rules.

(3) The Department may allow a compromised claim to be paid in installments over a period not to exceed 90 days.

(4) During the 12 months following the date of the compromise agreement, the Department reserves the right to collect the original unmitigated claim through benefit reduction under OAR 461-195-0551.

Stat. Authority: ORS 411.060, 411.816, 412.049, 414.042  
Stats. Implemented: ORS 411.060, 411.635, 411.816, 412.049, 414.042  
Hist.: AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; 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

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**Rule Caption:** Changing OARs affecting public assistance, medical assistance or food stamp clients.

**Adm. Order No.:** SSP 39-2009(Temp)

**Filed with Sec. of State:** 12-31-2009

**Certified to be Effective:** 1-1-10 thru 6-30-10

**Notice Publication Date:**

**Rules Adopted:** 461-135-1101

**Rules Amended:** 461-101-0010, 461-110-0210, 461-110-0400, 461-110-0530, 461-110-0630, 461-115-0030, 461-115-0050, 461-115-0230, 461-115-0430, 461-115-0705, 461-120-0010, 461-120-0125, 461-120-0210, 461-135-1100, 461-135-1149, 461-145-0130, 461-145-0143, 461-155-0270, 461-160-0015, 461-165-0030, 461-170-0010, 461-170-0011, 461-180-0090

**Subject:** The Department is making these rule changes to implement the recent Healthy Kids legislation (2009 Oregon Laws Chapter 867, House Bill 2116). The legislation requires the Department to put new programs into place effective January 1, 2010 to ensure children in Oregon have affordable health insurance coverage available. Effective January 1, 2010 the Department is implementing the Healthy KidsConnect (HKC) program to expand health insurance coverage for children. Eligibility will be determined by the Department, and enrollment for HKC will be through the Office of Private Health Partnerships (OPHP).

OAR 461-101-0010, about the program acronyms the Department uses in the chapter 461 rules is being amended to include the acronym for Healthy KidsConnect (HKC) and to revise the acronym for Continuous Eligibility for OHP-CHP pregnant women (CEC).

OAR 461-110-0210 about how the Department determines the composition of a household group (the individuals who live together with or without benefit of a dwelling) is being amended to state the circumstances under which an individual absent from a Healthy KidsConnect (HKC) program household group for 30 days still is considered to be in the household group.

OAR 461-110-0400 about how the Department determines the composition of a filing group (the individuals whose circumstances are considered in the eligibility determination process) is being amended to state which members of the household group (the individuals who live together with or without benefit of a dwelling) are included in a filing group in the Healthy KidsConnect (HKC) program.

OAR 461-110-0530 about how the Department determines the composition of a financial group (the members of the filing group whose income and resources count in determining eligibility and benefits; the filing group being the individuals whose circumstances are considered in the eligibility determination process) is being amended to state which filing group members are included in a financial group in the Healthy KidsConnect (HKC) program.

OAR 461-110-0630 about how the Department determines the composition of a need group (the individuals whose basic and special needs are used in determining eligibility and benefit level) is being amended to state who is included in a need group in the Healthy KidsConnect (HKC) program.

OAR 461-115-0030 about how the Department determines the date of request used in the eligibility process is being amended to state how the date of request is determined in the Healthy KidsConnect (HKC) program.

OAR 461-115-0050 about when a client must file an application for benefits from the Department programs is being amended to revise the policy concerning when no new application is required to add an individual to a benefit group (the individuals who receive benefits) in the Department's medical assistance programs.

OAR 461-115-0230 about the circumstances that lead the Department to schedule an interview with a client during the process of determining the client's eligibility or for other reasons related to a program is being amended to indicate policies that do not apply in the Healthy KidsConnect (HKC) program.

OAR 461-115-0430 about when the Department periodically re-determines a client's eligibility for benefits is being amended to state the Department re-determines eligibility every 12 months for clients in the Healthy KidsConnect (HKC) program.

OAR 461-115-0705 about the required verifications for eligibility in the Department's medical assistance programs is being amended to state what verifications are required from a client in the Health KidsConnect (HKC) program. This rule also is being amended to remove language exempting Oregon Health Plan - Persons Under 19 (OHP-CHP) program clients from the U.S. citizenship verification requirements and to state that a client must verify his or her alien status at each Oregon Health Plan (OHP) program certification. In addition, this rule is being amended to state how a client's earned income is verified during a recertification in the OHP program.

OAR 461-120-0010 about the Oregon residency requirements for an individual to be eligible to receive benefits is being amended to state the residency requirements for a client in the Healthy KidsConnect (HKC) program.

OAR 461-120-0125 about how the Department determines a client's alien status in all of the Department's programs except Refugee Assistance (REF) and Refugee Assistance Medical (REFM) programs is being amended to state when a qualified non-citizen in the Healthy KidsConnect (HKC) program meets the alien status requirements and to state when a non-citizen in the Department's medical assistance programs meets the alien status requirements. This rule also is being amended to comply with a change in federal guidelines by removing the eight-month limitation on eligibility for Afghan and Iraqi aliens granted Special Immigration Status (SIV) under section 101(a)(27) of the Immigration and Nationality Act and to state that these aliens are qualified non-citizens in all of the Department's programs except the REF and REFM programs. This rule also is being amended to remove references to the Oregon Supplemental Income Program (OSIP) as regular payments under the OSIP program are being discontinued effective January 1, 2010 in response to HB 3065 (2009 Or. Laws ch. 849).

OAR 461-120-0210 about when a client is required to provide or apply for a social security number to be eligible for Department programs is being amended to state when a Healthy KidsConnect (HKC) program client is not required to provide or apply for a social security number.

OAR 461-135-1100 about the specific eligibility requirements in the Oregon Health Plan (OHP) program is being amended to state that the definition of private major medical health insurance applies to OAR 461-135-1101 (a new rule about the specific eligibility requirements in the Healthy KidsConnect program for ensuring children have access to affordable health insurance). This rule also is being amended to restate when an Oregon Health Plan Persons Under 19 (OHP-CHP) program client may have the two-month waiting period waived.

OAR 461-135-1101 is being adopted to state the specific eligibility requirements for the Healthy KidsConnect (HKC) program including: how income is treated, how budgeting is determined, the countable income standard, the citizenship and alien status requirements, that an eligible child are referred to the Office of Private Health Partnerships (OPHP), that OPHP enrolls the eligible child in the appropriate category of the HKC program, that the HKC program eligibility period is 12 months, and under what circumstances a child becomes ineligible for the HKC program.

OAR 461-135-1149 about the specific eligibility requirements in the Continuous Eligibility for OHP-CHP pregnant women (CEC) and Continuous Eligibility for Medicaid (CEM) programs, and how continuous eligibility applies to non-Citizen/Alien-Waived Emergent Medical program children is being amended to state that to be eligible for the CEC or CEM program a non-citizen client must meet the alien status requirements of OAR 461-120-0125(4).

OAR 416-145-0143 about how the Department treats federal economic recovery payments when determining a client's eligibility for Department program benefits is being amended to state that \$33 per

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month are excluded from earned income for clients in the Healthy KidsConnect (HKC) program.

OAR 461-165-0030 about when a client is prohibited from receiving duplicate or concurrent payments from more than one of the Department's programs is being amended to state that a client may not receive benefits from the Continuous Eligibility for OHP-CHP pregnant women (CEC) and Continuous Eligibility for Medicaid (CEM) programs while receiving a subsidy through the Family Health Insurance Assistance Program (FHIAP) established by ORS 735.720 to 735.740. This rule also is being amended to state that a client may not receive benefits from the CEC, CEM, Extended Medical (EXT), Medical Assistance Assumed (MAA), Medical Assistance to Families (MAF), Oregon Health Plan (OHP), Oregon Supplemental Income Program Medical (OSIPM), Refugee Assistance Medical (REFM), or Medical Coverage for Children in Substitute or Adoptive Care (SAC) programs while receiving health insurance coverage subsidized through the Office of Private Health Partnerships (OPHP) in accordance with 2009 Oregon Laws Chapter 867.

OAR 461-170-0011 about the changes a client must report is being amended to state the changes a client in the Healthy KidsConnect (HKC) program must report within ten days of the change occurring.

OAR 461-180-0090 about the effective date for starting medical benefits for an eligible client is being amended to state that in the Healthy KidsConnect (HKC) program, the Office of Private Health Partnerships (OPHP) determines the effective date for enrolling an eligible child in one of the HKC program categories of coverage.

OAR 461-145-0130 about how the Department treats a client's earned income when making eligibility and benefit determinations is being amended in response to a recent change in federal guidelines to exclude the earned income of temporary census workers from consideration when the Department determines eligibility and benefit level for a client in the Supplemental Nutrition Assistance Program (SNAP).

OAR 461-155-0270 about the room and board standard for Oregon Supplemental Income Program Medical (OSIPM) program clients living in a waived community based care setting is being amended to state the standard for a client residing in a community based care facility and restate that the client must pay room and board. This rule also is being amended to remove references to the Oregon Supplemental Income Program (OSIP) and the personal needs standard as use of the personal needs standard is being discontinued effective January 1, 2010 in response to House Bill 3065 (2009 Or. Laws ch. 849).

OAR 461-160-0015 about resource limits in eligibility determinations for the Department's programs is being amended in response to federal legislation (The Medicare Improvements for Patients and Providers Act of 2008 (122 Stat. 2503)) to restate the resource limits for clients of the Qualified Medicare Beneficiaries (QMB) program and to state that the resource limit is amended in January of each year based on the low income subsidy for Medicare Part D as published by the Health Resources and Services Administration of the U.S. Department of Health and Human Services. This rule also is being amended to implement the recent Healthy Kids legislation (2009 Oregon Laws Chapter 867, House Bill 2116). The legislation requires the Department to put new programs into place effective January 1, 2010 to ensure children in Oregon have affordable health insurance coverage available. Effective January 1, 2010 the Department is implementing the Healthy KidsConnect (HKC) program to expand health insurance coverage for children and this rule is being amended to state that in the HKC program there is no resource limit.

OAR 461-170-0010 about a Department client's responsibility to report a change in circumstances to the Department is being amended to indicate that a change is considered reported when reported by a client, authorized representative, or ineligible student in the household.

**Rules Coordinator:** Annette Tesch—(503) 945-6067

## 461-101-0010

### Program Acronyms and Overview

(1) Acronyms are frequently used when referring to a program. There is an acronym for each umbrella program (for instance, OSIP) and acronyms for each subprogram (for instance, OSIP-AB, OSIP-AD, and OSIP-OAA).

(2) When no program acronym appears in a rule in Chapter 461 of these rules, the rule with no program acronym applies to all programs listed in this rule. If a rule does not apply to all programs, the rule uses program acronyms to identify the programs to which the rule applies.

(3) Wherever an umbrella acronym appears, that means the rule covers all the subprograms under that code (for instance, OSIP means OSIP-AB, OSIP-AD, and OSIP-OAA).

(4) ADC; Aid to Dependent Children. Financial aid to low-income families when children are deprived of parental support because of continued absence, death, incapacity, or unemployment. When used alone, ADC refers to all ADC programs. Use of the acronym, ADC, which stands for Aid to Dependent Children, and use of the phrase, Aid to Dependent Children, refer to the state's Temporary Assistance for Needy Families Program, and its acronym, TANF. The following codes are used for ADC subprograms:

(a) ADC-BAS; Aid to Dependent Children — Basic (includes eligibility based on continued absence, death, incapacity, or unemployment). ADC with deprivation based on unemployment is also denoted by ADC-BAS/UN.

(b) EA; Aid to Dependent Children — Emergency Assistance. Emergency cash to families without the resources to meet emergent needs.

(5) ADCM; Aid to Dependent Children Medical. Medical aid to low-income families when children are deprived of parental support, as for ADC. Use of the acronym ADCM, which stands for Aid to Dependent Children Medical, and use of the phrase Aid to Dependent Children Medical refer to EXT, MAA, MAF, and SAC programs. When used alone, ADCM refers to all ADC-related medical programs. The following codes are used for ADCM subprograms:

(a) ADCM-BAS; Aid to Dependent Children Medical — Basic.

(b) ADCM-EXT; Aid to Dependent Children Medical — Extended. ADCM-EXT provides extended medical benefits to families after their ADC benefits end.

(c) ADCM-SAC; Aid to Dependent Children Medical — Substitute or Adoptive Care. ADCM-SAC gives medical coverage to children in substitute or adoptive care.

(6) The Assessment Program (see the Pre-TANF program in this rule).

(7) BCCM; Breast and Cervical Cancer Medical program.

(8) CAWEM; Citizen/Alien-Waived Emergent Medical. Medicaid coverage of emergent medical needs for clients who are not eligible for other medical programs solely because they do not meet citizenship and alien status requirements.

(9) CEC; Continuous Eligibility for OHP-CHP pregnant women. Title XXI medical assistance for a pregnant non-CAWEM child found eligible for the OHP-CHP program who, for a reason other than moving out of state or becoming a recipient of private major medical health insurance, otherwise would lose her eligibility. The pregnant individual is deemed eligible for OHP-CHP through the last day of the month in which the pregnancy ends.

(10) CEM; Continuous Eligibility for Medicaid. Title XIX medical assistance for a non-CAWEM child found eligible for Medicaid who loses his or her eligibility for a reason other than turning 19 years of age or moving out of state. The child is deemed eligible for Medicaid for the remainder of the 12 month eligibility period.

(11) DSNAP; Disaster Supplemental Nutrition Assistance Program. Following a presidential declaration of a major disaster in Oregon, DSNAP provides emergency DSNAP program benefits to victims. OAR 461-135-0491 to 461-135-0497 cover DSNAP eligibility and benefits.

(12) ERDC or ERDC-BAS; Employment Related Day Care-Basic. Helps low-income working families pay the cost of child care.

(13) EXT; Extended Medical Assistance. The Extended Medical Assistance program provides medical assistance for a period of time after a family loses its eligibility for the MAA, MAF, or Pre-TANF program due to an increase in their child support or earned income.

(14) FS; Food Stamps. Helps low-income households maintain proper nutrition by giving them the means to purchase food. Any reference to Food Stamps or FS also includes the Supplemental Nutrition Assistance Program or SNAP.

(15) GA; General Assistance. Cash assistance to low-income individuals with disabilities who do not have dependent children.

(16) GAM; General Assistance Medical. Medical assistance to clients who are eligible for the GA program but have not been found eligible for OSIPM benefits.

(17) HKC; Healthy KidsConnect. A program administered by the Office of Private Health Partnerships (OPHP) providing access to health care for children not eligible for any of the Department's other medical assistance programs. The Department determines eligibility and OPHP manages enrollment.

(18) HSP; Housing Stabilization Program. A program that helps low-income families obtain stable housing. The program is operated through the Housing and Community Services Department through community-based,

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service-provider agencies. The Department's rules for the program (OAR 461-135-1305 to 461-135-1335) were repealed July 1, 2001.

(19) JOBS; Job Opportunity and Basic Skills. An employment program for REF, REFM, and TANF clients. JOBS helps these clients attain self-sufficiency through training and employment. The program is part of Welfare Reform.

(20) JOBS Plus. Provides subsidized jobs rather than SNAP or TANF benefits. For TANF clients, JOBS Plus is a component of the JOBS Program; for FS clients and noncustodial parents of children receiving TANF, it is a separate employment program. Eligibility for TANF clients, SNAP clients, and noncustodial parents of children receiving TANF is determined by the Department. Eligibility for UI recipients is determined by the Oregon State Employment Department. When used alone, JOBS Plus includes only clients whose JOBS Plus program participation is through the Department of Human Services. JOBS Plus administered through the Oregon State Employment Department is known in chapter 461 of the Oregon Administrative Rules as Oregon Employment Department UI JOBS Plus. The following acronyms are used for specific categories:

- (a) ADC-PLS; Clients eligible for JOBS Plus based on TANF.
- (b) SNAP-PLS; Clients eligible for JOBS Plus based on SNAP.
- (c) NCP-PLS; Noncustodial parents of children receiving TANF.

(21) LIS; Low-Income Subsidy. The Low-Income Subsidy program is a federal assistance program for Medicare clients who are eligible for extra help meeting their Medicare Part D prescription drug costs.

(22) MAA; Medical Assistance Assumed. The Medical Assistance Assumed program provides medical assistance to people who are eligible for the Pre-TANF program or ongoing TANF benefits.

(23) MAF; Medical Assistance to Families. The Medical Assistance to Families program provides medical assistance to people who are ineligible for MAA but are eligible for Medicaid using ADC program standards and methodologies that were in effect as of July 16, 1996.

(24) OFSET. The Oregon Food Stamp Employment Transition Program, which helps SNAP program benefit recipients find employment. This program is mandatory for some SNAP program benefit recipients.

(25) OHP; Oregon Health Plan. The Oregon Health Plan Program provides medical assistance to many low-income individuals and families. The program includes five categories of people who may qualify for benefits. The acronyms for these categories are:

(a) OHP-OPU; Adults. OHP coverage for adults who qualify under the 100 percent income standard. A person eligible under OHP-OPU is referred to as a health plan new/noncategorical (HPN) client.

(b) OHP-OPC; Children. OHP coverage for children who qualify under the 100 percent income standard.

(c) OHP-OP6; Children Under 6. OHP coverage for children under age 6 who qualify under the 133 percent income standard.

(d) OHP-OPP; Pregnant Females and their newborn children. OHP coverage for pregnant females who qualify under the 185 percent income standard and their newborn children.

(e) OHP-CHP; Persons Under 19. OHP coverage for persons under age 19 who qualify under the 185 percent income standard for medical assistance authorized by the Children's Health Insurance Program (CHIP) provision of the 1997 Balanced Budget Act.

(26) OSIP; Oregon Supplemental Income Program. Cash supplements and special need payments to persons who are blind, disabled, or 65 years of age or older. When used alone, OSIP refers to all OSIP programs. The following acronyms are used for OSIP subprograms:

(a) OSIP-AB; Oregon Supplemental Income Program — Aid to the Blind.

(b) OSIP-AD; Oregon Supplemental Income Program — Aid to the Disabled.

(c) OSIP-EPD; Oregon Supplemental Income Program — Employed Persons with Disabilities program. This program provides Medicaid coverage for employed persons with disabilities with adjusted income less than 250 percent of the Federal Poverty Level.

(d) OSIP-OAA; Oregon Supplemental Income Program — Old Age Assistance.

(27) OSIPM; Oregon Supplemental Income Program Medical. Medical coverage for elderly and disabled individuals. When used alone, OSIPM refers to all OSIP-related medical programs. The following codes are used for OSIPM subprograms:

(a) OSIPM-AB; Oregon Supplemental Income Program Medical — Aid to the Blind.

(b) OSIPM-AD; Oregon Supplemental Income Program Medical — Aid to the Disabled.

(c) OSIPM-EPD; Oregon Supplemental Income Program Medical — Employed Persons with Disabilities program. This program provides Medicaid coverage for employed persons with disabilities with adjusted income less than 250 percent of the Federal Poverty Level.

(d) OSIPM-OAA; Oregon Supplemental Income Program Medical — Old Age Assistance.

(e) OSIPM-IC; Oregon Supplemental Income Program Medical — Independent Choices

(28) The Post-TANF program provides a monthly transitional payment to employed clients who are no longer eligible for the Pre-TANF or TANF programs due to earnings, and meet the other eligibility requirements.

(29) The Pre-TANF program is an up-front assessment and resource-search program for TANF applicant families. The intent of the program is to assess the individual's employment potential; determine any barriers to employment or family stability; develop an individualized case plan that promotes family stability and financial independence; help individuals find employment or other alternatives; and provide basic living expenses immediately to families in need.

(30) QMB; Qualified Medicare Beneficiaries. Programs providing payment of Medicare premiums and one program also providing additional medical coverage for Medicare recipients. Each of these programs also is considered to be a Medicare Savings Program (MSP). When used alone in a rule, QMB refers to all MSP. The following codes are used for QMB subprograms:

(a) QMB-BAS; Qualified Medicare Beneficiaries — Basic. The basic QMB program.

(b) QMB-DW; Qualified Medicare Beneficiaries — Disabled Worker. Payment of the Medicare Part A premium for people under age 65 who have lost eligibility for Social Security disability benefits because they have become substantially gainfully employed.

(c) QMB-SMB; Qualified Medicare Beneficiaries — Specified Limited Medicare Beneficiary. Payment of the Medicare Part B premium only. There are no medical benefits available through QMB-SMB.

(d) QMB-SMF; Qualified Medicare Beneficiaries — Qualified Individuals. Payment of the Medicare Part B premium only. There are no medical benefits available through QMB-SMF. This program has a 100-percent federal match, but also has an allocation that, if reached, results in the closure of the program.

(31) REF; Refugee Assistance. Cash assistance to low-income refugee singles or married couples without children.

(32) REFM or REFM-BAS; Refugee Assistance Medical — Basic. Medical coverage for low-income refugees.

(33) The Repatriate Program helps Americans resettle in the United States if they have left a foreign land because of an emergency situation.

(34) SAC; Medical Coverage for Children in Substitute or Adoptive Care.

(35) Senior Prescription Drug Assistance Program; provides that people 65 years of age or older can purchase prescription drugs at the Medicaid price.

(36) SFDNP; Senior Farm Direct Nutrition Program. Food vouchers for low income seniors. Funded by a grant from the United States Department of Agriculture.

(37) SFPSS; State Family Pre-SSI/SSDI Program. A voluntary program providing cash assistance and case management services to families when at least one TANF eligible adult in the household has an impairment (see OAR 461-125-0260) and is or will be applying for Supplemental Security Income (SSI) or Social Security Disability Insurance (SSDI).

(38) SNAP; Supplemental Nutrition Assistance Program. Helps low-income households maintain proper nutrition by giving them the means to purchase food. SNAP used to be known as FS or Food Stamps, any reference to SNAP also includes FS and Food Stamps.

(39) TA-DVS; Temporary Assistance for Domestic Violence Survivors. Addresses the needs of clients threatened by domestic violence.

(40) TANF; Temporary Assistance for Needy Families. Cash assistance for families when children in those families are deprived of parental support because of continued absence, death, incapacity, or unemployment. Cash assistance used to be known as ADC.

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Stats. Implemented: ORS 411.060, 411.816, 412.014, 412.049, 414.042, 414.342, 2009 OL Ch. 867

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 16-1990, f. 6-29-90, cert. ef. 7-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 23-1990, f. 9-28-90, cert. ef. 10-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 35-1992, f. 12-31-92, cert. ef. 1-1-93; AFS 16-1993, f. & cert. ef. 9-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; 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 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 17-1996, f. 4-29-96, cert. ef. 5-1-96; 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 9-1997, f. & cert. ef. 7-1-97; AFS 4-1998, f. 2-25-98, cert. ef. 3-1-98; AFS 10-1998, f. 6-29-98, cert. ef. 7-1-98; AFS 17-1998, f. & cert. ef. 10-1-98; AFS 25-1998, f. 12-18-98, cert. ef. 1-1-99; 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 9-1999, f. & cert. ef. 7-1-99; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; AFS 11-2001, f. 6-29-01, cert. ef. 7-1-01; AFS 17-2001(Temp), f. 3-31-01, cert. ef. 9-1-01 thru 9-30-01; 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 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 7-2003, f. & cert. ef. 4-1-03; 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 17-2004, f. & cert. ef. 7-1-04; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 7-2005, f. & cert. ef. 7-1-05; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06; SSP 8-2006, f. & cert. ef. 6-1-06; SSP 7-2007, f. 6-29-07, cert. ef. 7-1-07; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08; SSP 23-2008, f. & cert. ef. 10-1-08; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09; 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 39-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10

# ADMINISTRATIVE RULES

## 461-110-0210

### Household Group

(1) The household group consists of the individuals who live together with or without benefit of a dwelling. For homeless people, the household group consists of the individuals who consider themselves living together.

(2) A separate household group is established for all the individuals who live in a dwelling. A separate dwelling is not recognized for the purpose of determining the members of a household group unless the living space has—separate from other dwellings—an access to the outside that does not pass through another dwelling, a sleeping area, a bathroom, and a kitchen facility.

(3) For all programs except the SNAP program, a separate household group is established for individuals who live in the same dwelling as another household group, if all the following are true:

(a) There is a landlord-tenant relationship between the two groups in which the tenant is billed by the landlord at *fair market value* (see OAR 461-001-0000) for housing.

(b) The tenant lives independently from the landlord.

(c) The tenant:

(A) Has and uses sleeping, bathroom, and kitchen facilities separate from the landlord; or

(B) Shares bathroom or kitchen facilities with the landlord, but the facilities are in a commercial establishment that provides room or board or both for compensation at *fair market value*.

(4) Individuals who live with more than one household group during a calendar month are members of the household group in which they spend more than half of their time, except as follows:

(a) In the ERDC program, if a *child* (see OAR 461-001-0000) lives with different caretakers during the month, the child is considered a member of both household groups.

(b) In the MAA, MAF, and TANF programs:

(A) If a *parent* (see OAR 461-001-0000) sleeps at least 30 percent of the time during the calendar month in the home of the *dependent child* (see OAR 461-001-0000), the parent is in the same household group as the *dependent child*.

(B) A *dependent child* is included in the group with the caretaker relative (see OAR 461-001-0000), who usually has the major responsibility for care and control of the *dependent child*, if the *dependent child* lives with two household groups in the same calendar month for at least one of the following reasons:

(i) Education.

(ii) The usual *caretaker relative* is gone from the household for part of the month because of illness.

(iii) A family emergency.

(c) In the SNAP program:

(A) The individual is a member of the household group that provides the individual more than half of his or her 21 weekly meals. If the individual is a *child*, the *child* is a member of the household group credited with providing the child more than half of his or her 21 weekly meals. A household group is credited with providing breakfast and lunch for each day the child departs that group's home for school, even if the *child* eats no breakfast or lunch at that home.

(B) During the month in which a resident of a *domestic violence shelter* (see OAR 461-001-0000) enters the shelter, the resident may be included both in the household he or she left and in a household group in the shelter.

(5) In the OSIPM program, individuals receiving waived care or nursing facility care are each an individual household group.

(6) In the QMB program, the household group consists of the client and the client's *spouse* (see OAR 461-001-0000), even if the spouse does not meet all nonfinancial eligibility requirements.

(7) The individuals in the household group who apply for benefits are called applicants. The household group and applicants form the basis for determining who is in the remaining eligibility groups.

(8) Individuals absent from the household for 30 days or more are no longer part of the household, except for the following:

(a) In all programs except the SNAP program, individuals in a general hospital for 30 days or more remain in the household group unless they go into long-term care. In the SNAP program, these individuals are no longer in the household group.

(b) In the CEC, CEM, ERDC, EXT, HKC, MAA, MAF, OHP, REF, REFM, SAC, and TANF programs:

(A) A *caretaker relative* who is absent for up to 90 days while in a residential alcohol or drug treatment facility is in the household group.

(B) A *child* who is absent for 30 days or more is in the household group if the *child* is:

(i) Absent for illness (unless the *child* is in a long-term care Title XIX facility), social service, or educational reasons;

(ii) In foster care, but expected to return to the household within the next 30 days; or

(iii) For OHP only, in a residential alcohol or drug treatment facility. If the household of the child is ineligible because of income, the *child* is a separate household.

(c) In the ERDC, HKC, and OHP programs, an individual who is absent because of education, training, or employment, including long-haul truck driving, fishing, and active duty in the U.S. armed forces.

(d) In the MAA, MAF, REF, REFM, and TANF programs, a *parent* who is absent for 30 days or more is in the household group if:

(A) The *parent* is absent because of education, training or employment—including absence while working or looking for work outside the area of their residence, such as long-haul truck driving, fishing and active duty in the U.S. armed forces; and

(B) The other *parent* remains in the home.

(9) In the OSIP-EPD and OSIPM-EPD programs, the household group consists only of the individual applying for or receiving benefits.

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## 461-110-0400

### Filing Group; HKC, OHP

In the HKC and OHP programs, filing groups are formed from the household group as follows:

(1) A person constitutes a filing group if not required by this rule to be in a filing group with another person.

(2) The following people must be in the same filing group, even if they are not applicants or do not meet all nonfinancial eligibility requirements:

(a) People married to each other and each child of either spouse.

(b) With respect to a child or unborn, the parents of the child or unborn and the children of each parent.

(c) Siblings under 19 years of age.

(3) A child whose caretaker relative is not the child's parent may constitute a separate filing group or may be in a group with the caretaker relative, at the option of the caretaker relative.

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Hist.: AFS 2-1994, f. & cert. ef. 2-1-94; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 5-2002, f. & cert. ef. 4-1-02; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 39-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10

## 461-110-0530

### Financial Group

(1) Except as provided in section (5) of this rule, "financial group" means the filing group members whose income and resources count in determining *eligibility* (see OAR 461-001-0000) and benefits.

(2) In the EXT, MAA, MAF, REF, REFM, and SAC programs, the financial group consists of each individual in the filing group, except the following:

(a) A *caretaker relative* (see OAR 461-001-0000) other than a *parent* (see OAR 461-001-0000) who chooses not to be included in the *need group* (see OAR 461-110-0630); and

(b) An individual who receives SSI benefits.

(3) In the HKC and OHP programs, the financial group consists of each individual in the filing group (including those receiving SSI benefits), except a *caretaker relative* (other than a *parent*) who chooses not to be included in the *need group*.

(4) In the OSIP program:

(a) When an individual lives in a *standard living arrangement* (see OAR 461-001-0000), each member of the filing group (see OAR 461-110-0410) is in the financial group.

(b) When an individual lives in a *nonstandard living arrangement* (see OAR 461-001-0000), the financial group is determined under subsection (5)(c) of this rule.

(5) In the OSIPM program:

(a) For the purposes of this section of this rule, "ineligible" means an individual not eligible to receive either SSI or TANF program benefits.

(b) When an individual lives in a *standard living arrangement*:

(A) Except as provided in paragraph (B) of this subsection, each member of the filing group is in the financial group.

(B) When an individual is not *assumed eligible* (see OAR 461-135-0010) for OSIPM:

(i) The individual's spouse who is *ineligible* and in the filing group is not in the financial group if the individual's *adjusted income* (see OAR 461-001-0000) using the deductions allowed under OAR 461-160-0550(3) is greater than the OSIPM program *adjusted income* standard for a *need group* of one under OAR 461-155-0250. The financial group consists only of the individual.

(ii) If the *ineligible* spouse's remaining income after allocation (see OAR 461-160-0551) to each ineligible child is equal to or less than the difference between the couple and the individual SSI standards: the spouse who is *ineligible* is not considered to be in the financial group when determining









## ADMINISTRATIVE RULES

member of the spouse or parent's family residing in the same household as the non-citizen at the time of the abuse; a non-citizen whose child has been battered or subjected to battery or cruelty; or a non-citizen child whose parent has been battered.

(2) An individual meets the alien status requirements if he or she is one of the following:

(a) An American Indian born in Canada to whom the provisions of section 289 of the INA (8 U.S.C. 1359) apply.

(b) A member of an Indian tribe, as defined in section 4(e) of the Indian Self-Determination and Education Act (25 U.S.C. 450b(e)).

(3) In the ERDC and TANF programs, an individual meets the alien status requirements if he or she is one of the following:

(a) An individual who is a *qualified non-citizen*.

(b) A non-citizen who is currently a victim of domestic violence or who is at risk of becoming a victim of domestic violence.

(c) A "victim of a severe form of trafficking in persons" certified under the Victims of Trafficking and Violence Protection Act of 2000 (22 U.S.C. 7101 to 7112).

(d) A family member of a victim of a severe form of trafficking in persons who holds a visa for family members authorized by the Trafficking Victims Protection Reauthorization Act of 2003 (22 U.S.C. 7101 to 7112).

(4) In the BCCM, CEC, CEM, EXT, HKC, MAA, MAF, OHP, OSIPM, QMB, and SAC programs:

(a) A *qualified non-citizen* meets the alien status requirements if he or she satisfies one of the following situations:

(A) Effective October 1, 2009, is an individual under 19 years of age.

(B) Was a *qualified non-citizen* before August 22, 1996.

(C) Physically entered the United States before August 22, 1996, and was continuously present in the United States between August 22, 1996, and the date *qualified non-citizen* status was obtained. An individual is not continuously present in the United States if he or she is absent from the United States for more than 30 consecutive days or a total of more than 90 days between August 22, 1996 and the date *qualified non-citizen* status was obtained.

(D) Is an individual granted any of the following alien statuses:

(i) Refugee — under section 207 of the INA.

(ii) Asylum — under section 208 of the INA.

(iii) Deportation being withheld under section 243(h) of the INA.

(iv) Cubans and Haitians who are either public interest or humanitarian parolees.

(v) An individual granted immigration status under section 584(a) of the Foreign Operations, Export Financing and Related Program Appropriations Act of 1988.

(vi) A "victim of a severe form of trafficking in persons" certified under the Victims of Trafficking and Violence Protection Act of 2000 (22 U.S.C. 7101 to 7112).

(vii) A family member of a victim of a severe form of trafficking in persons who holds a visa for family members authorized by the Trafficking Victims Protection Reauthorization Act of 2003 (22 U.S.C. 7101 to 7112).

(viii) An Iraqi or Afghan alien granted special immigrant status (SIV) under section 101(a)(27) of the INA.

(E) Meets the alien status requirements in section (2), (6), or (7) of this rule.

(F) In the OSIPM program, is receiving SSI benefits.

(G) In the QMB program, is receiving SSI and Medicare Part A benefits.

(b) A non-citizen meets the alien status requirements if he or she is under the age of 19 and is one of the following:

(A) A citizen of a Compact of Free Association State (i.e., Federated States of Micronesia, Republic of the Marshall Islands, and the Republic of Palau) who has been admitted to the U.S. as a non-immigrant and is permitted by the Department of Homeland Security to reside permanently or indefinitely in the U.S.

(B) An individual described in 8 CFR section 103.12(a)(4) who belongs to one of the following classes of aliens permitted to remain in the United States because the Attorney General has decided for humanitarian or other public policy reasons not to initiate deportation or exclusion proceedings or enforce departure:

(i) An alien currently in temporary resident status pursuant to section 210 or 245A of the INA (8 USC 1160 and 1255a);

(ii) An alien currently under Temporary Protected Status (TPS) pursuant to section 244 of the INA (8 USC 1229b);

(iii) Cuban-Haitian entrants, as defined in section 202(b) Pub. L. 99-603 (8 USC 1255a), as amended;

(iv) Family Unity beneficiaries pursuant to section 301 of Pub. L. 101-649 (8 USC 1255a), as amended;

(v) An alien currently under Deferred Enforced Departure (DED) pursuant to a decision made by the President;

(vi) An alien currently in deferred action status pursuant to Department of Homeland Security Operating Instruction OI 242.1(a)(22); or

(vii) An alien who is the spouse or child of a United States citizen whose visa petition has been approved and who has a pending application for adjustment of status.

(C) An individual in non-immigrant classifications under the INA who is permitted to remain in the U.S. for an indefinite period, including those individuals as specified in section 101(a)(15) of the INA (8 USC 1101).

(5) In the GA and GAM programs, an individual meets the alien status requirement if he or she is one of the following:

(a) An individual who is blind or has a disability was lawfully residing in the United States on August 22, 1996, and is now a *qualified non-citizen*.

(b) An individual granted one of the following statuses, but only for seven years following the date the status is granted:

(A) Refugee—under section 207 of the INA.

(B) Asylum—under section 208 of the INA.

(C) Deportation being withheld under section 243(h) of the INA.

(D) An individual granted immigration status under section 584(a) of the Foreign Operations, Export Financing and Related Program Appropriations Act of 1988.

(E) Cubans and Haitians who are either public interest or humanitarian parolees.

(F) A "victim of a severe form of trafficking in persons" certified under the Victims of Trafficking and Violence Protection Act of 2000 (22 U.S.C. 7101 to 7112).

(G) A family member of a victim of a severe form of trafficking in persons who holds a visa for family members authorized by the Trafficking Victims Protection Reauthorization Act of 2003 (22 U.S.C. 7101 to 7112).

(c) An individual who meets one of the alien status requirements in section (2) or (6) of this rule.

(d) An Iraqi or Afghan alien granted special immigrant status (SIV) under section 101(a)(27) of the INA.

(6) In all programs except the ERDC and TANF programs, a *qualified non-citizen* meets the alien status requirement if he or she is:

(a) A veteran of the United States Armed Forces who was honorably discharged for reasons other than alien status and who fulfilled the minimum active-duty service requirements described in 38 U.S.C. 5303A(d).

(b) A member of the United States Armed Forces on active duty (other than active duty for training).

(c) The spouse or a dependent child of an individual described in subsection (a) or (b) of this section.

(d) In the SNAP program, a *qualified non-citizen* who meets the requirement in section (9) of this rule.

(7) Except as provided in section (2), subsections (3)(e) and (4)(a), and sections (5) and (6) of this rule, a non-citizen who entered the United States or was given *qualified non-citizen* status on or after August 22, 1996:

(a) Is ineligible for the BCCM, MAA, MAF, OHP, OSIPM, QMB, and SAC programs for five years beginning on the date the non-citizen received his or her *qualified non-citizen* status.

(b) Meets the alien status requirement following the five-year period.

(8) In the SNAP program, an individual meets the alien status requirement if he or she is one of the following:

(a) An individual granted any of the following alien statuses:

(A) Refugee — under section 207 of the INA.

(B) Asylum — under section 208 of the INA.

(C) Deportation being withheld under section 243(h) of the INA.

(D) Cubans and Haitians who are either public interest or humanitarian parolees.

(E) An individual granted immigration status under section 584(a) of the Foreign Operations, Export Financing and Related Program Appropriations Act of 1988.

(F) A "victim of a severe form of trafficking in persons" certified under the Victims of Trafficking and Violence Protection Act of 2000 (22 U.S.C. 7101 to 7112).

(G) A family member of a victim of a severe form of trafficking in persons who holds a visa for family members authorized by the Trafficking Victims Protection Reauthorization Act of 2003 (22 U.S.C. 7101 to 7112).

(H) An Iraqi or Afghan alien granted special immigrant status (SIV) under section 101(a)(27) of the INA.

(b) A *qualified non-citizen* under 18 years of age.

(c) A non-citizen who has been residing in the United States for at least five years while a *qualified non-citizen*.

(d) A non-citizen who is lawfully residing in the United States and who was a member of a Hmong or Highland Laotian tribe at the time that the tribe rendered assistance to United States personnel by taking part in a military or rescue operation during the Vietnam era (as defined in 38 U.S.C. 101).

(e) The spouse, the un-remarried surviving spouse, or an unmarried dependent child, of an individual described in subsection (d) of this section.

(f) A *qualified non-citizen* who has a *disability*, as defined in OAR 461-001-0015.

(9) A client who is lawfully admitted to the United States for permanent residence under the INA and has worked 40 qualifying quarters of coverage as defined under title II of the Social Security Act, or can be credited with such qualifying quarters as provided under 8 U.S.C. 1645, meets the alien status requirements for the SNAP program, subject to the following provisions:

(a) No quarter beginning after December 31, 1996, is a qualifying quarter if the client received any federal, means-tested benefit during the quarter.

# ADMINISTRATIVE RULES

Federal means tested benefits include SNAP, TANF, and Medicaid (except emergency medical).

(b) For the purpose of determining the number of qualifying quarters of coverage, a client is credited with all of the quarters of coverage worked by a parent of the client while the client was under the age of 18 and all of the qualifying quarters worked by a spouse of the client during their marriage, during the time the client remains married to such spouse or such spouse is deceased.

(c) A lawful permanent resident who would meet the alien status requirement, except for a determination by the Social Security Administration (SSA) that he or she has fewer than 40 quarters of coverage, may be provisionally certified for SNAP program benefits while SSA investigates the number of quarters creditable to the client. A client provisionally certified under this section who is found by SSA, in its final administrative decision after investigation, not to have 40 qualifying quarters is not eligible for SNAP program benefits received while provisionally certified. The provisional certification is effective according to the rule on effective dates for opening benefits, OAR 461-180-0080. The provisional certification cannot run more than six months from the date of original determination by SSA that the client does not have sufficient quarters.

Stat. Auth.: ORS 411.060, 411.816, 412.014, 412.049, 414.042, 2009 OL Ch. 849 & 867  
Stats. Implemented: ORS 411.060, 411.816, 412.014, 412.049, 414.042, 2009 OL Ch. 849 & 867

Hist.: AFS 17-1992, f. & cert. ef. 7-1-92; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 32-1996(Temp), f. & cert. ef. 9-23-96; AFS 36-1996, f. 10-31-96, cert. ef. 11-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 13-1997, f. 8-28-97, cert. ef. 9-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 22-1998, f. 10-30-98, cert. ef. 11-1-98; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 17-2001(Temp), f. 8-31-01, cert. ef. 9-1-01 thru 9-30-01; 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; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 29-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 3-31-04; SSP 36-2003(Temp), f. 12-31-03 cert. ef. 1-1-04 thru 3-31-04; SSP 6-2004, f. & cert. ef. 4-1-04; SSP 10-2004(Temp), f. & cert. ef. 4-9-04 thru 6-30-04; SSP 14-2004(Temp), f. & cert. ef. 5-11-04 thru 6-30-04; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 7-2005, f. & cert. ef. 7-1-05; 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 11-2006(Temp), f. 6-30-06, cert. ef. 7-1-06 thru 9-30-06; 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 3-2008(Temp), f. & cert. ef. 1-30-08 thru 7-28-08; SSP 4-2008(Temp), f. & cert. ef. 2-22-08 thru 7-28-08; SSP 17-2008, f. & cert. ef. 7-1-08; 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 9-2009(Temp), f. & cert. ef. 5-1-09 thru 10-28-09; SSP 29-2009(Temp), f. & cert. ef. 10-1-09 thru 3-30-10; SSP 28-2009, f. & cert. ef. 10-1-09; SSP 38-2009, f. 12-31-09, cert. ef. 1-1-10; SSP 39-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10

## 461-120-0210

### Requirement to Provide or Apply for SSN

(1) In the CAWEM, ERDC, REF, and REFM programs, a member of a *need group* (see OAR 461-110-0630) or a *benefit group* (see OAR 461-110-0750) is not required to provide or apply for a social security number (SSN). In these programs, the Department may request that a member of the filing or need group provide an SSN on a voluntary basis.

(2) In the EA and TA-DVS programs, an individual must provide his or her SSN if the individual can.

(3) Except as provided in section (5) of this rule, in the OSIP, OSIPM, and QMB programs, to be included in the *benefit group*, an individual must:

(a) Provide a valid SSN for the individual; or

(b) Apply for a number if the individual does not have a valid one and provide the SSN when it is received.

(4) Except as provided in sections (5) to (7) of this rule, in all programs not covered by sections (1) to (3) of this rule, to be included in the *need group*, an individual (other than an unborn) must:

(a) Provide a valid SSN for the individual; or

(b) Apply for a number if the individual does not have one and provide the SSN when it is received.

(5) In the BCCM, CEC, CEM, EXT, GA, GAM, HKC, MAA, MAF, OHP, OSIP, OSIPM, QMB, SAC, and SNAP programs, an individual is not required to apply for or provide an SSN if the individual is:

(a) A member of religious sect or division of a religious sect that has continuously existed since December 31, 1950; and

(b) Adheres to its tenets or teachings that prohibit applying for or using an SSN.

(6) The requirement to apply for or provide the SSN is delayed as follows:

(a) In the BCCM, CEC, CEM, EXT, MAA, MAF, OHP, and SAC programs, a newborn who is assumed eligible based on the eligibility of the mother of the newborn may receive benefits until one year of age without meeting the SSN requirements of section (4) of this rule.

(b) In the SNAP program:

(A) An applicant eligible for expedited services may receive his or her first full month's allotment without meeting the SSN requirement but must meet the requirement before receiving a second full month's allotment.

(B) Before applying for or providing an SSN, a newborn may be added to an existing *benefit group* (see OAR 461-110-0750) for six months following the date the baby is born or until the group's next recertification, whichever is later.

(7) In the SNAP program:

(a) An individual who refuses or fails without good cause to provide or apply for an SSN when required by this rule is ineligible to participate. This period of ineligibility continues until the individual provides the SSN to the Department.

(b) An individual may participate in SNAP for one month in addition to the month of application, if the individual can show good cause why the application for an SSN has not been completed. To continue to participate, the individual must continue to show good cause each month until the application for an SSN is complete with Social Security Administration.

(c) An individual meets the good cause requirement in subsections (a) and (b) of this section if the individual provides evidence or collateral information that the individual applied for or made every effort to supply the Social Security Administration with the necessary information to complete the application process. Delays due to illness not associated with a *disability* (see OAR 461-001-0015), lack of transportation, or temporary absence do not qualify as good cause under this rule.

(8) This rule authorizes or requires the collection of an SSN for each of the following purposes.

(a) The determination of eligibility for benefits. The SSN is used to verify income and other assets, and match with other state and federal records such as the Internal Revenue Service (IRS), Medicaid, child support, Social Security benefits, and unemployment benefits.

(b) The preparation of aggregate information and reports requested by funding sources for the program providing benefits.

(c) The operation of the program applied for or providing benefits.

(d) Conducting quality assessment and improvement activities.

(e) Verifying the correct amount of payments, recovering overpaid benefits, and identifying any individual receiving benefits in more than one household.

Stat. Auth.: ORS 411.060, 411.070, 411.816, 412.049, 414.042, 2009 OL Ch. 867

Stats. Implemented: ORS 411.060, 411.070, 411.816, 412.049, 414.042, 2009 OL Ch. 867  
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 2-1994, f. & cert. ef. 2-1-94; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 1-2000, f. 1-13-00, cert. ef. 2-1-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07; SSP 10-2007, f. & cert. ef. 10-1-07; 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 39-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10

## 461-135-1100

### Specific Requirements; OHP

In addition to eligibility requirements applicable to the OHP program in other rules in chapter 461 of the Oregon Administrative Rules, this rule sets out specific eligibility requirements for the OHP program.

(1) For purposes of this rule, OAR 461-135-1101, and 461-135-1149, the term *private major medical health insurance* refers to health insurance coverage that provides medical care for physician and hospital services, including major illnesses, with a limit of not less than \$10,000 for each covered individual. This term does not include coverage under the Kaiser Child Health Program.

(2) To be eligible for OHP, a person cannot:

(a) Be receiving, or deemed to be receiving, SSI benefits;

(b) Be eligible for Medicare, except that this requirement does not apply to OHP OPP;

(c) Be receiving Medicaid through another program; or

(d) Be enrolled in a health insurance plan subsidized by the Family Health Insurance Assistance program (FHIAP, see ORS 735.720 to 735.740).

(3) To be eligible for the OHP-OPU program, a person must be 19 years of age or older and may not be pregnant. A person eligible for OHP-OPU is referred to as a health plan new/noncategorical (HPN) client. In addition to all other OHP eligibility requirements, an HPN client:

(a) May not be covered by *private major medical health insurance* and may not have been covered by *private major medical health insurance* during the six months preceding the effective date for starting medical benefits. The six-month waiting period is waived if:

(A) The person has a condition that, without treatment, would be life-threatening or would cause permanent loss of function or disability;

(B) The person's private health insurance premium was reimbursed under the provisions of OAR 461-135-0990;

(C) The person's private health insurance premium was subsidized through FHIAP; or

(D) A member of the person's filing group was a victim of domestic violence.

(b) Must meet the following eligibility requirements:

(A) The resource limit provided in OAR 461-160-0015.

(B) The higher education student requirements provided in OAR 461 135 1110.

(C) Payment of premiums determined in accordance with OAR 461-155-0235 and paid in accordance with OAR 461-135-1120.

(D) Selection of a medical, dental and mental health managed health care plan (MHCP) or primary care case manager (PCCM) if available, unless the HPN client is exempted by OAR 410-141-0060.

(E) The requirements in OAR 461-120-0345 related to obtaining medical coverage for members of the benefit group through the Family Health Insurance Assistance Program (FHIAP), if applicable.

# ADMINISTRATIVE RULES

(4) To be eligible for the OHP-OPC program, a person must be less than 19 years of age.

(5) To be eligible for the OHP-OP6 program, a child must be less than six years of age and not eligible for OHP-OPC.

(6) To be eligible for the OHP-OPP program, a person must be pregnant or must be a newborn assumed eligible under OAR 461-135-0010(4).

(7) To be eligible for the OHP-CHP program, a person must be under 19 years of age and must:

(a) Not be eligible for OHP-OPC, OHP-OPP, or OHP-OP6;

(b) Meet budgeting requirements of OAR 461 160 0700;

(c) Select a medical, dental and mental health managed health care plan (MHCP) or primary care case manager (PCCM) if available, unless the client is exempted by OAR 410-141-0060; and

(d) Not be covered by *private major medical health insurance* or by any *private major medical health insurance* during the preceding two months. The two-month waiting period is waived if:

(A) The person has a condition that, without treatment, would be life threatening or cause permanent loss of function or disability;

(B) The loss of health insurance was due to the loss of or a change in employment;

(C) The person's private health insurance premium was reimbursed under OAR 461 135 0990;

(D) The person's private health insurance premium was subsidized by FHIAP or through the Office of Private Health Partnerships (OPHP) in accordance with 2009 Oregon Laws Chapter 867; or

(E) A member of the person's filing group was a victim of domestic violence.

(8) A child who becomes ineligible for OHP because of age while receiving in patient medical services remains eligible until the end of the month in which he or she no longer receives those services if he or she is receiving in patient medical services on the last day of the month in which the age requirement is no longer met.

Stat. Auth.: ORS 411.060, 414.042, 2009 OL Ch. 867

Stats. Implemented: ORS 411.060, 414.042, 2009 OL Ch. 867

Hist.: AFS 2-1994, f. & cert. ef. 2-1-94; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; 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 36-1996, f. 10-31-96, cert. ef. 11-1-96; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 10-1998, f. 6-29-98, cert. ef. 7-1-98; AFS 17-1998, f. & cert. ef. 10-1-98; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 8-2006, f. & cert. ef. 6-1-06; SSP 13-2008(Temp), f. 5-30-08, cert. ef. 6-1-08 thru 6-30-08; SSP 17-2008, f. & cert. ef. 7-1-08; SSP 29-2009(Temp), f. & cert. ef. 10-1-09 thru 3-30-10; SSP 36-2009(Temp), f. & cert. ef. 12-1-09 thru 12-31-09; SSP 38-2009, f. 12-31-09, cert. ef. 1-1-10; SSP 39-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10

## 461-135-1101

### Specific Requirements; Healthy KidsConnect (HKC)

In addition to the eligibility requirements applicable to the HKC program in other rules in chapter 461 of the Oregon Administrative Rules, this rule sets out specific eligibility requirements for the HKC program.

(1) To be eligible for HKC, an individual must be under 19 years of age and may not be covered by *private major medical health insurance* (see OAR 461-135-1100) or by any *private major medical health insurance* during the preceding two months. The two-month waiting period is waived if:

(a) The individual has a condition that, without treatment, would be life-threatening or cause permanent loss of function or disability;

(b) The loss of health insurance was due to a change in employment;

(c) The individual's private health insurance premium was reimbursed under OAR 461-135-0990;

(d) The individual's private health insurance premium was subsidized by FHIAP or by the Office of Private Health Partnerships (OPHP); or

(e) A member of the individual's filing group was a victim of domestic violence.

(2) Income treatment and availability of income requirements used for determining HKC program eligibility are the same as used for the OHP-CHP program in this chapter of the administrative rules.

(3) Budgeting for HKC program eligibility follows the same methodologies as those used for the OHP-CHP program under OAR 461-150-0055.

(4) The countable income standard for the HKC program is at or above 201 percent of the federal poverty limit, in accordance with 2009 Oregon Laws Chapter 867.

(5) To be eligible for the HKC program, a child must be a U.S. citizen or meet the alien status requirements as provided in OAR 461-120-0125.

(6) Once approved for the HKC program, the child is referred to OPHP in accordance with 2009 Oregon Laws Chapter 867. OPHP may enroll the child in one of the following program categories:

(a) Healthy KidsConnect Employer Sponsored Insurance (ESI);

(b) Healthy KidsConnect subsidy; or

(c) Healthy KidsConnect full pay.

(7) The eligibility period for the HKC program is a 12-month period. Once a child is approved as eligible for the HKC program, the child is referred to OPHP for enrollment. The enrollment period begins on the date OPHP enrolls the child and may continue through the remainder of the 12-month eligibility period.

(8) A child found eligible for the HKC program under this rule becomes ineligible if any of the following occur:

(a) The child reaches 19 years of age.

(b) The child begins coverage under *private major medical health insurance* and the insurance is not provided through a contract with OPHP.

(c) The child becomes a resident of a state other than Oregon.

(d) The child does not pay the child's share of the HKC program insurance premium.

(e) OPHP determines the child no longer qualifies for enrollment through OPHP.

(f) The Department determines the child does not meet the requirements for eligibility, including but not limited to the child's failure to re-enroll in the HKC program before the end of the HKC program eligibility period.

Stat. Auth.: ORS 411.060, 414.042, 2009 OL Ch. 867

Stats. Implemented: ORS 411.060, 414.042, 2009 OL Ch. 867

Hist.: SSP 39-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10

## 461-135-1149

### Specific Requirements; Continuous Eligibility for Non-CAWEM Children; CEC, CEM

(1) "Continuous eligibility for non-CAWEM children" means a non-CAWEM child under 19 years of age the Department determines is eligible for Medicaid or OHP-CHP is deemed to be eligible for a total of 12 months regardless of any change in circumstances, other than:

(a) Moving out of state;

(b) Turning 19 years of age, however a pregnant individual who turns 19 years of age remains eligible for OHP-CHP through the last day of the month during which the pregnancy ends; or

(c) In the OHP-CHP program, receipt of private major medical health insurance.

(2) When a pregnant non-CAWEM child is eligible for and receiving OHP-CHP program benefits loses this eligibility, her medical assistance continues through the CEC program through the last day of the month in which the pregnancy ends as long as she is not a recipient of *private major medical health insurance* (see OAR 461-135-1100).

(3) To be eligible for the CEC program, a client must meet the requirements of all of the following subsections:

(a) Be a U.S. citizen or meet the requirements in OAR 461-120-0125(4);

(b) Be under 20 years of age;

(c) Lose eligibility for OHP-CHP program medical benefits while pregnant; and

(d) Not be a recipient of *private major medical health insurance*.

(4) CEC program eligibility ends:

(a) The last day of the month in which the pregnancy ends;

(b) When the client moves out of state;

(c) When the client voluntarily ends OHP-CHP program benefits;

(d) When the client becomes a recipient of private major medical health insurance; or

(e) If the client becomes eligible for Child Welfare (CW) medical, EXT, MAA, MAF, OHP, OSIPM, or SAC program benefits.

(5) When a non-CAWEM child who is eligible for and receiving CW medical, EXT, MAA, MAF, OHP (except OHP-CHP), OSIPM, or SAC program benefits loses this eligibility with time remaining in the 12-month continuous eligibility period, the child's medical assistance continues for the remainder of the 12-month eligibility period through the CEM program.

(6) The CEM program eligibility period is based on the most recent CW medical, EXT, MAA, MAF, OHP (except OHP-CHP), OSIPM, or SAC program approval date. A child losing eligibility for CW medical, EXT, MAA, MAF, OHP (except OHP-CHP), OSIPM, or SAC program benefits less than 12 months after having been approved for benefits qualifies for CEM program benefits for the balance of the 12 month period following that approval.

(7) To be eligible for the CEM program, a client must meet the requirements of all of the following subsections:

(a) Be a U.S. citizen or meet the requirements in OAR 461-120-0125(4);

(b) Be eligible for and receiving CW medical, EXT, MAA, MAF, OHP (except OHP-CHP), OSIPM, or SAC program medical benefits;

(c) Be under 19 years of age; and

(d) Lose eligibility for CW medical, EXT, MAA, MAF, OHP (except OHP-CHP), OSIPM or SAC program medical benefits less than 12 months after having been approved for benefits, including approvals resulting from redeterminations.

(8) CEM program eligibility ends when the client:

(a) Becomes 19 years of age;

(b) Moves out of state;

(c) Voluntarily ends benefits; or

(d) Becomes eligible for CW medical, EXT, MAA, MAF, OHP, OSIPM, or SAC program benefits.

Stat. Auth.: ORS 409.050, 411.060, 411.070, 414.042

Stats. Implemented: ORS 409.050, 411.060, 411.070, 414.042, 2009 OL Ch. 756

Stat. Auth.: ORS 409.050, 411.060, 411.070, 414.042

Stats. Implemented: ORS 409.050, 411.060, 411.070, 414.042, 2009 OL Ch. 756

Hist.: 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 39-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10









# ADMINISTRATIVE RULES

(a) Diphtheria/Tetanus/Pertussis containing vaccine (DTaP) — Five doses must be received unless:

(A) The fourth dose was given at or after the fourth birthday, in which case the child is complete with four doses; or

(B) The third dose of Diphtheria/Tetanus containing vaccine was received on or after the seventh birthday, in which case the child is complete with three doses.

(b) Polio — Four doses must be received unless:

(A) The third dose was given at or after the fourth birthday, in which case the child is complete with three doses of polio vaccine; or

(B) The student is 18 years of age or older. Polio vaccination at or after the 18th birthday is not required.

(c) Measles — Two doses must be received at or after 12 months of age, or in the same month and year as the child's first birthday. Second dose must be received at least 28 days after first dose.

(d) Rubella — One dose must be received at or after 12 months of age, or in the same month and year as the child's first birthday.

(e) Mumps — One dose must be received at or after 12 months of age, or in the same month and year as the child's first birthday.

(f) Hepatitis B — Up to three doses must be received. If the first dose was received at or after 11 years of age and the second dose is received at least four months after dose one, the child is complete with two doses.

(g) Varicella — Up to two doses must be received, depending on the child's age when the first dose was administered. The first dose must be received at or after 12 months of age or in the same month and year as the child's first birthday, and after March 1995, the date the vaccine was licensed in the United States. Second dose, if required, must be received at least 28 days after first dose.

(h) Hepatitis A — Two doses must be received at or after 12 months of age, or in the same month and year as the child's first birthday. Beginning school year 2008–2009, the requirement for Hepatitis A vaccine will be phased in by grade. (See Primary Review Table.) [Table not included. See ED. NOTE.]

(i) Tetanus/Diphtheria/Pertussis booster (Tdap) — One dose must be received at or after 10 years of age, unless the last Diphtheria/Tetanus containing vaccine was given less than five years ago. Beginning school year 2008–2009, the requirement for Tdap will be phased in by grade. (See Primary Review Table.) [Table not included. See ED. NOTE.]

(3) Interrupted series: If there is a lapse of time between doses longer than that recommended by the standard described in OAR 333-050-0120, the schedule should not be restarted. Immunization may resume with the next dose in the series.

(4) Partial doses: Because the efficacy of immunizing with partial doses of the vaccines listed in this rule is not known, this procedure does not satisfy the requirements of these rules.

(5) A child shall not be excluded from school for failing to receive a required vaccine if the State Health Officer has determined that there is a vaccine shortage and that is the reason the child has not received the vaccine. Any vaccine that has been waived due to a vaccine shortage will be required at the next review cycle, once the shortage has been lifted. The Public Health Division shall notify local health departments, schools and facilities of any shortages that affect their procedures under these rules.

(6) The local public health officer, after consultation with the Public Health Division, may allow a child to attend a school or facility without meeting the minimum immunization requirements in case of temporary local vaccine shortage.

(a) The local health department shall provide a letter signed by the local health officer to the parent of the affected student detailing which vaccines the student is being exempted from. The letter must state that the student will receive an Exclusion Order if the student's record is not updated with the missing doses prior to the next exclusion cycle.

(b) A copy of the letter must be attached to the student's Certificate of Immunization Status on file at the school or facility.

(c) A photocopied form letter signed by the local health officer may be used by the local health department when the shortage is expected to affect more than one child.

(d) If the vaccine is still unavailable at the next exclusion cycle, the local health department, with the agreement of the Public Health Division, will not issue Exclusion Orders for the unavailable vaccine.

(7) The following immunity exemptions satisfy the immunization requirements for the specified vaccines:

(a) Exemption for Measles, Mumps or Rubella vaccination due to a disease history may be certified by a physician or an authorized representative of the local health department for a child who has immunity based on a health care practitioner's diagnosis;

(b) Exemption for Measles, Mumps or Rubella vaccination due to a documented immune titer may be certified by a physician or an authorized representative of the local health department;

(c) Exemption for Hib conjugate vaccination may be certified by a physician or authorized representative of the local health department for a child who experienced invasive Haemophilus influenzae Type b disease at 24 months of age or older;

(d) Exemption for Varicella vaccine may be signed by the parent for history of varicella. The date of the disease is not required. This exemption will be automatically authorized by the local health department.

(e) Exemption for Varicella based on laboratory confirmation of immunity may be certified by a physician or authorized representative of the local health department;

(f) Exemption for Hepatitis B vaccination based on laboratory confirmation of immunity or confirmation of carrier status may be certified by a physician or authorized representative of the local health department; and

(g) Exemption for Hepatitis A vaccination based on laboratory confirmation of immunity may be certified by a physician or authorized representative of the local health department.

(8) Children possessing the following medical exemptions are susceptible to the diseases for which they are exempt from vaccination:

(a) Exemption for measles, mumps, rubella or varicella vaccination may be certified by a physician or an authorized representative of the local health department for a post-pubertal female when she is currently pregnant or there is a significant risk of her becoming pregnant within one month; and

(b) Exemption for one or more immunizations shall be established by a diagnosis based on a specific medical contraindication certified in a letter from the physician or an authorized representative of the local health department. The vaccines, medical diagnosis, practitioner's name, address and phone number must be documented and attached to the record.

(9) Exemptions submitted to the school or facility must be in English.

(10) A child may attend a school or facility under ORS 433.267(1) if the child is up-to-date and remains up-to-date and in compliance with immunization schedules for spacing between doses presented in OAR 333-050-0120.

(11) If evidence is presented to the local health department that an Exclusion Order was issued in error because a vaccine was given within the four-day grace period recommended by the Advisory Committee on Immunization Practices as published in the General Recommendations on Immunization, the local health department shall rescind the Exclusion Order. The local health department shall notify the child's school or facility when an Exclusion Order is rescinded.

(12) In situations where a child's vaccine history presents an unusual problem not covered by these rules, the local health department may use its judgment to make a final determination of the child's immunization status.

(13) Religious exemption from immunization requirement is allowed for one or more of the vaccines. Parents must select which vaccines a child is being exempted from by checking the appropriate boxes on the Certificate of Immunization Status.

(14) A child may not be excluded from school until kindergarten for not having the fifth dose of Diphtheria/Tetanus/Pertussis containing vaccine, fourth dose of Polio vaccine or second dose of Measles vaccine.

(15) A child may not be excluded from school until seventh grade for not having Tdap vaccine.

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

Stat. Auth.: ORS 433.004 & 433.273

Stats. Implemented: ORS 433.001, 433.004, 433.006 & 433.235 - 433.284

Hist.: HD 21-1981, f. & ef. 10-21-81; HD 17-1982, f. & ef. 8-13-82; HD 12-1983, f. & ef. 8-1-83; HD 8-1987, f. & ef. 7-15-87; HD 6-1991, f. & cert. ef. 5-15-91; HD 10-1991, f. & cert. ef. 7-23-91; HD 9-1992, f. & cert. ef. 8-14-92; HD 16-1997, f. & cert. ef. 12-3-97; OHD 12-2000, f. & cert. ef. 12-26-00; OHD 14-2001, f. & cert. ef. 7-12-01, Renumbered from 333-019-0035; OHD 26-2001, f. & cert. ef. 12-4-01; OHD 21-2002, f. & cert. ef. 12-13-02; PH 35-2004(Temp), f. & cert. ef. 11-10-04 thru 5-6-05; PH 2-2005, f. & cert. ef. 2-3-05; PH 1-2006, f. & cert. ef. 1-27-06; PH 12-2007, f. & cert. ef. 9-27-07; PH 1-2008(Temp), f. & cert. ef. 1-8-08 thru 6-30-08; PH 6-2008, f. & cert. ef. 3-17-08; PH 16-2008(Temp), f. & cert. ef. 10-27-08 thru 4-20-09; Administrative correction 5-20-09; PH 13-2009(Temp), f. 12-17-09, cert. ef. 12-21-09 thru 6-18-10

## 333-050-0120

### Immunizations Schedules for Spacing of Doses

See **Primary Review Table** for the judgment of compliance or non-compliance with the required immunizations.

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

Stat. Auth.: ORS 433.004 & 433.273

Stats. Implemented: ORS 433.001, 433.004, 433.006 & 433.235 - 433.284

Hist.: HD 21-1981, f. & ef. 10-21-81; HD 17-1982, f. & ef. 8-13-82; HD 22-1983, f. & ef. 11-1-83; HD 15-1986, f. & ef. 7-15-86; HD 4-1990(Temp), f. & cert. ef. 1-11-90; HD 10-1991, f. & cert. ef. 7-23-91; HD 12-1991(Temp), f. 8-26-91, cert. ef. 9-3-91; HD 16-1997, f. & cert. ef. 12-3-97; OHD 8-1998, f. & cert. ef. 9-10-98; OHD 12-2000, f. & cert. ef. 12-26-00; OHD 14-2001, f. & cert. ef. 7-12-01, Renumbered from 333-019-0070; PH 12-2007, f. & cert. ef. 9-27-07; PH 1-2008(Temp), f. & cert. ef. 1-8-08 thru 6-30-08; PH 6-2008, f. & cert. ef. 3-17-08; PH 16-2008(Temp), f. & cert. ef. 10-27-08 thru 4-20-09; Administrative correction 5-20-09; PH 13-2009(Temp), f. 12-17-09, cert. ef. 12-21-09 thru 6-18-10

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**Rule Caption:** Repeal of outdated rules that no longer fall under authority of the Public Health Division.

**Adm. Order No.:** PH 14-2009

**Filed with Sec. of State:** 12-21-2009

**Certified to be Effective:** 12-21-09

**Notice Publication Date:** 11-1-2009

**Rules Repealed:** 333-092-0000, 333-092-0005, 333-092-0010, 333-092-0015, 333-092-0020, 333-092-0025, 333-092-0030, 333-092-



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0035, 333-092-0040, 333-092-0045, 333-092-0050, 333-092-0055, 333-092-0060, 333-092-0065, 333-092-0070, 333-092-0075, 333-092-0080, 333-092-0085, 333-092-0090, 333-092-0095, 333-300-0000

**Subject:** The Department of Human Services, Public Health Division is permanently repealing Oregon Administrative Rules chapter 333, division 92 related to Long Term Care Facilities, Nursing Homes for the Mentally Retarded. The authority over long term care facilities was transferred from the Health Division to the Seniors and People with Disabilities (SPD) Division in 1986. Consequently, SPD promulgated administrative rules in 1994 (chapter 309, division 43) relating to Intermediate Care Facilities for Mentally Retarded and Other Developmentally Disabled Persons that supercede the rules in chapter 333, division 92.

In addition, the Division is permanently repealing OAR chapter 333, division 300 related to Tissues, Organs or Fluids for Diagnostic, Research or Transplantation Purposes. OAR 333-300-0000 applies to the State Medical Examiner's Office that used to fall under the Health Division, but now falls under State Police. Therefore, the Public Health Division no longer needs this rule in the chapter 333 administrative rules. State Police was contacted regarding their need for this rule and they stated that OAR 333-300-0000 no longer applies to any program operated by the State Police.

**Rules Coordinator:** Brittany Sande—(971) 673-1291

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**Rule Caption:** Travelers' Accommodation Rules – Administrative Cleanup and Removal of Obsolete Language.

**Adm. Order No.:** PH 15-2009

**Filed with Sec. of State:** 12-23-2009

**Certified to be Effective:** 12-23-09

**Notice Publication Date:** 11-1-2009

**Rules Amended:** 333-029-0025, 333-029-0045, 333-029-0050, 333-029-0060, 333-029-0070, 333-029-0080, 333-029-0115

**Rules Repealed:** 333-029-0030

**Subject:** The Department of Human Services, Public Health Division is permanently amending and repealing administrative rules related to travelers' accommodations in chapter 333, division 29. The revisions remove obsolete language related to facility plan review. The revisions also update references to other rules and publications, and make grammatical changes. The changes should have little to no impact on present day functions involving either the local public health authority or the industry.

**Rules Coordinator:** Brittany Sande—(971) 673-1291

## 333-029-0025

### Plans Required

No person may construct, enlarge, or alter any travelers' accommodation or hostel without first:

- (1) Submitting complete plans and specifications of the proposed construction, enlargement, or alteration to the issuing authority; and
- (2) Securing plan approval from the issuing authority.
- (3) Plan review is made by the Oregon Building Codes Division or by jurisdictions exempt under ORS 476.030. Written evidence of plan review, construction permit issuance, and a signed occupancy permit must be presented to the local public health authority before licensing.

(4) Whenever a food service facility, operating in conjunction with a travelers' accommodation so licensed under these rules, is constructed or extensively remodeled and whenever an existing structure is converted to use as a food service facility, properly prepared plans and specifications for such construction, remodeling or conversion must be submitted to the local public health authority for approval before construction. Plans must be submitted in accordance with Oregon Food Sanitation Rules OAR 333-150-0000 part 8-2.

Stat. Auth.: ORS 446.330 & 624.020

Stats. Implemented: ORS 446.310 - 446.350, 446.990 & 624.020

Hist.: HD 1-1978, f. & ef. 1-4-78; HD 19-1983(Temp), f. & ef. 10-18-83; HD 12-1984, f. & ef. 6-20-84; HD 5-1985, f. & ef. 4-25-85; PH 15-2009, f. & cert. ef. 12-23-09

## 333-029-0045

### Air Volume, Heat, Light, and Ventilation for Hostels

- (1) Each dormitory must:
  - (a) Have a ceiling height of not less than seven feet, six inches; and
  - (b) Have not less than 375 cubic feet of air volume and 50 square feet of usable floor area for each occupant.

**NOTE:** If any room used for sleeping purposes has a sloping ceiling, the prescribed ceiling height is required in only one-half the area thereof. Floor area where the ceiling is less than five feet from the finished floor to the finished ceiling may not be considered usable.

(2) Bed arrangements of dormitories must provide not less than 24 inches clear space between each bed, cot, or bunk. No dormitory may contain more than two tiers of beds. When two tiers are used, there must be at least:

- (a) Three feet of clear vertical space between tiers of beds and between the top tier and ceiling;
- (b) Thirty inches of horizontal space between beds;
- (c) One foot of clear space between the floor of the dormitory and the underside of the first tier of beds. In lieu of such space, the first tier of bunks must have a continuous base that must be sealed to the floor; and
- (d) A minimum aisle width with access to exits must be provided as follows:

(A) Thirty-six inch aisle width when serving a tributary occupant load of 30 or less persons;

(B) Forty-four inch aisle width when serving a tributary occupant load of more than 30 persons;

(C) If more than three beds are placed end to end in a row, there must be an approved aisleway at each end of the row in compliance with paragraph (A) or (B) of this subsection, whichever is appropriate to the occupant load.

(3) Every dormitory, shower, bath and toilet room used during periods requiring artificial heat must be provided with a safe and adequate source of heat by means of air exchange from other room(s) or by mechanical means capable of maintaining room temperature of not less than 68° F. at a level three feet above the floor during the time of occupancy.

(4) All sleeping rooms must be provided with natural light and ventilation by means of windows or skylights with an area of not less than one-tenth of the floor area of such rooms. The minimum area must be 10 square feet:

(a) Not less than one-half of the required window or skylight area may be openable to provide natural ventilation.

(b) In lieu of natural ventilation, a mechanical ventilation system must be provided. Such system must be capable of providing two air changes per hour and one-fifth of the air supply must be taken from the outside.

(c) In lieu of natural lighting, artificial lighting must be provided. Such lighting must be at least 10 foot candles in intensity three feet from the floor surface.

(5) All bathrooms, toilet rooms, laundry rooms, and similar rooms must be provided with natural light and ventilation by means of windows or skylights with an area equal to one-tenth of the floor area of such rooms. The minimum area must be three square feet:

(a) Not less than one-half of the required window or skylight area must be openable to provide natural ventilation. Openable windows must be screened.

(b) In lieu of natural ventilation, a mechanical ventilation system connected directly to the outside must be capable of providing five air changes per hour.

(c) In lieu of natural lighting, artificial lighting must be provided. Such lighting must be at least 10 foot candles in intensity three feet from the floor surface.

Stat. Auth.: ORS 446.330

Stats. Implemented: ORS 446.310 - 446.350 & 446.990

Hist.: HD 1-1978, f. & ef. 1-4-78; HD 5-1985, f. & ef. 4-25-85; PH 15-2009, f. & cert. ef. 12-23-09

## 333-029-0050

### Toilet, Lavatory, and Bath Facilities

(1) At least one toilet, lavatory, and bath must be provided for each five lodging units or fraction thereof where the individual lodging units are not provided such facilities. The required number of sanitary fixtures must be in accordance with the requirements of the Oregon Department of Consumer and Business Services, Building Codes Division.

(a) Multi-story accommodations constructed after July 1, 1970, must have toilet, lavatory, and bath facilities located on each floor. Toilets, lavatories and bath facilities must be maintained in a clean and sanitary condition.

(b) New toilet, lavatory and bath facilities, or facilities remodeled, enlarged or converted after the effective date of these rules must meet the requirements of the 2008 Oregon Plumbing Specialty Code and the 2007 Oregon Structural Specialty Code.

(2) The location and use of all public toilet and bath facilities must be clearly indicated by appropriate signs.

(3) Toilet, lavatory, and bath facilities for travelers' accommodations and hostels located in private homes must be separate from toilet and bath facilities utilized by the owner or operator of said travelers' accommodations and hostels.

(4) All lavatories, bathtubs, and showers must be provided with hot and cold water except where otherwise specifically exempted by the Division. Hot water must be at least 120° F.

(5) Toilet and bathrooms must:

(a) Have floors which are finished with a material that is smooth, easily cleanable, impervious to water, and coved to a height of four inches;

(b) Have shower compartments with walls which are impervious to water to a height of six feet above the floor. An effective water-tight joint

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between the wall and the floor must be maintained. (Wooden racks or duck boards over shower floors are prohibited);

(c) Have interior finishes which are smooth, easily cleanable, and impervious to water;

(d) Where rubber or impervious mats are used, have such mats clean and dry between usages;

(e) Have bathtub and shower stall floors that are finished with non-slip, impervious surfaces or provided with non-slip impervious bath mats; and

(f) Where glass bath or glass shower doors are used, have such doors made of safety glass.

(6) Non-water carried sewage disposal may not be used in lieu of water carried sewage disposal unless approved by the issuing authority and the Department of Environmental Quality according to OAR 340-071-0130.

(7) All plumbing installations must be in accordance with the requirements of the Oregon Department of Consumer and Business Services, Building Codes Division, 2008 Oregon Plumbing Specialty Code. New plumbing installations, or systems remodeled, enlarged or converted after the effective date of these rules must meet the requirements of the 2008 Oregon Plumbing Specialty Code.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 446.330

Stats. Implemented: ORS 446.310 - 446.350 & 446.990

Hist.: HD 1-1978, f. & ef. 1-4-78; HD 19-1983(Temp), f. & ef. 10-18-83; HD 12-1984, f. & ef. 6-20-84; HD 5-1985, f. & ef. 4-25-85; PH 1-2005, f. & cert. ef. 1-14-05; PH 15-2009, f. & cert. ef. 12-23-09

## 333-029-0060

### Solid Waste

(1) A minimum of one water-tight, non-absorbent and easily washable waste receptacle must be provided in each lodging unit. Such receptacle shall be kept clean and in good repair.

(2) Solid waste must be collected daily from rooms and areas used by guests.

(3) Solid waste must be disposed of in a manner which complies with the rules of the Department of Environmental Quality.

(4) Solid waste must be stored in individual garbage containers, bins, or storage vehicles.

(5) All such containers, bins, or vehicles must:

(a) Have tight fitting lids or covers; and

(b) Be durable, rust resistant, water-tight, rodent proof, readily washable, and kept in good repair.

(6) Solid waste must be collected at regular intervals. Such intervals may not exceed seven days. Collection frequency must be such so as not to create:

(a) Vector production and sustenance;

(b) Objectionable odors; or

(c) Any overflowing of solid waste or other unsanitary condition.

(7) Solid waste must be transported in a manner that complies with Department of Environmental Quality requirements.

Stat. Auth.: ORS 446.330

Stats. Implemented: ORS 446.310 - 446.350 & 446.990

Hist.: HD 1-1978, f. & ef. 1-4-78; HD 19-1983(Temp), f. & ef. 10-18-83; HD 12-1984, f. & ef. 6-20-84; HD 5-1985, f. & ef. 4-25-85; PH 15-2009, f. & cert. ef. 12-23-09

## 333-029-0070

### Spa and Swimming Pools

Any spa or swimming pool located at or operated in connection with a travelers' accommodation or hostel must comply with the respective Oregon Public Health Division rules:

(1) For Public Spa Pools, OAR 333-062-0005 through 333-062-0185; and

(2) For Public Swimming Pools, OAR 333-060-0005 through 333-060-0515.

Stat. Auth.: ORS 448.035

Stats. Implemented: ORS 448.005 - 448.090

Hist.: HD 1-1978, f. & ef. 1-4-78; HD 19-1983(Temp), f. & ef. 10-18-83; HD 12-1984, f. & ef. 6-20-84; HD 5-1985, f. & ef. 4-25-85; PH 15-2009, f. & cert. ef. 12-23-09

## 333-029-0080

### Sewage Disposal

(1) Travelers' accommodations and hostels must provide an adequate and safe sewerage system.

(2) Sewage and waste water must be disposed of into a public sewerage system in a manner approved by the Department of Environmental Quality.

(3) All sewerage systems must be designed, constructed, approved and maintained in compliance with the minimum standards set forth in the 2008 Oregon Plumbing Specialty Code and, where applicable, the additional statutes, rules and standards set forth by the Oregon Department of Environmental Quality.

(4) No untreated or partially-treated sewage, liquid waste, or septic tank effluent may be discharged directly or indirectly onto the surface of the ground or into the public waters.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 446.330

Stats. Implemented: ORS 446.310 - 446.350 & 446.990

Hist.: HD 1-1978, f. & ef. 1-4-78; HD 19-1983(Temp), f. & ef. 10-18-83; HD 12-1984, f. & ef. 6-20-84; HD 5-1985, f. & ef. 4-25-85; PH 15-2009, f. & cert. ef. 12-23-09

## 333-029-0115

### Fees

License fees are set by local county ordinance. Applicants for a Traveler's Accommodation or Hostel license will pay the license fee set by the LPHA for that county. If the state becomes the agency issuing the license, the applicant for a Traveler's Accommodation or Hostel license (OAR 333-029-0005 through 333-029-0110) must pay to the Oregon Public Health Division a fee of \$60.

Stat. Auth.: ORS 446.321

Stats. Implemented: ORS 446.310 - 446.350 & 446.990

Hist.: HD 4-1980, f. & ef. 3-21-80; HD 19-1983(Temp), f. & ef. 10-18-83; HD 12-1984, f. & ef. 6-20-84; HD 5-1985, f. & ef. 4-25-85; HD 27-1994, f. 10-27-94, cert. ef. 12-31-94; PH 15-2009, f. & cert. ef. 12-23-09

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**Rule Caption:** Update of public swimming, wading and spa rules to comply with federal legislation.

**Adm. Order No.:** PH 16-2009

**Filed with Sec. of State:** 12-23-2009

**Certified to be Effective:** 12-23-09

**Notice Publication Date:** 11-1-2009

**Rules Adopted:** 333-060-0128, 333-062-0103

**Rules Amended:** 333-060-0125, 333-060-0505, 333-060-0510, 333-062-0100

**Subject:** The Department of Human Services, Public Health Division is permanently adopting and amending Oregon Administrative Rules in chapter 333, divisions 60 and 62, related to main drains and suction fittings in public swimming pools, public wading pools and public spa pools. These changes to the state administrative rules bring the OARs into parallel compliance with the Federal Virginia Graeme Baker Pool and Spa Safety Act and clear up any discrepancies between state and federal regulations.

The revisions update Oregon Administrative Rules into parallel compliance with current federal standards and provide direction for new pool construction. The adoption and amendment of rules will address the issue of differences between the two sets of requirements.

**Rules Coordinator:** Brittany Sande—(971) 673-1291

## 333-060-0125

### Inlets

(1) Pool inlets must be provided, sized and arranged to produce a uniform circulation of water so as to maintain a uniform disinfectant residual throughout the pool.

(2) There must be at least one inlet per 400 square feet of pool area or 10,000 gallons of water, whichever is greater.

(3) Pools more than 50 feet wide and reverse flow pools must use floor inlet fittings uniformly spaced no more than 20 feet apart and within 15 feet of the sidewalls.

(4) Grates must be designed so as to prevent entrapment of fingers.

(5) All recirculation inlet fittings must be adjustable for rate of flow. Wall inlet fittings must be directional.

(6) Inlet fittings must have tamper-proof screws that cannot be removed except with tools. Grates, vortex plates and inlet fittings must be in place whenever the pool is in use.

(7) Direct potable water pool inlets must:

(a) Be over-the-rim fill spouts with air gaps located under a diving board or beside grab rails;

(b) Be through-the-wall fill lines located above the water level and equipped with an appropriate backflow prevention device installed per OAR 333-061-0071; or

(c) Be directly connected to the recirculation water supply and equipped with reduced pressure device installed per OAR 333-061-0071 on the potable water supply adjacent to the connection with the pool recirculation water.

Stat. Auth.: ORS 448.011

Stats. Implemented: ORS 448.005 - 448.100 & 448.990

Hist.: HD 2-1979, f. 1-25-79, ef. 3-1-79; Renumbered from 333-042-0143; HD 7-1986, f. & ef. 5-1-86; HD 22-1994, f. 8-22-94, cert. ef. 9-1-94; PH 6-2009(Temp), f. 6-16-09, cert. ef. 6-17-09 thru 12-13-09; Administrative correction 12-23-09; PH 16-2009, f. & cert. ef. 12-23-09

## 333-060-0128

### Submerged Suction Outlets and Drains

The provisions in this rule are consistent with the requirements of the federal Virginia Graeme Baker Pool and Spa Safety Act (VGBPSSA), 15 USC 8001. Public swimming pools, wading pools and spas that operate year-round were expected to be in compliance by December 19, 2008. Seasonal public pools and spas that were closed when the law went into effect are expected to be in compliance with the federal law on the day that they reopen in 2009. The U.S. Consumer Product Safety Commission (CPSC) is responsible for enforcing the VGBPSSA. Sections (1) and (2) of this rule will not be

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enforced by the state or a county delegated authority under ORS 448.100 against public swimming pools, wading pools and spas built prior to the effective date of this rule as the state is not responsible for enforcement of the VGBPSSA. However, any public swimming pool, wading pool or spa not in compliance with the VGBPSSA could be subject to an enforcement action by the CPSC.

(1) Two Outlets. There must be at least two outlets located at the lowest point of the pool floor to drain the entire floor area. Exceptions to this include:

(a) Reverse Flow Pools, where the drain is not connected to the recirculation system, but is provided for drainage of the pool through an air-gap connection to the sanitary sewer.

(b) Other suction-fitting arrangement that allows the drainage of the pool through an air-gap connection to the sanitary sewer, or other approved location, while also providing entrapment protection.

(c) Pools with no drain system, with provisions to completely drain the pool to the sanitary sewer or other approved location, by other means that have entrapment protection.

(2) MAIN DRAINS AND SUBMERGED SUCTION FITTINGS. All submerged suction fittings must be installed according to the standards below.

(a) Pool main drains must be installed in the deepest part of the pool and designed to minimize tripping and toe stubbing hazards. Suction fittings must be installed to minimize tripping, toe stubbing and scrape hazards.

(b) Main drain and submerged suction outlets must be designed with sufficient open area that the maximum velocity through the cover does not exceed the cover's listed flowrate.

(c) All hardware and fittings must be supplied by the manufacturer and installed according to the manufacturer's directions.

(d) Main drain and submerged suction fitting systems must provide ENTRAPMENT, HAIR ENTANGLEMENT and EVISCERATION protection.

(A) Main drains and submerged suction fittings and sumps must be compliant with the requirements of ANSI/ASME A112.19.8 (2007). The cover must be labeled and include: "VGB 2008," the logo of the third party listing agency, the standard for which it was tested, the gallons for which it was approved and the location it is to be placed.

(B) All submerged suction fittings must be installed with a sump designed and approved by the manufacturer for that outlet cover.

(C) All field built sumps must be designed by an Oregon registered engineer and must be built so the opening of the suction pipe is no closer than 1.5 times the pipe's inside diameter from the bottom of the listed suction cover/plate.

(D) Main drains and submerged suction fittings must be separated by at least three feet (measured from the main drain connector pipe centerlines) between the furthest fittings, or be on separate planes, placed so the floor and wall suction fittings cannot be easily blocked at the same time.

(i) The outlets must be sized to handle an equal portion of at least 200 percent of the recirculation flow.

(ii) The outlets must be installed so that they cannot be isolated from one another; no intervening valves.

(iii) The piping going back to the pump must be located in the hydraulic middle of the connector piping, and must be the same size as the connector piping.

(3) BROKEN OR MISSING GRATE FITTINGS. If the pool operator finds that a suction fitting is broken or missing, they must close the pool immediately, shut down the recirculation system and remain closed until the fitting has been replaced.

Stat. Auth.: ORS 448.011

Stats. Implemented: ORS 448.005 - 448.100 & 448.990

Hist.: PH 16-2009, f. & cert. ef. 12-23-09

## 333-060-0505

### New Wading Pool Construction

(1) RECIRCULATION. All public wading pools that have submerged outlets must have at least two outlets for each pump. Each public wading pool, except those in subsection (1)(c) of this rule, must have a recirculation rate that meets or exceeds subsection (1)(a) or (1)(b) of this rule, whichever is greater:

(a) A 60-minute turnover time; or

(b) When skimmers are used, each skimmer must be designed to skim between 30 to 45 gpm water flow, when 70 percent of the recirculation flow is through the skimmers ( $(\# \text{ of skimmers}) \times (30 \text{ to } 45 \text{ gpm design flow}) / 0.70 = \text{gpm recirculation rate}$ ). The skimmer piping must be designed to handle 100 percent of the recirculation rate.

(c) Spray pools, water playgrounds and interactive fountains that do not pond water and that use potable water once and dispose of it without recirculating it are not regulated or licensed by the Division.

(2) SEPARATE SYSTEM. Each public wading pool must have its own separate recirculation system.

(3) SURFACE SKIMMING. The pool must be designed to skim the water surface continuously. The Division may consider overflow structures such as intermittent fixed weir overflow and trench drains, if shown to be

comparably compliant to gutter systems. The Division or its agent may consider alternate overflow designs if the designer shows that adequate skimming and water mixing occur when non-traditional designs are proposed.

(a) SKIMMERS must be listed as meeting ANSI/NSF Standard 50 requirements by a nationally recognized testing organization approved by the Division. A skimmer must be provided for every 400 square feet (37 m<sup>2</sup>) of water surface area or fraction thereof and provide flow in the amount determined in subsection (1)(b) of this rule.

(b) GUTTERS AND TRENCH DRAINS. Gutters allow skimming along the entire edge of the gutter. Generally the gutter extends completely around the perimeter of the pool. A TRENCH DRAIN is used much like a gutter, and is installed in zero-depth areas where an overflow lip cannot be provided. Trench drains are installed at the same angle as the floor. To skim properly, the bottom edge of the trench drains must be level to a very small tolerance and slightly below the water surface.

(A) To determine the minimum amount of surge capacity needed for the pool, add subparagraphs (3)(b)(A)(i) and (ii) of this rule and provide this capacity by installing a surge tank, or any combination of surge tank, gutter, or trench drain:

(i) Provide a minimum surge capacity equal to an amount determined by calculating eight minutes of recirculation flow (8 x recirculation rate = surge capacity); then

(ii) Add the surge needs of any spray feature or water activity system. Allow an amount equal to at least two minutes of feature recirculation flow, or as recommended by the manufacturer, whichever is greater.

(B) Install an automatic fill device, to maintain the water level, on all wading pools with gutters or trench drains.

(4) INLETS. Locate the inlets to evenly distribute treated water to all parts of the wading pool and to move debris to the overflow and drain systems. The designer is responsible for demonstrating that the inlet system will provide adequate circulation to all portions of the wading pool:

(a) Use floor inlets on all wading pools more than 30 feet wide (9.1m), and on zero-depth pools.

(b) In-floor cleaning systems, or other products that may cause a tripping or stubbing hazard, are not allowed.

(c) All inlet fittings must have tamper-proof screws or attachments that cannot be removed except with tools. Inlet fittings will be in place whenever the pool is in use.

(5) SUBMERGED SUCTION FITTINGS AND MAIN DRAINS. All submerged suction fittings must be installed according to the standards below.

(a) Wading pool main drains must be installed in the deepest part of the pool and be designed to minimize tripping and toe stubbing hazards.

(b) Main drain and submerged suction outlets must be designed with sufficient open area that the maximum velocity through the cover does not exceed the cover's listed flowrate.

(c) All hardware and fittings must be supplied by the manufacturer and installed according to the manufacturer's directions.

(d) Main drain and submerged suction fitting systems must provide ENTRAPMENT, HAIR ENTANGLEMENT and EVISCERATION protection.

(A) Main drains and submerged suction fittings and sumps must be compliant with the requirements of ANSI/ASME A112.19.8 (2007). The cover must be labeled and include: "VGB 2008," the logo of the third party listing agency, the standard for which it was tested, the gallons for which it was approved and the location it is to be placed.

(B) Maintain any documentation about your main drain or suction fitting.

(C) All submerged suction fittings must be installed with a sump designed and approved by the manufacturer for that outlet cover.

(D) All field built sumps must be designed by an Oregon registered engineer and must be built so the opening of the suction pipe is no closer than 1.5 times the pipe's inside diameter from the bottom of the listed suction cover/plate.

(E) Two or more outlets must be provided. They must be separated by at least three feet (measured from the midpoint of the main drain connector pipe centerlines) between the furthest fittings, or be on separate planes, placed such that they cannot be blocked by one person.

(i) The outlets must be sized to handle an equal portion of at least 200 percent of the recirculation flow.

(ii) The outlets must be installed so that they cannot be isolated from one another; no intervening valves.

(iii) The main drain or submerged suction fitting-piping going back to the pump must be located in the hydraulic middle of the fitting connector piping, and must be the same size as the connector piping.

(6) BROKEN OR MISSING GRATE FITTINGS. If the pool operator finds that a suction fitting is broken or missing, they must close the wading pool immediately, shut down the recirculation system and remain closed until the fitting has been replaced.

(7) BASIN DESIGN. The slope of the pool bottom can be no more than 1 in 12. Eight inches (200 mm) is the maximum water depth allowed at any edge of the pool accessible from the deck. When perimeter water depths exceed eight inches (200mm) at the edge of the pool, stairs and handrails

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complying with the requirements of OAR 333-060-0080(1), (3), (4)(b), (7), (8), and (9), must be provided at the designated entry points.

(8) DECKING. Unobstructed decking, five feet (1.5 m) or more in width must be provided around the wading pool perimeter. When a wading pool is adjacent to a swimming pool, it must be located near the shallow end of the swimming pool, with a minimum of nine feet (2.7 m) of deck between the pools.

(9) ENCLOSURE. Enclose the wading pool area, as required by OAR 333-060-0105. Spray pools, water playgrounds, and fountains that do not pond water may comply with paragraph (11)(c)(E) of this rule in lieu of providing an enclosure.

(10) DEPTH MARKING:

(a) The operator must indicate the maximum pool depth in feet and inches, with a sign near each entrance to the wading pool.

(b) Depth markings must be placed around the pool perimeter indicating the water depth at the edge, following the requirements in OAR 333-060-0065.

(c) Pools with a zero-depth edge are not required to have perimeter depth markings, but are still required to provide the maximum depth signs.

(d) Pools and fountains that do not pond water are not required to have depth markings or maximum depth signs.

(11) SPRAY FEATURES AND PLAY EQUIPMENT. Fountains, sprays, slides and similar features may be installed, if specifically designed for aquatic installation:

(a) WATER SOURCE. Water-using features must be designed and installed to draw their water supply from the main drain or similar fitting, surge tank, trench drains or gutters, but not from the skimmers. The main drain fittings and the related piping must be sized for 100 percent of the pool recirculation rate plus 100 percent of the capacity of any feature pump routed through the fittings. The sizing of the feature pump must be based on 20 ft. TDH (59,000 Pa), unless the actual TDH is calculated.

(b) EQUIPMENT DESIGN AND INSTALLATION. Play equipment shall be designed and installed to meet all applicable standards of the CPSC Handbook for Playground Safety (1997 edition), and ASTM F1487, Standard for Public Playground Equipment:

(A) Applicable requirements include equipment design and construction, proper anchoring, entrapment protection, protrusion safety, and safety use-zone sizing. All equipment shall be designed for use in pools.

(B) Play equipment must be designed to be difficult to climb, unless the equipment is specifically designed for climbing and provided with safety zones and impact attenuating surfaces acceptable to the Division.

(C) Swings are not allowed.

(D) Obstructions extending from the walls or the bottom of the wading pool are not permitted, unless a designed part of the play equipment, with provisions made for safety and good water circulation.

(E) "Children's Activity Slides" are small, low exit velocity slides designed for use by small children in shallow water. They must be designated by the manufacturer for use in 24 inches (0.6 m) or less of water, and installed as recommended by the manufacturer. Other types of slides are not allowed.

(F) Spray pools, using potable water, must comply with all requirements concerning basin design, materials, entrapment protection, fall protection, and safety during construction of the pool, and must be maintained and operated in a safe and healthy manner.

(c) SPRAY POOLS or WATER PLAYGROUNDS. Spray pools or water playgrounds are basins containing spray features intended for recreational use, but that do not collect water in the basin. If the water is captured and recirculated, the pool shall meet the requirements of OAR, chapter 333, division 60. If potable water is used once and drained to waste, the spray pool or water playground is not regulated or licensed under these rules:

(A) Design spray pools with a zero-depth design, with no walls in the basin.

(B) Spray pools do not require devices for skimming.

(C) All water recirculated through the spray features shall be filtered and sanitized, or from a potable water source. Equipment capable of continuously supplying at least 0.25 ppm additional chlorine to the line returning water to the spray features must be provided, except when potable water is supplied, used once and drained to waste, or all the water is filtered and treated before being sent back to the water features.

(D) Slip-resistant, easy to clean and water impervious surfaces must be installed in the spray basin. Impact attenuating surfaces, basin surfacing materials with shock absorbing properties, for use with equipment addressed in subsection (11)(b) of this rule, will be considered, but must be water impervious, not conducive to bacteria and algae growth, and resistant to vandalism and damage. All impact cushioning materials must be approved by the Division for use in a wet environment.

(E) Spray pools do not require a security enclosure. At least six feet (1.9 m) of deck around the perimeter of the pool basin and sloped away from the basin must be provided.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 448.011

Stats. Implemented: ORS 448.005 - 448.100 & 448.990

Hist.: PH 17-2006, f. 6-30-06, cert. ef. 7-1-06; PH 6-2009(Temp), f. 6-16-09, cert. ef. 6-17-09 thru 12-13-09; Administrative correction 12-23-09; PH 16-2009, f. & cert. ef. 12-23-09

## 333-060-0510

### Existing Wading Pools

The requirements in this rule apply to all wading pools built before July 13, 2006.

(1) RETRO-FIT RECIRCULATION SYSTEMS. All water-retaining wading pools need recirculation, filtration, and disinfection. Those wading pools without water recirculation shall be renovated, or phased out of use and removed, before December 31, 2009.

(a) COMPLIANCE. Operators of all wading pools affected by this rule must provide to the Division or its agent, before July 1, 2007, a proposed plan and timetable for renovation or removal of the pool.

(A) The proposed plan and timetable will be reviewed by the Division or agent health department and an acceptable plan and timetable will be negotiated or approved.

(B) Before renovation begins, construction plans, a plan review application and fees must be submitted to the Division or its agent to obtain approval and a construction permit.

(C) If a wading pool operator fails to submit a plan by July 1, 2007, or fails to complete renovations or removal by December 31, 2009, the license for the pool will not be renewed:

(i) After December 31, 2009, wading pools without water recirculation systems and without a license to operate, are declared public nuisances under the authority of ORS 448.060; and

(ii) The Division or its agent, in compliance with ORS 448.060 may proceed with abatement of said nuisance.

(b) INTERIM OPERATION. Operators of wading pools that have no recirculation, filtration or disinfection systems must change the water at least every four hours. This may be accomplished by gradual drainage, or by dumping and filling. This may continue until the wading pool is retro-fit or December 31, 2009 whichever comes first. Additional requirements include:

(A) At opening, and every two hours after that, until closing, the water must be tested and a chlorinating product added to reach a residual of 5 ppm.

(B) The water must be drained at closing each day. Before opening again, the basin must be thoroughly rinsed and any debris removed. The basin must be scrubbed at least weekly, with a solution containing at least 50 ppm of chlorine, mixed according to the directions on the chemical container. Potable water must be used to fill the pool and the chlorine level adjusted.

(2)(a) Protection against ENTRAPMENT, HAIR ENTANGLEMENT and EVISCERATION for all suction fittings will be provided on all wading pools, except those addressed in subsection (1)(b) of this rule by December 31, 2008.

(b) COMPLIANCE. If a wading pool operator fails to provide entrapment protection by December 31, 2008 the operator will close the wading pool until either protection is provided and approved by the Division or its agent, or the pool is removed. If corrections are not completed by December 31, 2009, the license for the pool will not be renewed.

(A) Before renovation begins; construction plans, a plan review application and fees must be submitted to the Division or its agent to obtain approval and a construction permit.

(B) After December 31, 2009, wading pools without entrapment protection and without a license to operate are declared public nuisances under the authority of ORS 448.060; and

(C) The Division or its agent, in compliance with ORS 448.060 may proceed with abatement of said nuisance, including summary abatement, if necessary.

(D) Renovations must meet the requirements of OAR 333-060-0505(5) after June 16, 2009.

Stat. Auth.: ORS 448.011

Stats. Implemented: ORS 448.005 - 448.100 & 448.990

Hist.: PH 17-2006, f. 6-30-06, cert. ef. 7-1-06; PH 6-2009(Temp), f. 6-16-09, cert. ef. 6-17-09 thru 12-13-09; Administrative correction 12-23-09; PH 16-2009, f. & cert. ef. 12-23-09

## 333-062-0100

### Inlets

(1) Pool inlets must be provided, sized, and arranged to produce a uniform circulation of water so as to maintain a uniform disinfectant residual throughout the pool.

(2) There must be at least one inlet per 400 square feet of pool area or 10,000 gallons of water, whichever is greater, with a minimum of two inlets.

(3) Grates must be designed so as to prevent entrapment of fingers.

(4) All recirculation inlet fittings must be adjustable for rate of flow. Wall inlet fittings must be directional.

(5) Inlet fittings must have tamper-proof screws that cannot be removed except with tools. Grates, vortex plates and inlet fittings must be in place whenever the spa is in use.

(6) Direct potable water pool inlets must:

(a) Be over-the-rim spouts with an air-gap located beside grab rails;

(b) Be through-the-wall fill lines located above the water level and equipped with an appropriate backflow prevention device installed per OAR 333-061-0071; or

(c) Be directly connected to the recirculation water supply and equipped with reduced pressure device installed per OAR 333-061-0071 on the potable water supply adjacent to the connection with the spa pool recirculation water.

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Stat. Auth.: ORS 448.011  
Stats. Implemented: ORS 448.005 - 448.100 & 448.990  
Hist.: HD 14-1980(Temp), f. & ef. 12-19-80; HD 8-1981, f. & ef. 6-23-81; Renumbered from 333-042-0395; HD 23-1994, f. 8-22-94, cert. ef. 9-1-94; PH 6-2009(Temp), f. 6-16-09, cert. ef. 6-17-09 thru 12-13-09; Administrative correction 12-23-09; PH 16-2009, f. & cert. ef. 12-23-09

## 333-062-0103

### Submerged Suction Fittings and Drains

The provisions in this rule are consistent with the requirements of the federal Virginia Graeme Baker Pool and Spa Safety Act (VGBPSSA), 15 USC 8001. Public swimming pools, wading pools and spas that operate year-round were expected to be in compliance by December 19, 2008. Seasonal public swimming pools, wading pools and spas that were closed when the law went into effect are expected to be in compliance with the federal law on the day that they reopen in 2009. The U.S. Consumer Product Safety Commission (CPSC) is responsible for enforcing the VGBPSSA. This rule will not be enforced by the state or a county delegated authority under ORS 448.100 against public swimming pools, wading pools and spas built prior to the effective date of this rule as the state is not responsible for enforcement of the VGBPSSA. However, any public pool or spa not in compliance with the VGBPSSA could be subject to an enforcement action by the CPSC.

#### (1) ALL POOLS

(a) Every spa pool must have an easy and effective means of draining the pool.

(b) Main drain and submerged suction outlets must be designed with sufficient open area that the maximum velocity through the cover does not exceed the cover's listed flowrate. Drains and suction fittings must be installed to minimize tripping, toe stubbing and scrape hazards.

(c) All hardware and fittings must be supplied by the manufacturer and installed according to the manufacturer's directions.

(d) **BROKEN OR MISSING GRATE FITTINGS.** If the pool operator finds that a suction fitting is broken or missing, the operator must close the pool immediately, shut down the recirculation system and remain closed until the fitting has been replaced.

(2) **NEW CONSTRUCTION.** Main drain and submerged suction fitting systems must provide ENTRAPMENT, HAIR ENTANGLEMENT AND EVISCERATION protection.

(a) Main drains and submerged suction fittings and sumps must be compliant with the requirements of ANSI/ASME A112.19.8 (2007). The cover must be labeled and include; "VGB 2008," the logo of the third party listing agency, the standard for which it was tested, the gallons per minute for which it was approved and the location it is to be placed.

(b) Maintain any documentation about your main drain or suction fitting.

(c) All submerged suction fittings must be installed with a sump designed and approved by the manufacturer for that outlet cover.

(d) All field built sumps must be designed by an Oregon registered engineer and must be built so the opening of the suction pipe is no closer than 1.5 times the pipe's inside diameter from the bottom of the listed suction cover/plate.

(e) Main drains and submerged suction fittings must be separated by at least three feet (measured from the main drain connector pipe centerlines) between the furthest fittings, or be on separate planes, placed so the floor and wall suction fittings cannot be easily blocked at the same time.

(A) The outlets must be sized to handle an equal portion of at least 200 percent of the recirculation flow.

(B) The outlets must be installed so that they cannot be isolated from one another; no intervening valves.

(C) The piping going back to the pump must be located in the hydraulic middle of the connector piping, and must be the same size as the connector piping.

Stat. Auth.: ORS 448.011  
Stats. Implemented: ORS 448.005 - 448.100 & 448.990  
Hist.: PH 16-2009, f. & cert. ef. 12-23-09

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**Rule Caption:** Implementation of Sections 1 and 2 of House Bill 2726: Oregon's Menu Labeling Law.

**Adm. Order No.:** PH 17-2009

**Filed with Sec. of State:** 12-29-2009

**Certified to be Effective:** 1-1-10

**Notice Publication Date:** 11-1-2009

**Rules Adopted:** 333-015-0100, 333-015-0105, 333-015-0110, 333-015-0115, 333-015-0120, 333-015-0125, 333-015-0130, 333-015-0135, 333-015-0140, 333-015-0145, 333-015-0150, 333-015-0155, 333-015-0160, 333-015-0165

**Subject:** The Department of Human Services, Public Health Division is permanently adopting rules related to the implementation of Sections 1 and 2 of the Menu Labeling Act, which was passed by the 75th Oregon Legislative Assembly as House Bill 2726. Sections 1 and 2 of HB 2726 require chain restaurants, with 15 or more outlets

nationally, to provide certain nutrition information to customers starting in 2010.

**Rules Coordinator:** Brittany Sande—(971) 673-1291

## 333-015-0100

### Authority and Purpose

(1) These rules are adopted pursuant to the authority granted the Department of Human Services, Public Health Division in 2009 Oregon Laws, chapter 314 (House Bill 2726 Section 4 (1)).

(2) The purpose of the Oregon Menu Labeling Act is to provide consumers with basic nutrition information about prepared food sold at chain restaurants.

Stat. Auth.: 2009 OL Ch. 314  
Stats. Implemented: 2009 OL Ch. 314  
Hist.: PH 17-2009, f. 12-29-09, cert. ef. 1-1-10

## 333-015-0105

### Definitions

For purposes of OAR 333-015-0100 through 333-015-0165, the following definitions shall apply:

(1) "Act" means the Oregon Menu Labeling Act as it appears in 2009 Oregon Laws, chapter 314 (House Bill 2726).

(2) "Alcoholic beverage" means any liquid or solid containing more than one-half of one percent alcohol by volume and capable of being consumed by a human being.

(3) "Calorie and nutrient database" means a commercial computer application or a raw nutrient database that is based on United States Department of Agriculture's (USDA) National Nutrient Database for Standard Reference.

(4)(a) "Chain restaurant" means a restaurant that is located in Oregon that:

(A) Is a part of an affiliation of 15 or more restaurants within the United States;

(B) Sells standardized menu items that constitute 80 percent or more of the menu items served in the restaurant and at least 14 of the other affiliated restaurants; and

(C) Operates under a trade name or service mark, both as defined in ORS 647.005, which is identical or substantially similar to the trade names or service marks of the affiliated restaurants.

(b) "Chain restaurant" does not mean:

(A) A restaurant located inside a facility that is subject to Oregon Department of Agriculture inspection under an interagency agreement described in ORS 624.530, unless the trade name or service mark for the restaurant differs from the trade name or service mark of the facility containing the restaurant;

(B) A cafeteria of a public or private educational institution;

(C) A health care facility as defined in ORS 422.015; or

(D) A motion picture theater.

(5) "Combination meal menu item" means a group of two or more food products or menu items that is offered on a menu, menu board or food tag as a distinct item for sale and that is offered for sale for more than 90 days during a calendar year and which may or may not give the consumer a choice of food items to be included in the meal.

(6) "Condiment" means a sauce, seasoning or dressing including but not limited to butter, jellies or jams, ketchup, mustard, hot sauce, tartar sauce, and similar items offered for general use without charge and not a part of a standard recipe.

(7) "Food product" means a discrete unit serving of a ready-to-eat food or beverage.

(8)(a) "Food tag" means an informational label placed near a menu item, combination meal menu item, or food product that is identified or indicated by the label.

(b) "Food tag" does not mean a menu or menu board.

(9) "Government standards" means nutrient values defined by the USDA National Nutrient Database for Standard Reference.

(10) "Laboratory testing" means the chemical analysis of food products to determine nutrient content.

(11) "Menu" means a pictorial display or written description of menu items, combination meal menu items, or food products that does not have a fixed location and is not intended for joint viewing by multiple patrons.

(12)(a) "Menu board" means a pictorial or written description of menu items, combination meal menu items, or food products that:

(A) Is located where the customer places an order for a menu item; and  
(B) Is not a menu or a food tag.

(b) "Menu board" does not mean a pictorial display used solely for the purpose of marketing.

(13)(a) "Menu item" means a prepared food product that is offered on a menu, menu board or food tag as a distinct article for sale.

(b) "Menu item" does not mean the following:

(A) Condiments that are made available on tables or counters for general use without charge;

(B) Food products that are offered for sale for less than 90 days during a calendar year;

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(C) Alcoholic beverages, except as provided for under OAR 333-015-0160; or

(D) Food products in sealed manufacturer packaging.

(14) "Restaurant" means any establishment where food or drink is prepared for consumption by the public or any establishment where the public obtains food or drink so prepared in form or quantity consumable then and there, whether or not it is consumed within the confines of the premises where prepared, and also includes establishments that prepare food or drink in consumable form for service outside the premises where prepared, but does not include railroad dining cars, bed and breakfast facilities or temporary restaurants.

(15) "Self-service item" means any menu item that restaurant customers are permitted to obtain without assistance of a restaurant employee or agent.

(16) "Sealed manufacture packaging" means any food product sold in a sealed package subject to the nutrition labeling requirements for the Federal Nutrition Labeling and Education Act of 1990 (21USC 301) (21CFR101) (PL101-535) (NLEA).

(17) "Serving" means the discrete amount or portion of food as determined by the chain restaurant. Serving does not have the same definition given by the USDA and cited in the NLEA.

(18) "Standardized menu item" means any food product that is prepared with a standard recipe or formula within a chain restaurant, regardless of its name as a menu item.

(19) "Variable menu item" means a menu item that is available in different flavors and varieties at the same price point.

(20) "Verifiable reference values" means nutrient values based on the USDA National Nutrient Database for Standard Reference.

Stat. Auth.: 2009 OL Ch. 314

Stats. Implemented: 2009 OL Ch. 314

Hist.: PH 17-2009, f. 12-29-09, cert. ef. 1-1-10

## 333-015-0110

### General Provisions

(1) Each chain restaurant shall accurately ascertain and make available on site, and in written format, the typical nutrient values for each menu item and combination meal menu item, as the item is usually prepared and offered for sale on menus, menu boards and food tags, including condiments routinely added to a menu item as part of a standard recipe:

- (a) Total calories;
- (b) Total grams of saturated fat;
- (c) Total grams of trans fat;
- (d) Total grams of carbohydrates; and
- (e) Total milligrams of sodium.

(2) OAR 333-015-0110(1) does not apply to:

- (a) Food products that are offered for sale for less than 90 days in a calendar year;
- (b) Condiments;
- (c) Alcoholic beverages not listed as menu items; or
- (d) Unopened food products sold in sealed manufacturer packaging that are not intended to be part of the menu item or combination meal menu item.

Stat. Auth.: 2009 OL Ch. 314

Stats. Implemented: 2009 OL Ch. 314

Hist.: PH 17-2009, f. 12-29-09, cert. ef. 1-1-10

## 333-015-0115

### Written Formats for Nutrition Information

(1) Chain restaurants must provide nutrition information in one or more of the following formats:

- (a) A printed menu;
- (b) A printed menu insert; or
- (c) A brochure or printed handout.

(2) A copy of nutrition information shall be made available to each customer who requests it. Customers must not be required to return copies of nutrition information to the chain restaurant.

(3) Nutrition information for menu items must be labeled and organized in a manner that is readable, consistent with the organization and naming conventions of menu items on menus, menu boards or food tags and must be in a font size of not less than nine point.

(4) Nutrition information for menu items and food products in a combination meal menu item must be clearly labeled in a manner that is consistent with the name of the item as it is sold in the combination meal menu item.

(5) Nutrition information for menu items that are also sold as a part of a combination meal menu item under a different name must be listed under both names.

Stat. Auth.: 2009 OL Ch. 314

Stats. Implemented: 2009 OL Ch. 314

Hist.: PH 17-2009, f. 12-29-09, cert. ef. 1-1-10

## 333-015-0120

### Nutrition Labeling of Variable Menu Items

For variable menu items, the chain restaurant shall provide required nutrition information as follows:

(1) If both the highest and lowest value of the variable menu item is within 0 to 10 percent of the median value, the median value alone of the required nutrition information may be listed.

(2) If both the highest and lowest value of the variable menu item is within 11 to 20 percent of the median value, the range of values of the required nutrition information must be listed.

(3) If neither section (1) or (2) of this rule applies, each flavor or variety of the menu item must be listed as a separate menu item and accompanied by required nutrition information.

(4) In lieu of sections (1) through (3) of this rule, each flavor or variety of a menu item may be listed as a separate menu item and accompanied by required nutrition information.

Stat. Auth.: 2009 OL Ch. 314

Stats. Implemented: 2009 OL Ch. 314

Hist.: PH 17-2009, f. 12-29-09, cert. ef. 1-1-10

## 333-015-0125

### Nutrition Labeling of Combination Meal Menu Items

Labeling of combination meal menu items is not required as long as typical nutrient values are provided for the individual food products or menu items that comprise the combination meal menu item.

Stat. Auth.: 2009 OL Ch. 314

Stats. Implemented: 2009 OL Ch. 314

Hist.: PH 17-2009, f. 12-29-09, cert. ef. 1-1-10

## 333-015-0130

### Nutrition Information for Shared Menu Items or Shared Combination Meal Menu Items

Nutrition information for menu items or combination meal menu items intended to serve multiple individuals must state the number of individuals intended to be served by the menu items or combination meal menu items and the total typical nutrient values per individual serving.

Stat. Auth.: 2009 OL Ch. 314

Stats. Implemented: 2009 OL Ch. 314

Hist.: PH 17-2009, f. 12-29-09, cert. ef. 1-1-10

## 333-015-0135

### Acceptable Methods for Determining Typical Nutrient Values for Required Nutrition Information

A chain restaurant must utilize one of the following methods for determining typical nutrient values for menu items and combination meal menu items:

- (1) Calorie and nutrient databases as that term is defined in OAR 333-015-0105;
- (2) Verifiable reference values as that term is defined in OAR 333-015-0105;
- (3) Laboratory testing as that term is defined in OAR 333-015-0105; and
- (4) Government standards as that term is defined in OAR 333-015-0105.

Stat. Auth.: 2009 OL Ch. 314

Stats. Implemented: 2009 OL Ch. 314

Hist.: PH 17-2009, f. 12-29-09, cert. ef. 1-1-10

## 333-015-0140

### Verifiable and Accurate Information

(1) A chain restaurant may not make available to customers any typical nutrient values that are substantially inaccurate or that the restaurant knows or should know to be false or misleading.

(2) A chain restaurant may be found by the Oregon Public Health Division to have substantially inaccurate nutrient values if the chain restaurant failed to use one (or more) of the acceptable methods for determining nutrient values described in these rules.

Stat. Auth.: 2009 OL Ch. 314

Stats. Implemented: 2009 OL Ch. 314

Hist.: PH 17-2009, f. 12-29-09, cert. ef. 1-1-10

## 333-015-0145

### Nutrition Information for Self-Service Items

For menu items offered in a buffet, salad bar or other self-service area, nutrition information within a chain restaurant must specify — The typical nutrient values for an individual serving including:

- (1) The size of an individual serving expressed in standard weights and measures; and
- (2) The size of an individual serving expressed in relation to the utensil provided by the chain restaurant for serving that item or the individual servings as prepared or displayed by the chain restaurant.

Stat. Auth.: 2009 OL Ch. 314

Stats. Implemented: 2009 OL Ch. 314

Hist.: PH 17-2009, f. 12-29-09, cert. ef. 1-1-10

## 333-015-0150

### Trans Fat

A restaurant shall follow U.S. Food and Drug Administration (FDA) guidelines for labeling trans fat. This means that trans fat does not have to be listed if the total trans fat in the food is less than 0.5 grams per labeled serv-

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ing, and the chain restaurant makes no claims regarding fat, fatty acids or cholesterol content.

Stat. Auth.: 2009 OL Ch. 314  
Stats. Implemented: 2009 OL Ch. 314  
Hist.: PH 17-2009, f. 12-29-09, cert. ef. 1-1-10

## 333-015-0155

### Rounding Rules

Chain restaurants may round numerical values as follows, except for typical nutrient values for alcoholic beverages:

(1) Total calories values:

(a) For values above 50 calories, the disclosed value shall be rounded to the nearest value evenly divisible by 10.

(b) For values equal to or less than 50 calories, the disclosed value shall be rounded to the nearest value evenly divisible by five.

(2) Total grams of saturated fat values:

(a) For values above five grams of saturated fat, the disclosed value shall be rounded to the nearest gram.

(b) For values equal to or less than five grams of saturated fat, the disclosed value shall be rounded to the nearest 0.5 gram.

(c) For values below 0.5 grams of saturated fat, the disclosed value shall be rounded down to zero.

(3) Total grams of carbohydrates values:

(a) For values equal to or greater than one gram of carbohydrate, the disclosed value shall be rounded to the nearest gram.

(b) For values less than one gram of carbohydrate, the disclosed value shall be expressed as "contains less than one gram" or "less than one gram."

(c) For values below 0.5 grams of carbohydrate, the disclosed value shall be rounded down to zero.

(4) Total milligrams of sodium values:

(a) For values above 140 milligrams of sodium, the disclosed value shall be rounded to the nearest value evenly divisible by 10.

(b) For values between 5 and 140 milligrams of sodium, the disclosed value shall be rounded to the nearest value evenly divisible by five.

(c) For values below five milligrams of sodium, the disclosed value shall be rounded down to zero.

Stat. Auth.: 2009 OL Ch. 314  
Stats. Implemented: 2009 OL Ch. 314  
Hist.: PH 17-2009, f. 12-29-09, cert. ef. 1-1-10

## 333-015-0160

### Alcoholic Beverages

(1) Chain restaurants must provide nutrition information for alcoholic beverages offered on a menu, menu board or food tag for more than 90 days. Nutrition information for alcoholic beverages must be based on the following typical nutrient values for alcohol:

(a) For wine, 122 calories, 4 grams of carbohydrate and 7 milligrams of sodium per 5-ounces;

(b) For beer, other than light beer, 153 calories, 13 grams of carbohydrates and 14 milligrams of sodium per 12-ounces;

(c) For light beer, 103 calories, 6 grams of carbohydrates and 14 milligrams of sodium per 12-ounces;

(d) For distilled spirits, 96 calories per 1.5 ounces; and

(e) For mixed drinks or drinks that are a combination of wine, beer, or distilled spirits and one or more additional ingredients, chain restaurants must provide the total typical nutrient value for the mixed drink using the values for alcohol in OAR 333-015-0160(1), combined with the typical nutrient values for other ingredients based on acceptable methods for determining typical nutrient values under 333-015-0135(1).

Stat. Auth.: 2009 OL Ch. 314  
Stats. Implemented: 2009 OL Ch. 314  
Hist.: PH 17-2009, f. 12-29-09, cert. ef. 1-1-10

## 333-015-0165

### Disclaimers and Additional Nutrition Information

(1) Chain restaurants may publish truthful disclaimers, notifying customers that there may be variations in nutrient content across servings, due to differences in preparation, inconsistent service sizes, ingredients, or custom orders.

(2) Chain restaurants may publish truthful additional nutrition information for menu items including but not limited to cholesterol, fiber, sugar, protein, calcium, iron, vitamin C, vitamin A, and allergens.

(3)(a) Chain restaurants may publish a statement providing information about the recommended daily intake amounts for calories, saturated fat and sodium as follows:

(b) "Recommended limits for a 2,000 calorie daily diet are 20 grams of saturated fat and 1,700 milligrams of sodium."

Stat. Auth.: 2009 OL Ch. 314  
Stats. Implemented: 2009 OL Ch. 314  
Hist.: PH 17-2009, f. 12-29-09, cert. ef. 1-1-10

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**Rule Caption:** Reimbursement for Cost of Services and Supplies Provided for Disposition of Unclaimed Indigent Bodies.

**Adm. Order No.:** PH 1-2010

**Filed with Sec. of State:** 1-14-2010

**Certified to be Effective:** 1-14-10

**Notice Publication Date:** 12-1-2009

**Rules Amended:** 333-012-0500

**Subject:** The Department of Human Services, Public Health Division is permanently amending OAR 333-012-0500 to reflect the statutory requirements of SB 796 (Oregon Laws 2009, chapter 709). This action will allow the Public Health Division to increase the maximum reimbursement cap to licensed funeral service practitioners for the cost of services provided for disposition of unclaimed indigent bodies. The maximum reimbursement cap was previously set in ORS 97.170(5). SB 796, Section 8 removed the maximum reimbursement cap from statute and directs establishment of the maximum reimbursement cap to OAR 333-012-0500. The maximum reimbursement cap is presently set at \$450 and this rulemaking will increase the maximum reimbursement cap to \$650.

**Rules Coordinator:** Brittany Sande—(971) 673-1291

## 333-012-0500

### Reimbursement for Cost of Services Performed and Supplies Provided for Disposition of Unclaimed Indigent Bodies

(1) Licensed funeral service practitioners, hereafter referred to as claimants, shall submit an itemized statement of expenses for services performed and supplies provided for disposition of unclaimed indigent bodies.

(2) The itemized statement shall be accompanied by the claimants' certification that services for which reimbursement is claimed were in accordance with stipulations in ORS 97.170(1), (3), (4) and (6).

(3) Certification will be on the Public Health Division's current Form FS 23-154 ("http://www.oregon.gov/DHS/ph/docs/indigent\_costfund.pdf" or contact 971-673-0572) or similar document which contains all the information requested on Form FS 23-154.

(4) The Public Health Division shall disburse funds to claimants monthly:

(a) Applications received between the tenth day of a month and the ninth day of the following month will constitute the total number of claims eligible for reimbursement in that month;

(b) Maximum reimbursement will be in the amount of the invoice or \$650, whichever is less; and

(c) In accordance with ORS 432.312(1) and (2), the total amount of reimbursement cannot exceed the total amount of funds available and on hand at the close of the accounting period each month. Therefore, in any given month when the amount of claimants' itemized statements or a maximum of \$650 per claim, whichever is less, exceeds the total amount of funds available for disbursement, the total amount of the funds on hand and available for disbursement will be distributed proportionately among all of the claimants that submitted itemized statements during that month.

(d) If funds available and on hand at the close of the accounting period exceed the total amount of claimants' itemized statements or a maximum of \$650 per claim, the remaining funds will carry forward to the next accounting period and made available for funding future claims up to the allowable maximum reimbursement.

(5) Fraudulent submission of this form will result in penalties set forth in ORS 692.180.

Stat. Auth.: ORS 97.170, 432.146 & 432.312  
Stats. Implemented: ORS 97.170(1), (3), (4) & (6), 432.312(1) & (2)  
Hist.: HD 14-1993(Temp), f. 10-14-93, cert. ef. 10-15-93; HD 2-1994, f. & cert. ef. 1-12-94; PH 7-2009(Temp), f. & cert. ef. 7-20-09 thru 1-15-10; PH 1-2010, f. & cert. ef. 1-14-10

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**Rule Caption:** Oregon Indoor Clean Air Act.

**Adm. Order No.:** PH 2-2010

**Filed with Sec. of State:** 1-14-2010

**Certified to be Effective:** 1-14-10

**Notice Publication Date:** 11-1-2009

**Rules Amended:** 333-015-0035, 333-015-0040, 333-015-0075, 333-015-0085

**Subject:** The Department of Human Services, Public Health Division is permanently amending the following Oregon Administrative Rules related to the Indoor Clean Air Act:

• 333-015-0035: To eliminate requirement for signage on each sleeping room door at hotels and motels

• 333-015-0040: To clarify outdoor signage requirements for seating and dining areas within 10 feet of entrances, exits, windows that open, and air intake vents

# ADMINISTRATIVE RULES

- 333-015-0075: To create a consistent complaint response procedure for complaints received after a business has successfully completed a remediation plan

- 333-015-0085: To create a specific schedule of penalties for each type of violation of the Act and for repeat violations

**Rules Coordinator:** Brittany Sande—(971) 673-1291

## 333-015-0035

### General Provision

(1) No person shall smoke or carry any lighted smoking instrument in a public place except in those areas that are not required to be smokefree pursuant to ORS 433.850(2) and OAR 333-015-0035(6) and (8).

(2) Employers shall provide a place of employment that is free of tobacco smoke for all employees, except in those areas listed in ORS 433.850(2) and in OAR 333-015-0035(5), (6) and (8).

(3) No person shall smoke or carry any lighted smoking instrument within 10 feet of the following parts of public places or places of employment:

- (a) Entrances;
- (b) Exits;
- (c) Windows that open;
- (d) Ventilation intakes that serve an enclosed area;
- (e) A service line or within 10 feet of a service line that extends an entrance.

(4) Smoking shall be prohibited within 10 feet of an accessibility ramp that extends beyond 10 feet from the entrance or exit.

(5) The owner or entity in charge of a hotel or motel may designate up to 25 percent of the sleeping rooms of the hotel or motel as rooms in which smoking is permitted.

(a) If the owner or entity in charge of a hotel or motel chooses to designate up to 25 percent of sleeping rooms as smoking permitted, all smoking rooms on the same floor must be contiguous. The status of the rooms may not be changed, except to add more nonsmoking rooms.

(b) The owner or entity in charge of a hotel or motel shall provide written notice to patrons upon check-in as to the smoking status of the sleeping rooms.

(c) The owner or entity in charge of a hotel or motel shall post signs at each entrance and exit in accordance with OAR 333-015-0040, with the exception of sleeping room entrances and exits. Signage shall notify all patrons that smoking is limited to certain sleeping rooms.

(d) The owner or entity in charge of a hotel or motel shall provide written information to patrons upon check-in describing how patrons may notify management of smoking occurring in non-smoking areas or rooms.

(e) Nothing in these rules shall prevent the owner or entity in charge of a hotel or motel from prohibiting smoking on the entire premises.

(6) Smoking of noncommercial tobacco products for ceremonial purposes is permitted in spaces designated for traditional ceremonies in accordance with the American Indian Religious Freedom Act, 42 U.S.C. 1996.

(7) Smoking is prohibited in a room during the time that jurors are required to use the room.

(a) All jury rooms shall be posted prominently with "No Smoking" signs having letters no less than one inch in height.

(b) Nothing in this section is intended to allow smoking in a jury room when it would otherwise be prohibited by ORS 433.850 through 433.875.

(8) The following areas are not required to be smokefree:

(a) Smoke shops meeting the definition set forth in OAR 333-015-0030(22);

(b) Cigar bars if:

(A) The cigar bar generated on-site retail sales of cigars of at least \$5,000 for the calendar year ending December 31, 2006; and

(B) The cigar bar has provided the Public Health Division with proper documentation as required by OAR 333-015-0066.

(c) Up to 25 percent of the sleeping rooms of a hotel or motel, as designated by the owner or entity in charge. The hotel or motel must be in compliance with the rules set forth in OAR 333-015-0035(5)

(9) Nothing in these rules shall prevent an employer in charge of a place of employment or an entity in charge of a public place from designating the entire place of employment or public place as smokefree.

Stat. Auth.: ORS 433.855

Stats. Implemented: ORS 433.835 - 433.870

Hist.: HD 10-1983, f. & ef. 7-1-83; OHD 8-2002(Temp), f. & cert. ef. 5-28-02 thru 11-22-02; OHD 12-2002, f. & cert. ef. 8-27-02; PH 18-2004(Temp), f. & cert. ef. 5-7-04 thru 10-27-04; PH 27-2004, f. & cert. ef. 8-19-04; PH 12-2008, f. 8-15-08, cert. ef. 1-1-09; PH 2-2010, f. & cert. ef. 1-14-10

## 333-015-0040

### Signs

(1) An employer or entity in charge, except in those places described in OAR 333-015-0035(6) and (8), shall post signs prohibiting smoking. Signs shall use either the "no smoking" symbol (a cigarette with a diagonal slash through it within a circle) and the words "within 10 feet," or the words "No Smoking within 10 feet," or both. Nothing in these rules shall prevent an employer from increasing the amount of property where smoking is prohibit-

ed beyond the 10 foot requirement or from designating the entire premises as smokefree. Signage may be used without specifically including the words "within 10 feet" if the signage specifies some other restriction greater than 10 feet or designates the entire premises as smokefree. Signs shall be posted prominently at each entrance and exit to the place of employment or public place.

(2) In addition to requirements under this rule, an owner or entity in charge of a hotel or motel shall comply with signage requirements as described in OAR 333-015-0035(5).

(3) An owner or entity in charge of tables or outdoor seating or dining areas within 10 feet of entrances, exits, windows that open, or ventilation intakes that serve an enclosed area of any public place or workplace shall clearly mark the tables or outdoor seating or dining areas as non-smoking with signs that use either the "no smoking" symbol (a cigarette with a diagonal slash through it within a circle), the words "No Smoking," or both.

(4) In a cigar bar or smoke shop where smoking is allowed under OAR 333-015-0035(8), the employer or entity in charge shall post signage at each entrance and exit to clearly state that smoking is allowed in all or some of the premises, and that anyone under the age of 21 for cigar bars and under the age of 18 for smoke shops is prohibited from entering the premises.

(5) All signs used to describe whether smoking is prohibited or allowed in a place of employment or public place shall be placed at a height and location easily seen by a person entering the establishment and shall not be obscured in any way.

Stat. Auth.: ORS 433.855

Stats. Implemented: ORS 433.835 - 433.870

Hist.: HD 10-1983, f. & ef. 7-1-83; OHD 8-2002(Temp), f. & cert. ef. 5-28-02 thru 11-22-02; OHD 12-2002, f. & cert. ef. 8-27-02; PH 18-2004(Temp), f. & cert. ef. 5-7-04 thru 10-27-04; PH 27-2004, f. & cert. ef. 8-19-04; PH 12-2008, f. 8-15-08, cert. ef. 1-1-09; PH 18-2008, f. 11-14-08, cert. ef. 1-1-09; PH 2-2010, f. & cert. ef. 1-14-10

## 333-015-0075

### Complaint Response

DHS or the LPHA shall respond to complaints as follows:

(1) Initial complaint:

(a) DHS or the LPHA shall assess whether the site in question is required to be smokefree under the provisions of ORS 433.835 through 433.850.

(b) If DHS or the LPHA determines that the place of employment (or some portion) or public place is required to be smokefree, DHS or the LPHA shall send a letter ("initial response letter") to the place of employment or public place named in the complaint within 10 business days after receipt of the complaint of violation. The letter shall contain notification that the employer or public place has been reported as being in violation of the Act or these rules, educational materials about how to comply with the Act and these rules, and information on whom to contact for further information and assistance in compliance.

(c) DHS or the LPHA shall send a form letter to the complainant, if the complainant has supplied their name and contact information, notifying them that the complaint has been received and is being investigated, or that the workplace is not required to be smokefree under ORS 433.835 through 433.850.

(2) Second or subsequent complaint:

(a) If DHS or the LPHA receives additional complaint(s) about the site within five business days after the "initial response letter" was sent, DHS or the LPHA shall send a form letter to the complainant, if the complainant has supplied their name and contact information, telling them that the complaint has been received and the investigation process begun.

(b) If DHS or the LPHA receives a second or subsequent complaint about the site more than five business days after the "initial response letter" was sent, a representative of DHS or the LPHA shall make an unannounced site visit within 30 days of complaint receipt, to determine whether the employer or public place is in violation of the Act or these rules.

(c) Failure of an employer or entity in charge to permit DHS or the LPHA access to the place of employment or public place is a violation and may result in the imposition of civil penalties, or other action under sections (5) and (6) of this rule. If an employer or entity in charge does not permit access for a site visit, DHS or the LPHA shall notify the Assistant Director of the Public Health Division or designee for further enforcement activity.

(3) Finding of violation:

(a) A violation of indoor smoking prohibitions is deemed to have occurred if during a site visit pursuant to a second or subsequent complaint, the DHS or LPHA representative:

(A) Observes any person smoking or carrying a lighted smoking instrument in an area where smoking is prohibited;

(B) Observes cigar or cigarette butts in an area where smoking is prohibited;

(C) Observes ashtrays intended for use in an area where smoking is prohibited;

(D) Observes no signs or insufficient signs as required under these rules;

(E) Determines that a cigar bar does not have proper certification from DHS;



# ADMINISTRATIVE RULES

(F) Determines that a smoke shop that allows smoking does not have proper certification from DHS;

(G) Observes the smoking of non-cigar tobacco products in a cigar bar;

(H) Observes smoking instruments intended for use in an area where smoking is prohibited; or

(I) Obtains signed written statements from at least two individuals who have personally witnessed smoking, the carrying of a lighted smoking instrument, or the smoking of a prohibited tobacco product at a time and in an area where smoking is prohibited.

(b) A violation of outdoor smoking prohibitions is deemed to have occurred if during a site visit pursuant to a second or subsequent complaint, DHS or the LPHA representative:

(A) Observes any person smoking or carrying a lighted smoking instrument within 10 feet of entrances, exits, accessibility ramps that extend beyond 10 feet from an entrance or exit, windows that open, or ventilation intakes that serve an enclosed area of any public place or workplace;

(B) Observes ashtrays intended to be used for smoking within 10 feet of entrances, exits, accessibility ramps that extend beyond 10 feet from an entrance or exit, windows that open, or ventilation intakes that serve an enclosed area of any public place or workplace; or

(C) Observes tables or outdoor seating or dining areas within 10 feet of entrances, exits, windows that open, or ventilation intakes that serve an enclosed area of any public place or workplace that are not clearly marked as nonsmoking.

(4) Remediation plan:

(a) After a finding of violation, DHS or the LPHA representative and the employer or entity in charge will jointly develop a remediation plan. All remediation plans must be completed within 15 days of the site visit.

(b) An employer or entity in charge may request in writing an extension of time in which to complete the remediation plan in special circumstances. An extension may be granted only by the Assistant Director of the Public Health Division or designee.

(c) A DHS or LPHA representative shall make a follow-up visit within 30 days of the remediation plan completion date to confirm completion.

(d) If an employer or entity in charge does not cooperate in developing a remediation plan, DHS or the LPHA shall notify the Assistant Director of the Public Health Division or designee for further enforcement activity.

(e) If additional complaint(s) are received within three years after the date DHS or the LPHA confirmed completion of the remediation plan, a representative of DHS or the LPHA shall make an unannounced post-completed remediation plan visit within 15 business days of complaint receipt, to determine whether the employer or entity in charge is in violation of the Act or these rules. If a violation is found, the matter will be referred for enforcement under section (5) of this rule.

(f) If an additional complaint is received more than three years from the date DHS or the LPHA confirmed completion of the remediation plan, and no other complaints were received in that three year period, a representative of DHS or the LPHA shall make an unannounced site visit within 30 days of complaint receipt to determine whether the employer or entity in charge is in violation of the Act or these rules. If a violation is found, a remediation plan will be developed under section (4) of this rule.

(5) Notice of violation:

(a) If, during the follow-up visit or the post-completed remediation plan visit, DHS or the LPHA representative finds that the remediation plan has not been completed or finds additional evidence of violations, DHS or the LPHA shall notify the Assistant Director of the Public Health Division or designee for further enforcement activity.

(b) Once notified under subsection (2)(c), (4)(d), (4)(e) or (5)(a) of this rule, the Assistant Director of the Public Health Division or designee shall issue a notice of violation and, if applicable, notice of intent to impose civil penalties to the employer or entity in charge of a public place. Such notices shall comply with the notice and civil penalty provision in ORS Chapter 183 and OAR 333-015-0085.

(c) The notice of violation and notice of intent to impose civil penalty forms shall be provided by DHS. This form shall be used for all citations.

(d) The citation shall be personally delivered to the employer or entity in charge of a public place or mailed to the place of employment or the address of the entity in charge of a public place by both first class mail and certified mail, return receipt requested.

(e) Payment of civil penalties shall be made by mail to the Assistant Director of the Public Health Division and credited to the Tobacco Use Reduction Account, as required by ORS 433.855(1)(c).

(6) Failure to cooperate:

(a) In addition to assessing fines under OAR 333-015-0075(5) above, the Assistant Director of the Public Health Division may initiate further legal action against an employer or entity in charge of a public place that includes, but is not limited to, requesting an injunction from a court to enjoin operation of the business or public place if the employer or entity in charge of a public place has:

(A) Refused to allow an on-site visit to assess status of compliance;

(B) Refused to cooperate in the development of a remediation plan;

(C) Incurred repeated or multiple violations of the Act or these rules.

Stat. Auth.: ORS 433.855

Stats. Implemented: ORS 433.835 - 433.870

Hist.: OHD 8-2002(Temp), f. & cert. ef. 5-28-02 thru 11-22-02; OHD 12-2002, f. & cert. ef. 8-27-02; PH 18-2004(Temp), f. & cert. ef. 5-7-04 thru 10-27-04; PH 27-2004, f. & cert. ef. 8-19-04; PH 12-2008, f. 8-15-08, cert. ef. 1-1-09; PH 2-2010, f. & cert. ef. 1-14-10

## 333-015-0085

### Penalties

(1) Each violation of the Act or these rules shall be punishable by a fine up to \$500 each day the workplace or public place is found to be out of compliance, not to exceed \$2000 in any 30-day period, according to the following schedule:

(a) Violations described in OAR 333-015-0075(3)(a)(A), (C), (E), (F), and (G) shall be punishable by a fine of \$500 for the first violation and for each subsequent violation.

(b) Violations described in OAR 333-015-0075(3)(a)(B), (D), (H), (I) and (3)(b)(A), (B), and (C) shall be punishable by a fine of \$300 for the first violation, \$400 for the second violation, and \$500 for the third and any subsequent violations.

Stat. Auth.: ORS 433.855

Stats. Implemented: ORS 433.835 - 433.870

Hist.: OHD 8-2002(Temp), f. & cert. ef. 5-28-02 thru 11-22-02; OHD 12-2002, f. & cert. ef. 8-27-02; PH 18-2004(Temp), f. & cert. ef. 5-7-04 thru 10-27-04; PH 27-2004, f. & cert. ef. 8-19-04; PH 12-2008, f. 8-15-08, cert. ef. 1-1-09; PH 2-2010, f. & cert. ef. 1-14-10

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

**Rule Caption:** Medicaid Long Term Care Quality and Reimbursement Advisory Council.

**Adm. Order No.:** SPD 18-2009

**Filed with Sec. of State:** 12-23-2009

**Certified to be Effective:** 1-1-10

**Notice Publication Date:** 11-1-2009

**Rules Adopted:** 411-001-0115, 411-001-0118

**Rules Amended:** 411-001-0100, 411-001-0110, 411-001-0120

**Subject:** The Department of Human Services, Seniors and People with Disabilities Division is permanently amending the Medicaid Long Term Care Quality and Reimbursement Advisory Council (MLTCQRAC) rules in OAR chapter 411, division 001 to clarify administration, scope, and operation.

**Rules Coordinator:** Christina Hartman—(503) 945-6398

## 411-001-0100

### Purpose

(1) The purpose of the rules in OAR chapter 411, division 001 is to establish procedures for the operation of the Medicaid Long Term Care Quality and Reimbursement Advisory Council (Council).

(2) The Council was established by the 1995 Legislative Assembly and consists of 12 stakeholders including the Long Term Care Ombudsman, consumers, advocates, and providers. Council appointments are made by the Governor, the President of the Senate, the Speaker of the House, Governor's Commission on Senior Services, and the Oregon Disabilities Commission as described in ORS 410.550.

(3) The Council is directed to advise the Department of Human Services, Seniors and People with Disabilities Division on changes or modifications to the Medicaid reimbursement system and the adverse and positive effects of the changes or modifications on the quality of long term care and community-based care services and reimbursement for long term care and community-based care services.

Stat. Auth.: ORS 410.070, 410.555

Stats. Implemented: ORS 410.550 - 410.455

Hist.: SSD 7-1996, f. 8-30-96, cert. ef. 9-1-96; SPD 18-2006, f. 5-12-06, cert. ef. 6-1-06; SPD 18-2009, f. 12-23-09, cert. ef. 1-1-10

## 411-001-0110

### Definitions

(1) "Council" means the Medicaid Long Term Care Quality and Reimbursement Advisory Council.

(2) "DHS" means the Department of Human Services.

(3) "Medicaid Reimbursement System" means the method or methodology associated with reimbursing providers of long term care and community-based services under the Seniors and People with Disabilities Division's Aged and Physically Disabled Programs. The Medicaid reimbursement system does not include rates established by collective bargaining, rates established by actuarial calculations, or rate increases that have been approved and funded by the Legislature.

(4) "Quality" means the degree to which long term care systems, services, and supplies for individuals and populations increase the likelihood of positive outcomes.

(5) "SPD" means the Department of Human Services, Seniors and People with Disabilities Division.

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(6) "These Rules" mean the rules in OAR chapter 411, division 001.  
Stat. Auth.: ORS 410.070  
Stats. Implemented: ORS 410.550 - 410.555  
Hist.: SSD 7-1996, f. 8-30-96, cert. ef. 9-1-96; SPD 18-2006, f. 5-12-06, cert. ef. 6-1-06; SPD 18-2009, f. 12-23-09, cert. ef. 1-1-10

## 411-001-0115

### Council Administration

Council By-Laws supplement ORS 410.550 to 410.555 and these rules.  
Stat. Auth.: ORS 410.070, 410.555  
Stats. Implemented: ORS 410.550 - 410.555  
Hist.: SPD 18-2009, f. 12-23-09, cert. ef. 1-1-10

## 411-001-0118

### Council Scope and Operation

(1) At the beginning of each legislative session, the Council shall review the Governor's Recommended Budget for SPD. The Council may submit a recommendation in support or opposition of the Governor's Recommended Budget.

(2) DHS shall submit to the Council, for the Council's review and recommendation, any proposed change or modification to the Medicaid reimbursement system.

(3) Upon review of any proposed change or modification under section (2) of this rule, the Council shall issue a written advisory recommendation to SPD as described in OAR 411-001-0120.

(4) Prior to implementing any change or modification to the Medicaid reimbursement system, SPD shall submit the Council's written recommendation to the Legislative Assembly or to the Emergency Board if the Legislative Assembly is not in session.

(5) If the Council has a disagreement with any change or modification to the Medicaid reimbursement system, SPD shall obtain the approval of the Legislative Assembly or the Emergency Board if the Legislative Assembly is not in session, before instituting the proposed change or modification. A proposed change or modification with an estimated fiscal impact of \$100,000 or less shall be exempt from this provision.

(6) SPD shall inform the Council of all rate changes within SPD's Aged and Physically Disabled Programs, including rates established by collective bargaining, rates established by actuarial calculations, and rate increases that have been approved and funded by the Legislature.

(7) The Council may review SPD's strategic initiatives in order to assess the likelihood of increased quality for individuals served by SPD.

Stat. Auth.: ORS 410.070, 410.555  
Stats. Implemented: ORS 410.550 - 410.555  
Hist.: SPD 18-2009, f. 12-23-09, cert. ef. 1-1-10

## 411-001-0120

### Council Operation

(1) Within 60 calendar days after receipt from SPD of any proposed change or modification to the Medicaid reimbursement system, the Council shall issue a written advisory recommendation to SPD. The 60-day period shall begin the day following delivery to the chairperson of the Council if a proposed change or modification is faxed, hand-delivered, or e-mailed. Otherwise, the 60-day period shall begin the third day after the date of mailing first class.

(2) A written advisory recommendation issued by the Council must state:

(a) Whether the Council supports or opposes the proposed change or modification;

(b) Whether the Council concludes that the proposed change or modification shall have an adverse or positive effect on the quality of long term care and community-based care services provided under the Oregon Medicaid program; and

(c) The basis for the Council's recommendation, which must include:

(A) The reason for the Council's position;

(B) A list of the principal documents, reports, or studies, if any, relied upon in considering the proposed change or modification; and

(C) Other information deemed appropriate by the Council.

(3) Timeline for written recommendation.

(a) Notwithstanding section (1) of this rule, SPD may shorten the time within which the Council must issue a written recommendation if SPD decides to adopt a proposed change or modification by temporary rule and if SPD prepares a written statement in which SPD:

(A) Finds that failure to make proposed changes or modifications promptly is likely to result in serious prejudice to the public interest or to the interests of clients of DHS, providers of long term care or community-based care services, or other affected parties;

(B) Specifies reasons why the agency's failure to act promptly is likely to result in serious prejudice to those interests;

(C) States the need for the proposed change or modification and how the change or modification is intended to meet the need;

(D) Lists the principal documents, reports, or studies, if any, prepared or relied upon by SPD in evaluating the need for the proposed change or modification; and

(E) Cites the legal authority relied upon and bearing upon the adoption, amendment, or suspension of the rule if the proposed change or modification is to be made by administrative rule.

(b) However, SPD may not shorten the time for written recommendation to less than five business days.

(4) If SPD intends to adopt an administrative rule that directly or indirectly proposes a change or modification to the Medicaid reimbursement system, SPD may not proceed with notice requirements provided for in ORS 183.335 until SPD has received the Council's written recommendation as described in section (2) of this rule or the time permitted to the Council for issuance of a written recommendation has passed, whichever occurs first.

Stat. Auth.: ORS 410.070  
Stats. Implemented: ORS 410.550 - 410.555  
Hist.: SSD 7-1996, f. 8-30-96, cert. ef. 9-1-96; SPD 18-2006, f. 5-12-06, cert. ef. 6-1-06; SPD 18-2009, f. 12-23-09, cert. ef. 1-1-10

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**Rule Caption:** Nursing Facilities, Annual License Fees.

**Adm. Order No.:** SPD 19-2009

**Filed with Sec. of State:** 12-23-2009

**Certified to be Effective:** 1-1-10

**Notice Publication Date:** 12-1-2009

**Rules Amended:** 411-085-0020

**Subject:** The Department of Human Services, Seniors and People with Disabilities Division is permanently amending OAR 411-085-0020 to increase the annual license fees for nursing facilities to reflect the adjustment made by House Bill 2442 (2009).

**Rules Coordinator:** Christina Hartman—(503) 945-6398

## 411-085-0020

### License Fees, Special Assessment

(1) LICENSE APPLICATION FEES. License application fees may not be prorated for a partial year. The annual license fee is:

(a) For 1 to 15 beds: \$180

(b) For 16 to 49 beds: \$260

(c) For 50 to 99 beds: \$520

(d) For 100 to 150 beds: \$670

(e) For more than 150 beds: \$750

(2) SPECIAL TRUST FUND ASSESSMENT.

(a) Whenever the Department determines that the balance in the Trusteeship Fund created by Oregon statute is less than the amount established by the statute, a special assessment is levied against all licensees. The special assessment shall be pro-rated (based upon the annual fee of the licensee) in order to result in collection of an amount that shall result in a Trusteeship Fund balance of no more than the amount set by the statute. In no event may the special assessment be greater than the annual license fee. The special assessment may be levied only once each calendar year.

(b) Monies are disbursed from the Trusteeship Fund in accordance with ORS 441.277 to 441.323.

Stat. Auth.: ORS 410.070 & 441.055  
Stats. Implemented: ORS 441.020, 441.055, 441.303 & 441.615  
Hist.: SSD 19-1990, f. 8-29-90, cert. ef. 10-1-90; SSD 8-1993, f. & cert. ef. 10-1-93; SDSD 13-1999, f. 12-30-99, cert. ef. 1-1-00; SPD 26-2004, f. 7-30-04, cert. ef. 8-1-04; SPD 19-2009, f. 12-23-09, cert. ef. 1-1-10

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**Rule Caption:** Long-Term Support for Children with Developmental Disabilities.

**Adm. Order No.:** SPD 20-2009

**Filed with Sec. of State:** 12-23-2009

**Certified to be Effective:** 12-28-09

**Notice Publication Date:** 11-1-2009

**Rules Adopted:** 411-308-0010, 411-308-0020, 411-308-0030, 411-308-0040, 411-308-0050, 411-308-0060, 411-308-0070, 411-308-0080, 411-308-0090, 411-308-0100, 411-308-0110, 411-308-0120, 411-308-0130, 411-308-0140, 411-308-0150

**Rules Repealed:** 411-308-0010(T), 411-308-0020(T), 411-308-0030(T), 411-308-0040(T), 411-308-0050(T), 411-308-0060(T), 411-308-0070(T), 411-308-0080(T), 411-308-0090(T), 411-308-0100(T), 411-308-0110(T), 411-308-0120(T), 411-308-0130(T), 411-308-0140(T), 411-308-0150(T)

**Subject:** The Department of Human Services, Seniors and People with Disabilities Division (SPD) is permanently adopting rules in OAR chapter 411, division 308 to prescribe standards, responsibilities, and procedures for providing long-term support for children with developmental disabilities who are eligible for crisis diversion services to prevent out-of-home placement of a child with developmental disabilities, or to return a child with developmental disability.

# ADMINISTRATIVE RULES

ities back to the family home from an out-of-home community placement.

**Rules Coordinator:** Christina Hartman—(503) 945-6398

## 411-308-0010

### Statement of Purpose and Principles

(1) The rules in OAR chapter 411, division 308 prescribe standards, responsibilities, and procedures for providing long-term support for children with developmental disabilities to prevent out-of-home placement, or to return a child with developmental disabilities back to the family home from a residential setting other than the child's family home.

(2) Long-term supports are provided to children with developmental disabilities who are eligible for crisis diversion services. Long-term supports are designed to increase the family's ability to care for the child with developmental disabilities in the family home. Long-term supports resolve the crisis by providing supports to prevent the need for the child to be placed or remain in a residential setting other than the child's family home.

Stat. Auth.: ORS 409.050 & 410.070

Stats. Implemented: ORS 427.005, 427.007 & 430.610 - 430.670

Hist.: SPD 7-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; SPD 20-2009, f. 12-23-09, cert. ef. 12-28-09

## 411-308-0020

### Definitions

(1) "Abuse" means abuse of a child as defined in ORS 419B.005.

(2) "Activities of Daily Living (ADL)" means activities usually performed in the course of a normal day in the child's life such as eating, dressing and grooming, bathing and personal hygiene, mobility (ambulation and transfer), elimination (toileting, bowel, and bladder management), and cognition and behavior (play and social development).

(3) "Annual Support Plan" means the written details of the supports, activities, costs, and resources required for a child to be supported by the family in the family home. The child's Annual Support Plan articulates decisions and agreements made through a child- and family-centered process of planning and information-gathering conducted or arranged for by the child's services coordinator that involves the child (to the extent normal and appropriate for the child's age) and other persons who have been identified and invited to participate by the child's parent or guardian. The child's Annual Support Plan is the only plan of care required by the Seniors and People with Disabilities Division for a child receiving long-term support.

(4) "Assistant Director" means the assistant director of the Department of Human Services, Seniors and People with Disabilities Division, or that person's designee.

(5) "Child" means an individual under the age of 18 and eligible for long-term support.

(6) "Community Developmental Disability Program (CDDP)" means an entity that is responsible for planning and delivery of services for individuals with developmental disabilities in a specific geographic service area of the state operated by or under contract with the Seniors and People with Disabilities Division or a local mental health authority.

(7) "Cost Effective" means that a specific service or support meets the child's service needs and costs less than, or is comparable to, other service options considered.

(8) "CPMS" means the Client Processing Monitoring System.

(9) "Crisis" means:

(a) A situation where a child with a developmental disability is at imminent risk of placement outside the child's family home, or has already been placed outside the family home;

(b) The child requires supports due to the developmental disability to be able to safely remain in or return to the family home; and

(c) No alternative resources are available from which to obtain those supports.

(10) "Developmental Disability" means a disability that originates in the developmental years, that is likely to continue, and significantly impacts adaptive behavior as diagnosed and measured by a qualified professional. Developmental disabilities include mental retardation, autism, cerebral palsy, epilepsy, or other neurological disabling conditions that require training or support similar to that required by individuals with mental retardation, and the disability:

(a) Originates before the individual reaches the age of 22 years, except that in the case of mental retardation, the condition must be manifested before the age of 18;

(b) Originates and directly affects the brain and has continued, or must be expected to continue, indefinitely;

(c) Constitutes a significant impairment in adaptive behavior; and

(d) Is not primarily attributed to a mental or emotional disorder, sensory impairment, substance abuse, personality disorder, learning disability, or Attention Deficit Hyperactivity Disorder.

(11) "DHS" means the Department of Human Services.

(12) "Employer-Related Supports" mean activities that assist a family with directing and supervising provision of services described in a child's Annual Support Plan. Supports to a family assuming the role of employer include but are not limited to:

(a) Education about employer responsibilities;

(b) Orientation to basic wage and hour issues;

(c) Use of common employer-related tools such as job descriptions; and

(d) Fiscal intermediary services.

(13) "Family" for determining a child's eligibility for long-term support as a resident in the family home, for identifying persons who may apply, plan, and arrange for a child's supports, and for determining who may receive family training, means a unit of two or more persons that includes at least one child with developmental disabilities where the primary caregiver is:

(a) Related to the child by blood, marriage, or legal adoption; or

(b) In a domestic relationship where partners share:

(A) A permanent residence;

(B) Joint responsibility for the household in general (e.g. child-rearing, maintenance of the residence, basic living expenses); and

(C) Joint responsibility for supporting a child in the household with developmental disabilities and the child is related to one of the partners by blood, marriage, or legal adoption.

(14) "Family Home" means a child's primary residence that is not licensed, certified by, and under contract with the Department of Human Services as a foster home, residential care facility, assisted living facility, nursing facility, or other residential support program site.

(15) "Fiscal Intermediary" means a person or entity that receives and distributes long-term support funds on behalf of the family of an eligible child according to the child's Annual Support Plan.

(16) "General Business Provider" means an organization or entity selected by the parent or guardian of an eligible child, and paid with long-term support funds that:

(a) Is primarily in business to provide the service chosen by the child's parent or guardian to the general public;

(b) Provides services for the child through employees, contractors, or volunteers; and

(c) Receives compensation to recruit, supervise, and pay the persons who actually provide support for the child.

(17) "Guardian" means a person or agency appointed by the courts that is authorized by the court to make decisions about services for the child.

(18) "Incident Report" means a written report of any injury, accident, act of physical aggression, or unusual incident involving a child.

(19) "Independent Provider" means a person selected by a child's parent or guardian and paid with long-term support funds that personally provide services to the child.

(20) "Individual" means a person with developmental disabilities for whom services are planned and provided.

(21) "Long-Term Support" means individualized planning and service coordination, arranging for services to be provided in accordance with Annual Support Plans, and purchase of supports that are not available through other resources that are required for children with developmental disabilities who are eligible for crisis diversion services to live in the family home. Long-term supports are designed to:

(a) Prevent unwanted out-of-home placement and maintain family unity; and

(b) Whenever possible, reunite families with children with developmental disabilities who have been placed out of the home.

(22) "Long-Term Support Funds" mean public funds contracted by the Department of Human Services to the community developmental disability program and managed by the community developmental disability program to assist families with the purchase of supports for children with developmental disabilities according to each child's Annual Support Plan. Long-term support funds are available only to children for whom the Department of Human Services designates funds to the community developmental disability program by written contracts that specify the children by name.

(23) "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.

(24) "Nursing Care Plan" means a plan of care developed by a nurse that describes the medical, nursing, psychosocial, and other needs of a child and how those needs shall be met. The Nursing Care Plan includes which tasks shall be taught, assigned, or delegated to the qualified provider or family.

(25) "OHP" means the Oregon Health Plan.

(26) "Oregon Intervention System (OIS)" means a system of providing training to people who work with designated individuals to intervene physically or non-physically to keep individuals from harming self or others. The Oregon Intervention System is based on a positive approach that includes methods of effective evasion, deflection, and escape from holding.

(27) "Plan Year" means twelve consecutive months used to calculate what long-term support funds may be made available annually to support an eligible child.

(28) "Positive Behavioral Theory and Practice" means a proactive approach to individual behavior and behavior interventions that:

(a) Emphasizes the development of functional alternative behavior and positive behavior intervention;

(b) Uses the least intervention possible;

(c) Ensures that abusive or demeaning interventions are never used; and

# ADMINISTRATIVE RULES

(d) Evaluates the effectiveness of behavior interventions based on objective data.

(29) "Provider Organization" means an entity selected by a child's parent or guardian, and paid with long-term support funds that:

(a) Is primarily in business to provide supports for individuals with developmental disabilities;

(b) Provides supports for the individual through employees, contractors, or volunteers; and

(c) Receives compensation to recruit, supervise, and pay the persons who actually provide support for the individual.

(30) "Quality Assurance" means a systematic procedure for assessing the effectiveness, efficiency, and appropriateness of services.

(31) "Regional Process" means a standardized set of procedures through which a child's Annual Support Plan and funding to implement the Annual Support Plan are reviewed for approval. The review is performed by a committee of stakeholder representatives from a child's geographic service area and includes review of the potential risk of out-of-home placement, the appropriateness of the proposed supports, and cost effectiveness of the Annual Support Plan.

(32) "Services Coordinator" means an employee of the community developmental disability program or other agency that contracts with the county or Seniors and People with Disabilities Division, who plans, procures, coordinates, and monitors long-term support, and acts as a proponent for children with developmental disabilities and their families.

(33) "SPD" means the Department of Human Services, Seniors and People with Disabilities Division.

(34) "Support" means assistance eligible children and their families require, solely because of the effects of developmental disability on the child, to maintain the child in the family home.

(35) "These Rules" mean the rules in OAR chapter 411, division 308.

Stat. Auth.: ORS 409.050, 410.070, & 417.346

Stats. Implemented: ORS 417.340-417.355, 427.005, 427.007, 430.610 - 430.670

Hist.: SPD 7-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; SPD 20-2009, f. 12-23-09, cert. ef. 12-28-09

## 411-308-0030

### Long-Term Support Administration and Operation

(1) FISCAL INTERMEDIARY SERVICES. The CDDP must provide, or arrange a third party to provide, fiscal intermediary services for all families. The fiscal intermediary receives and distributes long-term support funds on behalf of the family. The responsibilities of the fiscal intermediary include payments to vendors as well as all activities and records related to payroll and payment of employer-related taxes and fees as an agent of families who employ persons to provide services, supervision, or training in the family home or community. In this capacity, the fiscal intermediary may not recruit, hire, supervise, evaluate, dismiss, or otherwise discipline employees.

#### (2) GENERAL RECORD REQUIREMENTS.

(a) Confidentiality. The CDDP must maintain records of services to individuals in accordance with OAR 411-320-0070, ORS 179.505, 192.515 - 192.518, 45 CFR 205.50, 45 CFR 164.512, Health Insurance Portability and Accountability Act (HIPAA), 42 CFR Part 2 HIPAA, and any DHS administrative rules and policies pertaining to individual service records.

(b) Disclosure. For the purpose of disclosure from individual medical records under these rules, CDDPs under these rules shall be considered "providers" as defined in ORS 179.505(1) and ORS 179.505 shall be applicable.

(A) Access to records by DHS does not require authorization by the family.

(B) For the purposes of disclosure from non-medical individual records, all or portions of the information contained in the non-medical individual records may be exempt from public inspection under the personal privacy information exemption to the public records law set forth in ORS 192.502(2).

(c) Individual records. Records for children who receive long-term support must be kept up-to-date and must include:

(A) An easily-accessed summary of basic information as described in OAR 411-320-0070(3) including date of enrollment in long-term support;

(B) Records related to receipt and disbursement of long-term support funds, including expenditure authorizations, expenditure verification, copies of CPMS expenditure reports, verification that providers meet requirements of OAR 411-308-0130, and documentation of family acceptance or delegation of record keeping responsibilities outlined in this rule. Records must include:

(i) Itemized invoices and receipts to record purchase of any single item;

(ii) Signed contracts and itemized invoices for any services purchased from independent contractors and professionals;

(iii) Written professional support plans, assessments, and reviews to document acceptable provision of behavior support, nursing, and other professional training and consultation services; and

(iv) Pay records, including timesheets signed by both employee and employer, to record employee services.

(C) Incident reports, including those involving CDDP staff;

(D) Assessments used to determine required supports, preferences, and resources;

(E) Documentation of the child's eligibility for crisis services and approval of the child's Annual Support Plan through a regional process;

(F) The child's Annual Support Plan and reviews;

(G) The services coordinator's correspondence and notes related to plan development and outcomes; and

(H) Family satisfaction information.

(d) General financial policies and practices. The CDDP must:

(A) Maintain up-to-date accounting records consistent with generally accepted accounting principles that accurately reflect all long-term support revenue by source, all expenses by object of expense, and all assets, liabilities, and equities; and

(B) Develop and implement written statements of policy and procedure as are necessary and useful to assure compliance with any DHS administrative rule pertaining to fraud and embezzlement.

(e) Records retention. Records must be retained in accordance with OAR chapter 166, division 150, Secretary of State, Archives Division.

(A) Financial records, supporting documents, statistical records, and all other records (except individual records) must be retained for a minimum of three years after the close of the contract period, or until audited.

(B) Individual records must be kept for a minimum of seven years.

(3) COMPLAINTS AND APPEALS. The CDDP must provide for review of complaints and appeals by or on behalf of children related to long-term support as set forth in OAR 411-320-0170(2)(c).

(4) OTHER OPERATING POLICIES AND PROCEDURES. The CDDP must develop and implement such written statements of policy and procedure, in addition to those specifically required by this rule, as are necessary and useful to enable the CDDP to accomplish its objectives and to meet the requirements of these rules and other applicable standards and rules.

Stat. Auth.: ORS 409.050, 410.070

Stats. Implemented: ORS 427.005, 427.007, & 430.610 - 430.670

Hist.: SPD 7-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; SPD 20-2009, f. 12-23-09, cert. ef. 12-28-09

## 411-308-0040

### Required Long-Term Support

(1) The CDDP must provide or arrange for the following services to support all children receiving long-term support in the family home:

(a) SERVICE COORDINATION.

(A) Assistance for families to determine needs, plan supports in response to needs, and develop individualized plans based on available natural supports and public resources;

(B) Assistance for families to find and arrange the resources to provide planned supports;

(C) Assistance for families and children (as appropriate) to effectively put the child's Annual Support Plan into practice including help to monitor and improve the quality of personal supports and to assess and revise the child's Annual Support Plan goals; and

(D) Assistance to families to access information, referral, and local capacity building services through the county's family support program under OAR chapter 411, division 305.

(b) EMPLOYER-RELATED SUPPORTS.

(A) Fiscal intermediary services in the receipt and accounting of long-term support funds on behalf of families in addition to making payment with the authorization of families; and

(B) Assistance to families to fulfill roles and obligations as employers of support staff when staff is paid with long-term support funds.

(2) The CDDP must inform families about long-term support when a child is determined by a qualified services coordinator to be at risk of out-of-home placement. The CDDP must provide accurate, up-to-date information that must include:

(a) Criteria for entry and for determining how much assistance with purchasing supports shall be available, including information about eligibility for crisis services and how long-term supports are different from family support services the child and family may have received under OAR chapter 411, division 305;

(b) An overview of common processes encountered in using long-term support, including the long-term support planning process and the regional processes for plan evaluation, review, and funding approval;

(c) Responsibility of providers of long-term support and CDDP employees as mandatory reporters of child abuse;

(d) A description of family responsibilities in regard to use of public funds;

(e) An explanation of family rights to select and direct the providers of services authorized through the eligible child's Annual Support Plan and purchased with long-term support funds from among those qualified according to OAR 411-308-0130 to provide supports; and

(f) Information on complaint and appeal rights and how to raise and resolve concerns about long-term supports.

(3) The CDDP must make information required in sections (1) and (2) of this rule available using language, format, and presentation methods appropriate for effective communication according to each family's needs and abilities.

Stat. Auth.: ORS 409.050, 410.070

Stats. Implemented: ORS 427.005, 427.007, & 430.610 - 430.670

# ADMINISTRATIVE RULES

Hist.: SPD 7-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; SPD 20-2009, f. 12-23-09, cert. ef. 12-28-09

## 411-308-0050

### Financial Limits of Long-Term Support

(1) In any plan year, long-term support funds used to purchase supports for a child must be limited to the amount of long-term support funds specified in the child's Annual Support Plan.

(2) Payment rates used to establish the limits of financial assistance for specific service in the child's Annual Support Plan must be based on SPD rate guidelines for costs of frequently-used services. SPD rate guidelines notwithstanding, final costs may not exceed local usual and customary charges for these services as evidenced by the CDDP's own documentation.

Stat. Auth.: ORS 409.050, 410.070

Stats. Implemented: ORS 427.005, 427.007, & 430.610 - 430.670

Hist.: SPD 7-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; SPD 20-2009, f. 12-23-09, cert. ef. 12-28-09

## 411-308-0060

### Eligibility for Long-Term Support

(1) ELIGIBILITY. The CDDP of a child's county of residence may find a child eligible for long-term support when the child:

(a) Is determined eligible for developmental disability services by the CDDP;

(b) Is under the age of 18;

(c) Is experiencing a crisis and may be safely served in the family home; and

(d) Is at risk of out-of-home placement, requires long-term support to be maintained in the family home, and does not receive or will stop receiving other DHS-paid in-home or community living services other than state Medicaid plan services, adoption assistance, or short-term assistance, including crisis services provided to prevent out-of-home placement; or

(e) Requires long-term support to return to the family home and resides in a DHS-paid residential service.

(2) CONCURRENT ELIGIBILITY. Children are not eligible for long-term support from more than one CDDP unless the concurrent service:

(a) Is necessary to affect transition from one county to another with a change of residence;

(b) Is part of a collaborative plan developed by both CDDPs; and

(c) Does not duplicate services and expenditures.

Stat. Auth.: ORS 409.050, 410.070

Stats. Implemented: ORS 427.005, 427.007, & 430.610 - 430.670

Hist.: SPD 7-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; SPD 20-2009, f. 12-23-09, cert. ef. 12-28-09

## 411-308-0070

### Long-Term Support Entry, Duration, and Exit

(1) ENTRY. An eligible child may enter long-term support only when long-term support funds are authorized through a regional process specifically to provide supports required to prevent out-of-home placement of the eligible child, or to provide supports required for an eligible child to return to the family home from a community placement. Funds for a child for whom SPD designated funds in family support services to the CDDP by written contract prior to June 30, 2009 that specified the child by name do not need to be reauthorized through a regional process.

(2) DURATION OF SERVICES. Once a child has entered long-term support, the child and family may continue receiving services from that CDDP through the last day of the month during which the child turns 18, as long as the supports continue to be necessary to prevent out-of-home placement, the child remains eligible for long-term support, and long-term support funds are available at the CDDP to continue services. The child's Annual Support Plan must be developed each year and kept current.

(3) CHANGE IN SUPPORTS. All increases in the child's Annual Support Plan, excluding statewide cost of living increases, must be approved through a regional process. Redirection of more than 25% of the long-term support funds in the child's Annual Support Plan to purchase different supports than those originally authorized must be approved through a regional process.

(4) CHANGE OF COUNTY OF RESIDENCE. If a child and family move outside the CDDP's area of service, the originating CDDP must arrange for services purchased with long-term support funds to continue, to the extent possible, in the new county of residence. The originating CDDP must:

(a) Provide information about the need to apply for services in the new CDDP and assist the family with application for services if necessary; and

(b) Contact the new CDDP to negotiate the date on which the long-term support, including responsibility for payments, shall transfer to the new CDDP.

(5) EXIT. A child must leave a CDDP's long-term support:

(a) When the child no longer resides in the family home;

(b) At the written request of the child's parent or guardian to end the long-term supports;

(c) When the long-term supports are no longer necessary to prevent out-of-home placement;

(d) At the end of the last day of the month during which the child turns 18;

(e) When the child and family moves to a county outside the CDDP's area of service, unless transition services have been previously arranged and authorized by the CDDP as required in section (4) of this rule; or

(f) No less than 30 days after the CDDP has served written notice, in the language used by the family, of intent to terminate services because:

(A) The child's family either cannot be located or has not responded to repeated attempts by CDDP staff to complete the child's Annual Support Plan development and monitoring activities and does not respond to the notice of intent to terminate; or

(B) The CDDP has sufficient evidence that the family has engaged in fraud or misrepresentation, failed to use resources as agreed upon in the child's Annual Support Plan, refused to cooperate with documenting expenses, or otherwise knowingly misused public funds associated with long-term support.

Stat. Auth.: ORS 409.050, 410.070

Stats. Implemented: ORS 427.005, 427.007, & 430.610 - 430.670

Hist.: SPD 7-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; SPD 20-2009, f. 12-23-09, cert. ef. 12-28-09

## 411-308-0080

### Annual Support Plan

(1) The CDDP must provide or arrange for an annual planning process to assist families in establishing outcomes, determining needs, planning for supports, and reviewing and redesigning support strategies for all children eligible for long-term support. The planning process must occur in a manner that:

(a) Identifies and applies existing abilities, relationships, and resources while strengthening naturally occurring opportunities for support at home and in the community; and

(b) Is consistent in both style and setting with the child's and family's needs and preferences, including but not limited to informal interviews, informal observations in home and community settings, or formally structured meetings.

(2) The CDDP, the child (as appropriate), and the child's family must develop a written Annual Support Plan for the child as a result of the planning process prior to purchasing supports with long-term support funds and annually thereafter. The child's Annual Support Plan must include but not be limited to:

(a) The eligible child's legal name and the name of the child's parent (if different than the child's last name), or the name of the child's guardian;

(b) A description of the supports and the reason the support is necessary to prevent out-of-home placement or to return the child from a community placement outside the family home;

(c) Beginning and end dates of the plan year as well as when specific activities and supports are to begin and end;

(d) The type of provider, quantity, frequency, and per unit cost of supports to be purchased with long-term support funds;

(e) Total annual cost of supports;

(f) The schedule of the child's Annual Support Plan reviews; and

(g) Signatures of the child's services coordinator, the child's parent or guardian, and the child (as appropriate).

(3) The child's Annual Support Plan or records supporting development of each child's Annual Support Plan must include evidence that:

(a) Long-term support funds are used only to purchase goods or services necessary to prevent the child from out-of-home placement, or to return the child from a community placement to the family home;

(b) The services coordinator has assessed the availability of other means for providing the supports before using long-term support funds, and other public, private, formal, and informal resources available to the child have been applied and new resources have been developed whenever possible;

(c) Basic health and safety needs and supports have been addressed including but not limited to identification of risks including risk of serious neglect, intimidation, and exploitation;

(d) Informed decisions by the child's parent or guardian regarding the nature of supports or other steps taken to ameliorate any identified risks; and

(e) Education and support for the child and the child's family to recognize and report abuse.

(4) The services coordinator must obtain and attach a Nursing Care Plan to the child's written Annual Support Plan when long-term support funds are used to purchase care and services requiring the education and training of a nurse.

(5) The services coordinator must obtain and attach a Behavior Support Plan to the child's written Annual Support Plan when the Behavior Support Plan shall be implemented by the child's family or providers during the plan year.

(6) Long-term supports may only be provided after the child's Annual Support Plan is developed in accordance with sections (1), (2), (3), (4), and (5) of this rule, authorized by the CDDP, and signed by the child's parent or guardian.

(7) The services coordinator must review and reconcile receipts and records of purchased supports authorized by the child's Annual Support Plan and subsequent Annual Support Plan documents, at least quarterly during the plan year.

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(8) At least annually or more frequently if required by the region, the services coordinator must conduct and document reviews of the child's Annual Support Plan and resources with the child's family as follows:

(a) Evaluate progress toward achieving the purposes of the child's Annual Support Plan;

(b) Record actual long-term support fund costs;

(c) Note effectiveness of purchases based on services coordinator observation as well as family satisfaction; and

(d) Determine whether changing needs or availability of other resources have altered the need for specific supports or continued use of long-term support funds to purchase supports. This must include a review of the child's continued risk for out-of-home placement.

(9) When the family and eligible child move to a county outside its area of service, the originating CDDP must assist long-term support recipients by:

(a) Continuing long-term support fund payments authorized by the child's Annual Support Plan which is current at the time of the move, if the support is available, until the transfer date agreed upon according to OAR 411-308-0070(4)(b); and

(b) Transferring the unexpended portion of the child's long-term support funds to the new CDDP of residence.

Stat. Auth.: ORS 409.050, 410.070

Stats. Implemented: ORS 427.005, 427.007, & 430.610 - 430.670

Hist.: SPD 7-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; SPD 20-2009, f. 12-23-09, cert. ef. 12-28-09

## 411-308-0090

### Managing and Accessing Long-Term Support Funds

(1) Funds contracted to a CDDP by SPD to serve a specifically-named child must only be used to support that specified child. Services must be provided according to each child's approved Annual Support Plan. The funds may only be used to purchase supports described in OAR 411-308-0120. Continuing need for services must be regularly reviewed according to SPD procedures described in these rules.

(2) No child receiving long-term support may concurrently receive services through:

(a) State plan personal care;

(b) Children's Intensive Behavior Model Waiver;

(c) Direct assistance or immediate access funds under family support;

(d) Medically Fragile Children's Model Waiver;

(e) Medically Involved Children's Model Waiver; or

(f) Long-term support from another CDDP unless short-term concurrent services are necessary when a child moves from one CDDP to another and the concurrent supports are arranged in accordance with OAR 411-308-0060(2).

(3) Children receiving long-term support may receive short-term crisis diversion services provided through the CDDP or region. Children receiving long-term support may utilize family support information and referral services, other than direct assistance or immediate access funds, while receiving long-term support. The CDDP must clearly document the services and demonstrate that the services are arranged in a manner that does not allow duplication of funding.

Stat. Auth.: ORS 409.050, 410.070

Stats. Implemented: ORS 427.005, 427.007, & 430.610 - 430.670

Hist.: SPD 7-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; SPD 20-2009, f. 12-23-09, cert. ef. 12-28-09

## 411-308-0100

### Conditions for Long-Term Support Purchases

(1) A CDDP must only use long-term support funds to assist families to purchase supports for the purpose defined in OAR 411-308-0010(1) and in accordance with the child's Annual Support Plan that meet requirements for development and content in OAR 411-308-0080.

(2) The CDDP must arrange for supports purchased with long-term support funds to be provided:

(a) In settings and under purchasing arrangements and conditions that allow the family to redirect long-term support funds to purchase supports and services from another qualified provider;

(b) In a manner consistent with positive behavioral theory and practice and where behavior intervention is not undertaken unless the behavior:

(A) Represents a risk to health and safety of the child or others;

(B) Is likely to continue and become more serious over time;

(C) Interferes with community participation;

(D) Results in damage to property; or

(E) Interferes with learning, socializing, or vocation.

(c) In accordance with applicable state and federal wage and hour regulations in the case of personal services, training, and supervision;

(d) In accordance with applicable state or local building codes in the case of environmental accessibility adaptations to the family home;

(e) In accordance with Oregon Board of Nursing rules in OAR chapter 851 when services involve performance of nursing services or delegation, teaching, and assignment of nursing tasks; and

(f) In accordance with to OAR 411-308-0130 governing provider qualifications.

(3) When long-term support funds are used to purchase services, training, supervision, or other personal assistance for children, the CDDP must require and document that providers are informed of:

(a) Mandatory responsibility to report suspected abuse;

(b) Responsibility to immediately notify the child's parent or guardian, or any other person specified by the child's parent or guardian, of any injury, illness, accident, or unusual circumstance involving the child that occurs when the provider is providing individual services, training, or supervision that may have a serious effect on the health, safety, physical or emotional well-being, or level of services required;

(c) Limits of payment:

(A) Long-term support fund payments for the agreed-upon services are considered full payment and the provider under no circumstances may demand or receive additional payment for these services from the family or any other source.

(B) The provider must bill all third party resources before using long-term support funds.

(d) The provisions of section (6) of this rule regarding sanctions that may be imposed on providers;

(e) The requirement to maintain a drug-free workplace; and

(f) The payment process, including payroll or contractor payment schedules or timelines.

(4) The method and schedule of payment must be specified in written agreements between the CDDP and the child's parent or guardian.

(a) Support expenses must be separately projected, tracked, and expensed, including separate contracts, employment agreements, and time-keeping for staff working with more than one eligible child.

(b) The CDDP is specifically prohibited from reimbursement of families for expenses or advancing funds to families to obtain services. The CDDP must issue payment, or arrange through fiscal intermediary services to issue payment, directly to the qualified provider on behalf of the family after approved services described in the child's Annual Support Plan have been satisfactorily delivered.

(5) The CDDP must inform families in writing of records and procedures required in OAR 411-308-0030(2)(c)(B) regarding expenditure of long-term support funds. During development of the child's Annual Support Plan, the services coordinator must determine the need or preference for the CDDP to provide support with documentation and procedural requirements and must delineate responsibility for maintenance of records in written service agreements.

(6) Sanctions for Independent Providers, Provider Organizations, and General Business Providers.

(a) A sanction may be imposed on a provider when the CDDP determines that, at some point after the provider's initial qualification and authorization to provide supports purchased with long-term support funds, the provider has:

(A) Been convicted of any crime that would have resulted in an unacceptable criminal records check upon hiring or authorization of service;

(B) Been convicted of unlawfully manufacturing, distributing, prescribing, or dispensing a controlled substance;

(C) Surrendered his or her professional license or certificate, or had his or her professional license or certificate suspended, revoked, or otherwise limited;

(D) Failed to safely and adequately provide the authorized long-term support services, or other similar services in a DHS program;

(E) Had a substantiated allegation of abuse or neglect against him or her;

(F) Failed to cooperate with any DHS or CDDP investigation or grant access to or furnish, as requested, records or documentation;

(G) Billed excessive or fraudulent charges or been convicted of fraud;

(H) Made false statement concerning conviction of crime or substantiation of abuse;

(I) Falsified required documentation;

(J) Failed to comply with the provisions of section (4) of this rule and OAR 411-308-0130; or

(K) Been suspended or terminated as a provider by another division within DHS.

(b) The following sanctions may be imposed on a provider:

(A) The provider may no longer be paid with long-term support funds;

or  
(B) The provider may not be allowed to provide services for a specified length of time or until specified conditions for reinstatement are met and approved by the CDDP or SPD, as applicable.

(c) If the CDDP makes a decision to sanction a provider, the CDDP must notify the provider by mail of the intent to sanction.

(d) The provider may appeal a sanction within 30 days of the date the sanction notice was mailed to the provider. The provider must appeal a sanction separately from any appeal of audit findings and overpayments.

(A) A provider may appeal a sanction by requesting an administrative review by the SPD Assistant Director.

(B) For an appeal regarding provision of Medicaid services, written notice of the appeal must be received by SPD within 30 days of the date the sanction notice was mailed to the provider.

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(e) A provider may be immediately suspended by the CDDP as a protective service action or in the case of alleged criminal activity that could pose a danger to the child. The suspension may continue until the issues are resolved.

(f) At the discretion of SPD, providers who have previously been terminated or suspended by any division within DHS may not be authorized as providers of Medicaid services.

Stat. Auth.: ORS 409.050, 410.070

Stats. Implemented: ORS 427.005, 427.007, & 430.610 - 430.670

Hist.: SPD 7-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; SPD 20-2009, f. 12-23-09, cert. ef. 12-28-09

## 411-308-0110

### Using Long-Term Support Funds for Certain Purchases is Prohibited

Long-term support funds may not be used for:

(1) Services that:

(a) Duplicate benefits and services otherwise available to citizens regardless of disability;

(b) Replace normal parental responsibilities for the child's care, education, recreation, and general supervision;

(c) Provide financial assistance with food, clothing, shelter, and laundry needs common to children with or without disabilities;

(d) Replace other governmental or community services available to the child or the child's family; or

(e) Exceed the actual cost of supports that must be provided for the child to be supported in the family home.

(2) Services, supplies, or supports that are illegal, experimental, or determined unsafe for the general public by recognized child and consumer safety agencies;

(3) Services or activities that are carried out in a manner that constitutes abuse;

(4) Services from persons who engage in verbal mistreatment and subject a child to the use of derogatory names, phrases, profanity, ridicule, harassment, coercion, or intimidation by threatening injury or withholding of services or supports;

(5) Services that restrict a child's freedom of movement by seclusion in a locked room under any condition;

(6) Purchase of family vehicles;

(7) Purchase of service animals or costs associated with the care of service animals;

(8) Health and medical costs that the general public normally must pay, including but not limited to:

(a) Medical or therapeutic treatments;

(b) Health insurance co-payments and deductibles;

(c) Prescribed or over-the-counter medications;

(d) Mental health treatments and counseling;

(e) Dental treatments and appliances;

(f) Dietary supplements and vitamins; or

(g) Special diet or treatment supplies not related to incontinence or infection control.

(9) Ambulance services;

(10) Legal fees including but not limited to the costs of representation in educational negotiations, establishment of trusts, or creation of guardianship;

(11) Vacation costs or any costs associated with the vacation;

(12) Services, training, support, or supervision that has not been arranged according to applicable state and federal wage and hour regulations;

(13) Employee wages or contractor payments for time or services when the child is not present or available to receive services including but not limited to employee paid time off, hourly "no show" charge, and contractor travel and preparation hours;

(14) Services, activities, materials, or equipment that are not necessary, cost effective, or do not meet the definition of support;

(15) Education and services provided by schools as part of a free and appropriate education for children and young adults under the Individuals with Disabilities Education Act;

(16) Services, activities, materials, or equipment that the CDDP determines may be obtained by the family through other available means such as private or public insurance, philanthropic organizations, or other governmental or public services;

(17) Services or activities for which the legislative or executive branch of Oregon government has prohibited use of public funds; or

(18) Purchase of services when there is sufficient evidence to believe that the child's parent or guardian, or the service provider chosen by the child's family, has engaged in fraud or misrepresentation, failed to use resources as agreed upon in the child's Annual Support Plan, refused to cooperate with record keeping required to document use of long-term support funds, or otherwise knowingly misused public funds associated with long-term support.

Stat. Auth.: ORS 409.050, 410.070

Stats. Implemented: ORS 427.005, 427.007, & 430.610 - 430.670

Hist.: SPD 7-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; SPD 20-2009, f. 12-23-09, cert. ef. 12-28-09

## 411-308-0120

### Supports Purchased with Long-Term Support Funds

(1) When conditions of purchase are met and provided purchases are not prohibited under OAR 411-308-0110, long-term support funds may be used to purchase a combination of the following supports based upon the needs of the child consistent with the child's Annual Support Plan and available funding:

(a) Specialized consultation including behavior consultation and nursing delegation;

(b) Environmental accessibility adaptations;

(c) Family caregiver supports;

(d) Family training;

(e) In-home daily care;

(f) Respite; and

(g) Specialized equipment and supplies.

(2) **SPECIALIZED CONSULTATION** — **BEHAVIOR CONSULTATION**. Behavior consultation is the purchase of individualized consultation provided only as needed in the family home to respond to a specific problem or behavior identified by the child's parent or guardian and the services coordinator. Behavior consultation services must be documented in a Behavior Support Plan prior to final payment for the services.

(a) Behavior consultation shall only be authorized to support a primary caregiver in their caregiving role, not as a replacement for an educational service offered through the school.

(b) Behavior consultation must include:

(A) Working with the family to identify:

(i) Areas of a child's family home life that are of most concern for the family and child;

(ii) The formal or informal responses the family or provider has used in those areas; and

(iii) The unique characteristics of the family that could influence the responses that would work with the child.

(B) Assessing the child. The behavior consultant utilized by the family must conduct an assessment and interact with the child in the family home and community setting in which the child spends most of their time. The assessment must include:

(i) Specific identification of the behaviors or areas of concern;

(ii) Identification of the settings or events likely to be associated with or to trigger the behavior;

(iii) Identification of early warning signs of the behavior;

(iv) Identification of the probable reasons that are causing the behavior and the needs of the child that are being met by the behavior, including the possibility that the behavior is:

(I) An effort to communicate;

(II) The result of a medical condition;

(III) The result of an environmental cause; or

(IV) The symptom of an emotional or psychiatric disorder.

(v) Evaluation and identification of the impact of disabilities (i.e. autism, blindness, deafness, etc.) that impact the development of strategies and affect the child and the area of concern;

(vi) An assessment of current communication strategies; and

(vii) Identification of possible alternative or replacement behaviors.

(C) Developing a variety of positive strategies that assist the family and provider to help the child use acceptable, alternative actions to meet the child's needs in the most cost effective manner. These strategies may include changes in the physical and social environment, developing effective communication, and appropriate responses by a family and provider to the early warning signs.

(i) Positive, preventive interventions must be emphasized.

(ii) The least intrusive intervention possible must be used.

(iii) Abusive or demeaning interventions must never be used.

(iv) The strategies must be adapted to the specific disabilities of the child and the style or culture of the family.

(D) Developing emergency and crisis procedures to be used to keep the child, family, and provider safe. When interventions in the behavior of the child are necessary, positive, preventative, non-aversive interventions that conform to OIS must be utilized. SPD shall not pay a provider to use physical restraints on a child receiving long-term support.

(E) Developing a written Behavior Support Plan consistent with OIS that includes the following:

(i) Use of clear, concrete language and in a manner that is understandable to the family and provider; and

(ii) Describes the assessment, recommendations, strategies, and procedures to be used.

(F) Teaching the provider and family the recommended strategies and procedures to be used in the child's natural environment.

(G) Monitoring, assessing, and revising the Behavior Support Plan as needed based on the effectiveness of implemented strategies. If protective physical intervention techniques are included in the Behavior Support Plan for use by the family, monthly practice of the technique must be observed by an OIS approved trainer.

(c) Behavior consultation does not include:

(A) Mental health therapy or counseling;

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(B) Health or mental health plan coverage; or  
(C) Educational services including but not limited to consultation and training for classroom staff, adaptations to meet the needs of the child at school, assessment in the school setting for the purposes of an Individualized Education Program, or any service identified by the school as required to carry out the child's Individual Education Program.

## (3) SPECIALIZED CONSULTATION — NURSING DELEGATION.

(a) Nursing delegation is the purchase of individualized consultation from a nurse in order to delegate tasks of nursing services in select situations. Tasks of nursing care are those procedures that require nursing education and licensure of a nurse to perform as described in OAR chapter 851, division 047.

(b) SPD requires nursing delegation for unlicensed providers paid with long-term support funds when a child requires tasks of nursing care.

## (4) ENVIRONMENTAL ACCESSIBILITY ADAPTATIONS.

(a) Environmental accessibility adaptations include:

(A) Physical adaptations to a family home that are necessary to ensure the health, welfare, and safety of the child in the family home due to the child's developmental disability or that are necessary to enable the child to function with greater independence around the family home and in family activities;

(B) Environmental modification consultation to determine the appropriate type of adaptation to ensure the health, welfare, and safety of the child; and

(C) Motor vehicle adaptations for the primary vehicle used by the child that are necessary to meet the unique needs of the child and ensure the health, welfare, and safety of the child.

(b) Environmental accessibility adaptations exclude:

(A) Adaptations or improvements to the family home that are of general utility and are not for the direct safety, remedial, or long term benefit to the child;

(B) Adaptations that add to the total square footage of the family home; and

(C) General repair or maintenance and upkeep required for the family home or motor vehicle, including repair of damage caused by the child.

(c) Funding for environmental accessibility adaptations is one time funding that is not continued in subsequent plan years. Funding for each environmental accessibility adaptation must be specifically approved through a regional process to ensure the specific adaptation is necessary to prevent out-of-home placement or to return the child to the family home, and to ensure that the proposed adaptation is cost effective. Environmental accessibility adaptations may only be included in a child's Annual Support Plan when all other public and private resources for the environmental accessibility adaptation have been exhausted.

(d) The CDDP must ensure that projects for environmental accessibility adaptations involving building renovation or new construction in or around a child's home costing \$5,000 or more per single instance or cumulatively over several modifications are approved by SPD before work begins and before final payment is made, are completed or supervised by a contractor licensed and bonded in the State of Oregon, and that steps are taken as prescribed by SPD for protection of SPD's interest through liens or other legal available means.

(e) The CDDP must obtain written authorization from the owner of a rental structure before any environmental accessibility adaptations are made to that structure. This does not preclude any reasonable accommodation required under the Americans with Disabilities Act.

(5) FAMILY CAREGIVER SUPPORTS. Family caregiver services assist families with unusual responsibilities of planning and managing provider services for their children.

(a) Family caregiver supports include:

(A) Child and family-centered planning facilitation and follow-up;

(B) Fiscal intermediary services to pay vendors and to carry out payroll and reporting functions when providers are domestic employees of the family; and

(C) Assistance with development of tools such as job descriptions, contracts, and employment agreements.

(b) Family caregiver supports exclude application fees and the cost of fingerprinting or other background check processing fee requirements.

(6) FAMILY TRAINING. Family training services include the purchase of training, coaching, counseling, and support that increase the family's ability to care for and maintain the child in the family home.

(a) Family training services include:

(A) Counseling services that assist the family with the stresses of having a child with a developmental disability.

(i) To be authorized, the counseling services must:

(I) Be provided by licensed providers including but not limited to psychologists licensed under ORS 675.030, professionals licensed to practice medicine under ORS 677.100, social workers licensed under ORS 675.530, and counselors licensed under ORS 675.715;

(II) Directly relate to the child's developmental disability and the ability of the family to care for the child; and

(III) Be short-term.

(ii) Counseling services are excluded for:

(I) Therapy that could be obtained through OHP or other payment mechanisms;

(II) General marriage counseling;

(III) Therapy to address family members' psychopathology;

(IV) Counseling that addresses stressors not directly attributed to the child;

(V) Legal consultation;

(VI) Vocational training for family members; and

(VII) Training for families to carry out educational activities in lieu of school.

(B) Registration fees for organized conferences, workshops, and group trainings that offer information, education, training, and materials about the child's developmental disability, medical, and health conditions.

(i) Conferences, workshops, or group trainings must be prior authorized and include those that:

(I) Directly relate to the child's developmental disability; and

(II) Increase the knowledge and skills of the family to care for and maintain the child in the family home.

(ii) Conference, workshop, or group trainings costs exclude:

(I) Registration fees in excess of \$500 per family for an individual event;

(II) Travel, food, and lodging expenses;

(III) Services otherwise provided under OHP or available through other resources; or

(IV) Costs for individual family members who are employed to care for the child.

(b) Funding for family training is one time funding that is not continued in subsequent plan years. Funding for each family training event must be specifically approved through a regional process to ensure the family training event is necessary to prevent out-of-home placement or to return the child to the family home, and to ensure the family training event is cost effective. Family training may only be included in a child's Annual Support Plan when all other public and private resources for the event have been exhausted.

(7) IN-HOME DAILY CARE. In-home daily care services include the purchase of direct provider support provided to the child in the family home or community by qualified individual providers and agencies. Provider assistance provided through in-home daily care must support the child to live as independently as appropriate for the child's age and must be based on the identified needs of the child, supporting the family in their primary caregiving role. Primary caregivers are expected to be present or immediately available during the provision of in-home daily care.

(a) In-home daily care services provided by qualified providers or agencies include:

(A) Basic personal hygiene — Assistance with bathing and grooming;

(B) Toileting, bowel, and bladder care — Assistance in the bathroom, diapering, external cleansing of perineal area, and care of catheters;

(C) Mobility — Transfers, comfort, positioning, and assistance with range of motion exercises;

(D) Nutrition — feeding and monitoring intake and output;

(E) Skin care — Dressing changes;

(F) Physical healthcare including delegated nursing tasks;

(G) Supervision — Providing an environment that is safe and meaningful for the child and interacting with the child to prevent danger to the child and others, and maintain skills and behaviors required to live in the home and community;

(H) Assisting the child with appropriate leisure activities to enhance development in and around the family home and provide training and support in personal environmental skills;

(I) Communication - Assisting the child in communicating, using any means used by the child;

(J) Neurological - Monitoring of seizures, administering medication, and observing status; and

(K) Accompanying the child and family to health related appointments.

(b) In-home daily care services must:

(A) Be previously authorized by the CDDP before services begin;

(B) Be necessary to resolve the crisis and documented in the child's Annual Support Plan;

(C) Be delivered through the most cost effective method as determined by the services coordinator; and

(D) Only be provided when the child is present to receive services.

(c) In-home daily care services exclude:

(A) Hours that supplant the natural supports and services available from family, community, other government or public services, insurance plans, schools, philanthropic organizations, friends, or relatives;

(B) Hours to allow a primary caregiver to work or attend school;

(C) Hours that exceed what is necessary to resolve the crisis;

(D) Support generally provided at the child's age by parents or other family members;

(E) Educational and supportive services provided by schools as part of a free and appropriate education for children and young adults under the Individuals with Disabilities Education Act;

(F) Services provided by the family; and

(G) Home schooling.



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(d) In-home daily care services may not be provided on a 24-hour shift-staffing basis. The child's primary caregiver is expected to provide at least eight hours of care and supervision for the child each day with the exception of overnight respite.

(8) **RESPIRE.** Respite services are provided to a child on a periodic or intermittent basis furnished because of the temporary absence of, or need for relief of, the primary caregiver.

(a) Respite may include both day and overnight services that may be provided in:

(A) The family home;

(B) A licensed, certified, or otherwise regulated setting;

(C) A qualified provider's home. If overnight respite is provided in a qualified provider's home, the CDDP and the child's parent or guardian must document that the home is a safe setting for the child; or

(D) Disability-related or therapeutic recreational camp.

(b) The CDDP shall not authorize respite services:

(A) To allow primary caregivers to attend school or work;

(B) That are ongoing and occur on more than a periodic schedule, such as eight hours a day, five days a week;

(C) On more than 14 consecutive overnight stays in a calendar month;

(D) For more than 10 days per individual plan year when provided at a specialized camp;

(E) For vacation travel and lodging expenses; or

(F) To pay for room and board if provided at a licensed site or specialized camp.

(9) **SPECIALIZED EQUIPMENT AND SUPPLIES.** Specialized equipment and supplies include the purchase of devices, aids, controls, supplies, or appliances that are necessary to enable a child to increase their abilities to perform and support activities of daily living, or to perceive, control, or communicate with the environment in which they live.

(a) The purchase of specialized equipment and supplies may include the cost of a professional consultation, if required, to assess, identify, adapt, or fit specialized equipment. The cost of professional consultation may be included in the purchase price of the equipment.

(b) To be authorized by the CDDP, specialized equipment and supplies must:

(A) Be in addition to any medical equipment and supplies furnished under OHP and private insurance;

(B) Be determined necessary to the daily functions of the child; and

(C) Be directly related to the child's disability.

(c) Specialized equipment and supplies exclude:

(A) Items that are not necessary or of direct medical or remedial benefit to the child;

(B) Specialized equipment and supplies intended to supplant similar items furnished under OHP or private insurance;

(C) Items available through family, community, or other governmental resources;

(D) Items that are considered unsafe for the child;

(E) Toys or outdoor play equipment; and

(F) Equipment and furnishings of general household use.

(d) Funding for specialized equipment with an expected life of more than one year is one time funding that is not continued in subsequent plan years. Funding for each specialized equipment purchase must be specifically approved through a regional process to ensure the support is necessary to prevent out-of-home placement or to return the child to the family home, and to ensure the support is cost effective. Specialized equipment may only be included in a child's Annual Support Plan when all other public and private resources for the equipment have been exhausted.

(e) The CDDP must secure use of equipment or furnishings costing more than \$500 through a written agreement between the CDDP and the child's parent or guardian that specifies the time period the item is to be available to the child and the responsibilities of all parties should the item be lost, damaged, or sold within that time period. Any equipment or supplies purchased with long-term support funds that are not used according to the child's Annual Support Plan, or according to an agreement securing the state's use, may be immediately recovered.

Stat. Auth.: ORS 409.050, 410.070

Stats. Implemented: ORS 427.005, 427.007, & 430.610 - 430.670

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## 411-308-0130

### Standards for Providers Paid with Long-Term Support Funds

Independent providers, provider organizations, and general business providers paid with long-term support funds must be qualified. At the discretion of SPD, providers who have previously been terminated or suspended by any DHS division may not be authorized as providers of service. Providers must meet the following qualifications:

(1) Each independent provider paid as a contractor, a self-employed person, or an employee of a child's parent or guardian to provide the services listed in OAR 411-308-0120 must:

(a) Be at least 18 years of age;

(b) Have approval to work based on a criminal records check completed by DHS in accordance with OAR chapter 407, division 007;

(c) Be legally eligible to work in the United States;

(d) Not be a parent, adoptive parent, stepparent, foster parent, or other person legally responsible for the child receiving supports;

(e) Demonstrate by background, education, references, skills, and abilities that he or she is capable of safely and adequately performing the tasks specified on the child's Annual Support Plan, with such demonstration confirmed in writing by the child's parent or guardian and including:

(A) Ability and sufficient education to follow oral and written instructions and keep any records required;

(B) Responsibility, maturity, and reputable character exercising sound judgment;

(C) Ability to communicate with the child; and

(D) Training of a nature and type sufficient to ensure that the provider has knowledge of emergency procedures specific to the child being cared for.

(f) Hold current, valid, and unrestricted appropriate professional license or certification where services and supervision requires specific professional education, training, and skill;

(g) Understand requirements of maintaining confidentiality and safeguarding information about the child and family;

(h) Not be on the current Centers for Medicare and Medicaid Services list of excluded or debarred providers; and

(i) If transporting the child, have a valid driver's license and proof of insurance, as well as other license or certification that may be required under state and local law depending on the nature and scope of the transportation.

(2) Nursing consultants must have a current Oregon nursing license and submit a resume to the CDDP indicating the education, skills, and abilities necessary to provide nursing services in accordance with state law.

(3) Behavior consultants may include but are not limited to autism specialists, licensed psychologists, or other behavioral specialists who:

(a) Have education, skills, and abilities necessary to provide behavior consultation services, including knowledge and experience in developing plans based on positive behavioral theory and practice;

(b) Have received at least two days of training in OIS and have a current certificate; and

(c) Submit a resume to the CDDP indicating at least one of the following:

(A) A bachelor's degree in special education, psychology, speech and communication, occupational therapy, recreation, art or music therapy, or a behavioral science field and at least one year of experience with individuals who present difficult or dangerous behaviors; or

(B) Three years experience with individuals who present difficult or dangerous behaviors and at least one year of that experience must include providing the services of a behavior consultant.

(4) Provider organizations must hold any current license or certification required by Oregon law to provide services to children. In addition, all persons directed by the provider organization as employees, contractors, or volunteers to provide services paid for with long-term support funds must meet the standards for qualification of independent providers described in section (1) of this rule.

(5) General business providers must hold any current license appropriate to function required by Oregon or federal law or regulation. Services purchased with long-term support funds must be limited to those within the scope of the general business provider's license. Such licenses include but are not limited to:

(a) A license under ORS 443.015 for a home health agency;

(b) A license under ORS 443.315 for an in-home care agency;

(c) A current license and bond as a building contractor as required by either OAR chapter 812, Construction Contractor's Board, or OAR chapter 808, Landscape Contractors Board, as applicable for a provider of environmental accessibility adaptations involving home renovation or new construction;

(d) Environmental modification consultants must be licensed general contractors and have experience evaluating homes, assessing the needs of the individual, and developing cost effective plans to make homes safe and accessible;

(e) Current retail business license for vendors and medical supply companies providing specialized equipment and supplies, including enrollment as Medicaid providers through the Division of Medical Assistance Program if vending medical equipment; and

(f) A current business license for providers of personal emergency response systems.

Stat. Auth.: ORS 409.050, 410.070

Stats. Implemented: ORS 427.005, 427.007, & 430.610 - 430.670

Hist.: SPD 7-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; SPD 20-2009, f. 12-23-09, cert. ef. 12-28-09

## 411-308-0140

### Quality Assurance

The CDDP must participate in statewide quality assurance, service evaluation, and regulation activities as directed by SPD in OAR 411-320-0045.

Stat. Auth.: ORS 409.050, 410.070

Stats. Implemented: ORS 427.005, 427.007, & 430.610 - 430.670

Hist.: SPD 7-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; SPD 20-2009, f. 12-23-09, cert. ef. 12-28-09

# ADMINISTRATIVE RULES

## 411-308-0150

### Variations

- (1) Variations may be granted to a CDDP if the CDDP:
  - (a) Lacks the resources needed to implement the standards required in these rules;
  - (b) If implementation of the proposed alternative services, methods, concepts, or procedures would result in services or systems that meet or exceed the standards in these rules; or
  - (c) If there are other extenuating circumstances.
- (2) Variations shall not be granted to OAR 411-308-0110 and 411-308-0130.
- (3) The CDDP requesting a variation must submit to SPD a written variation request utilizing SPD Form DHS 60-01 that contains the following:
  - (a) The section of the rule from which the variation is sought;
  - (b) The reason for the proposed variation;
  - (c) The proposed alternative practice, service, method, concept, or procedure;
  - (d) A plan and timetable for compliance with the section of the rule from which the variation is sought; and
  - (e) If the variation applies to a child's service, evidence that the variation is consistent with the child's current Annual Support Plan.
- (4) SPD may approve or deny the variation request.
- (5) SPD's decision shall be sent to the CDDP and to all relevant SPD programs or offices within 30 calendar days of the receipt of the variation request.
- (6) The CDDP may appeal the denial of a variation request by sending a written request for review to the SPD Assistant Director, whose decision is final.
- (7) SPD shall determine the duration of the variation.
- (8) The CDDP may implement a variation only after written approval from SPD.

Stat. Auth.: ORS 409.050, 410.070, & 417.346  
Stats. Implemented: ORS 417.340-417.355, 427.005, 427.007, 430.610 – 430.670  
Hist.: SPD 7-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; SPD 20-2009, f. 12-23-09, cert. ef. 12-28-09

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**Rule Caption:** Adult Protective Services.

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**Notice Publication Date:**

**Rules Adopted:** 411-020-0025, 411-020-0085

**Rules Amended:** 411-020-0002, 411-020-0020, 411-020-0030, 411-020-0100, 411-020-0120

**Subject:** To comply with the 2009 legislative changes from House Bill 2442, Senate Bill 670, and ORS 124.050, and to implement House Bill 2175 (2007), the Department of Human Services, Seniors and People with Disabilities Division (SPD) is temporarily amending the adult protective services rules in OAR chapter 411, division 020 to:

- Expand the definition of abuse in OAR 411-020-0002 for incidents occurring on or after January 1, 2010;
- Expand the definition of law enforcement agency in OAR 411-020-0002 to include federal agencies with jurisdiction to investigate and prosecute abuse;
- Adopt OAR 411-020-0025 for multidisciplinary teams and to add multidisciplinary teams to exceptions for confidentiality;
- Adopt OAR 411-020-0085 requiring notification of law enforcement under certain circumstances;
- Expand OAR 411-020-0100 to allow disclosure of the conclusion of an adult protective services investigation to the reported victim and perpetrator; and
- Delete duplicate rules for notifying law enforcement contained in OAR 411-020-0100 and OAR 411-020-0120.

**Rules Coordinator:** Christina Hartman—(503) 945-6398

## 411-020-0002

### Definitions

- (1) "Abuse" in a non-facility setting for incidents occurring on or before December 31, 2009, means a range of actions or inactions, including abandonment, financial exploitation, neglect, physical abuse, emotional or verbal abuse, self-neglect, and sexual abuse.
  - (a) "Abandonment" means the desertion or intentional forsaking of an older adult or an adult with a disability for any period of time by a person who has assumed responsibility for providing care, when that desertion or forsaking would place the adult at serious risk of harm.

- (b) "Emotional or verbal abuse" means the intentional infliction of anguish, distress, or intimidation through verbal or non-verbal acts or denial of civil rights.

- (c) "Financial exploitation" means the illegal or improper use, by means including, but not limited to, deceit, coercion, fraud, or undue influence, of the resources (including medications) of an older adult or individual with a disability. This includes causing alarm by conveying a threat to wrongfully take or appropriate money or property, which would be expected to cause an older adult to believe the threat shall be carried out.

- (d) "Neglect" means the failure (whether intentional, careless or due to inadequate experience, training or skill) to provide basic necessary care or services when agreed to by legal, contractual, or otherwise assumed responsibility when such failure leads to actual or serious potential for physical or emotional harm. This includes failure of a person who has fiduciary responsibility to assure the continuation of necessary care (for example, failure to pay for necessary care resulting in the withdrawal of services).

- (e) "Physical abuse" means the use of physical force that may result in bodily injury, physical pain, or impairment. Physical abuse may include, but is not limited to:

- (A) Such acts of violence as striking (with or without object), hitting, beating, punching, shoving, shaking, slapping, kicking, pinching, and burning;

- (B) The intentionally inappropriate use of drugs or physical restraints;
    - (C) The intentional mis-administration of types or amounts of drugs in order to cause harm to the person receiving them; and

- (D) The use of force-feeding or physical punishment.

- (f) "Sexual abuse" means non-consensual sexual contact or behavior that includes, but is not limited to, sexual harassment, inappropriate or unwanted sexual comments, and threats. These activities are considered non-consensual if a person does not make, or is incapable of making, an informed choice.

- (2) "Abuse" in a facility setting for incidents occurring on or before December 31, 2009, means abuse or neglect of care, as defined in the applicable licensing or certification rules, that occurs in facilities that are licensed (such as Residential Care Facilities, Assisted Living Facilities, Nursing Facilities, Commercial or Limited License Adult Foster Homes); or Room and Board Facilities that are registered, when the reported perpetrator is the facility itself or is an employee or agent of the facility. Relative Foster Homes are to be treated as non-facility settings.

- (3) "Abuse" for incidents that occur on or after January 1, 2010, means any of the following:

- (a) Physical abuse, including:

- (A) The use of physical force that may result in bodily injury, physical pain, or impairment.

- (B) Any physical injury to an adult caused by other than accidental means, or which appears to be at variance with the explanation given of the injury.

- (i) Conduct resulting in a physical injury caused by other than accidental means may include but is not limited to:

- (I) Acts of violence such as striking (with or without an object), hitting, beating, punching, shoving, shaking, kicking, pinching, choking, or burning; or

- (II) The use of force-feeding or physical punishment.

- (ii) Physical abuse is presumed to cause physical injury, including pain, to adults in a coma or adults otherwise incapable of expressing injury or pain.

- (b) Neglect, including:

- (A) The failure of a person who is responsible to provide care or services to make a reasonable effort to protect and adult from abuse; or

- (B) Failure to provide the care, supervision, or services necessary to maintain the physical and mental health of an adult that results in, or creates a serious risk of, physical harm or significant emotional harm to the adult.

- (i) Such failure may occur whether intentional, careless, or due to inadequate experience, training, or skill, and may include the administration of an incorrect medication or dose of medication by other than accidental means.

- (ii) The expectation for care, supervision, or services may exist as a result of an assumed responsibility or a legal or contractual agreement, including but not limited to where a person has a fiduciary responsibility to assure the continuation of necessary care.

- (iii) A failure to maintain the mental health of an adult, for the purposes of this definition, may mean active or passive failure to maintain the emotional well-being of the adult, including but not limited to causing unreasonable discomfort or serious loss of personal dignity, but is not intended to establish an expectation for providing professional mental health services where such services are not expected or intended.

- (c) Abandonment, including:

- (A) Desertion or willful forsaking of an adult for any period of time by a person who has assumed responsibility for providing care, when that desertion or forsaking would place the adult at serious risk of harm; or

- (B) The withdrawal or neglect of duties and obligations owed an adult by a person who is responsible to provide care or services, when that withdrawal or neglect of duties would place the adult at serious risk of harm.

- (d) Verbal abuse.

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(A) Verbal abuse includes threatening significant physical or emotional harm to an adult through the use of:

(i) Derogatory or inappropriate names, insults, verbal assaults, profanity, or ridicule; or

(ii) Harassment, coercion, threats, intimidation, humiliation, mental cruelty, or inappropriate sexual comments.

(B) For the purposes of this definition:

(i) Conduct that may be considered verbal abuse includes but is not limited to the use of oral, written, or gestured communication that is directed to an adult or within their hearing distance, regardless of their ability to comprehend; or

(ii) The emotional harm that may result from verbal abuse may include but is not limited to anguish, distress, or fear.

(e) Financial exploitation, including:

(A) Wrongfully taking, by means including but not limited to deceit, trickery, subterfuge, coercion, harassment, duress, fraud, or undue influence, the assets, funds, property, or medications belonging to or intended for the use of an adult;

(B) Alarming an adult by conveying a threat to wrongfully take or appropriate money or property of the adult if the adult 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 adult; or

(D) Failing to use the income or assets of an adult effectively for the support and maintenance of the adult;

(i) Effectively, for the purposes of this definition, means in a manner that is for the benefit of the person;

(ii) In a facility, such failure includes but is not limited to:

(I) An owner or employee borrowing from a resident;

(II) If the resident is not capable of consenting, spending resident funds for items or services that the resident cannot benefit from or appreciate; or

(III) Spending resident funds to acquire items for use in common areas when such purchase is not initiated by the resident.

(f) Sexual abuse, including:

(A) Sexual contact with a non-consenting adult or with an adult considered incapable of consenting to a sexual act. Consent, for purposes of this definition, means a voluntary agreement or concurrence of wills. Mere failure to object does not, in and of itself, constitute an expression of consent;

(B) Sexual harassment or sexual exploitation of an adult, or inappropriately exposing an adult to, or making an adult the subject of, sexually explicit material or language;

(C) Any sexual contact between an employee of a facility or paid caregiver and an adult served by the facility or caregiver, unless a pre-existing relationship existed. Sexual abuse does not include consensual sexual contact between an adult and a paid caregiver who is the spouse or domestic partner of the adult;

(D) Any sexual contact between an adult and a relative of the adult other than a spouse, where relative means a parent, grandparent, children, brother, sister, uncle, aunt, nieces, nephews, half brothers, half sisters, stepparents, or stepchildren;

(E) Any sexual contact that is achieved through force, trickery, threat, or coercion; or

(F) An act that constitutes a crime under ORS 163.375, 163.405, 163.411, 163.415, 163.425, 163.427, 163.465, or 163.467.

(g) Involuntary seclusion of an adult for the convenience of a caregiver or to discipline the adult.

(A) Involuntary seclusion may include:

(i) Confinement of an adult to his or her room;

(ii) Placing restrictions on an adult's ability to associate, interact, or communicate with other individuals; or

(iii) Placing restrictions on an adult's freedom of movement by restriction to a specific area.

(B) In a facility, emergency or short-term, monitored separation from other residents may not be considered involuntary seclusion and may be permitted if used for a limited period of time as a therapeutic intervention to reduce agitation until professional staff may develop a plan of care to meet the resident's needs, or as part of the care plan.

(h) A wrongful use of a physical or chemical restraint of an adult.

(A) A wrongful use of a physical restraint, including the wrongful use of a supportive device with restraining qualities, includes situations where:

(i) The resident has not requested or approved of the device;

(ii) A licensed health professional has not conducted a thorough assessment; or

(iii) Less restrictive alternatives have not been evaluated prior to the use of the device.

(B) A wrongful use of a chemical restraint includes but is not limited to the wrongful use of a medication or controlled substance for the purpose of sedation.

(4) "Adult" means an elderly person, a person with a physical disability who is 18 years of age or older, or a resident of an SPD licensed residential care facility, assisted living facility, or adult foster home.

(5) "APS Risk Management" means the process by which APS continues to maintain ongoing active contact with a reported victim who continues to be at serious risk of harm.

(6) "Area Agency on Aging (AAA)" means the agency designated by the Department with responsibility to provide a comprehensive and coordinated system of service to older adults or adults with disabilities in a designated planning and service area.

(7) "At-risk" means there is reason to believe injury, hazard, damage or loss may occur.

(8) "Community Based Care Facility" means an Assisted Living Facility, Residential Care Facility, Adult Foster Home, or registered Room and Board Facility.

(9) "Conclusion" for the purposes of a facility investigation means a determination by the APS Worker whether an incident occurred and, if it did, whether the incident was the result of wrongdoing. "Conclusion" for the purposes of a community investigation or self-neglect assessment, means a determination by the APS worker as to whether an incident occurred and, if it did, whether the incident was the result of wrongdoing or self-neglect.

(10) "Conservatorship" means that a court has issued an order appointing and investing a person with the power and duty of managing the property of another person.

(11) "Department" means the Department of Human Services, Seniors and People with Disabilities.

(12) "Disability" for the purposes of these rules means any physical or cognitive condition that significantly interferes with an adult's ability to protect his or her self from harm or neglect (See section 411-020-0015, Eligibility.)

(13) "Evidence" for the purpose of these rules means material gathered, examined or produced during the course of an APS investigation. This includes, but is not limited to, witness statements, documentation, photographs and relevant physical evidence.

(14) "Guardianship" means a court has issued an order appointing and investing a person with the power and duty of managing the care, comfort or maintenance of an incapacitated adult.

(15) "Imminent danger" means there is reasonable cause to believe an adult's life, physical well-being, or resources are in danger if no intervention is initiated immediately.

(16) "Inconclusive" means that after a careful analysis of the evidence gathered in an investigation, a determination of whether wrongdoing occurred cannot be reached by a preponderance of the evidence.

(17) "Informed Choice" means the person has the mental capacity, adequate information, and freedom from undue influence to understand the current situation, understand the options available and their likely consequences, and be able to reasonably choose from among those options and communicate that choice.

(18) "Law Enforcement Agency" means:

(a) Any city or municipal police department;

(b) Any county sheriff's office;

(c) The Oregon State Police;

(d) Any District Attorney;

(e) The Oregon Department of Justice; or

(f) Any federal law enforcement agency having the jurisdiction to investigate or prosecute for abuse defined in these rules. Examples of, but not limited to, are the Federal Bureau of Investigation (FBI), Federal Trade Commission, and the U.S. Post Inspector Office (identity theft).

(19) "Licensed Care Facility" means a facility licensed by the Department, including Nursing Facilities, Assisted Living Facilities, Residential Care Facilities, and Adult Foster Homes.

(20) "Local Office" means the local service staff of the Department or Area Agency on Aging.

(21) "Mandatory Reporter" for the purpose of these rules means any public or private official who is required by statute to report suspected abuse or neglect.

(a) If a person is a mandatory reporter and, while acting in an official capacity, comes in contact with and has reasonable cause to believe that any person living in a nursing facility or an older adult in any setting has suffered abuse or neglect, he or she must immediately file a report with local law enforcement or an office of the Department.

(b) Definitions of abuse or neglect for these purposes and procedures for investigation are defined in ORS 124.050 to 124.095 or 441.615 to 441.695 and OAR 411-085-0005 and 411-085-0360 to 411-085-0370 (Nursing Facility Abuse).

(c) Mandatory reporting is also required if the person, while acting in an official capacity, comes into contact with anyone who has abused an older adult or any person living in a nursing facility.

(d) The public or private officials who are mandatory reporters are:

(A) Physician, naturopathic physician, osteopathic physician, chiropractor, podiatric physician, physician assistant, and surgeon including any intern or resident;

(B) Licensed practical nurse, registered nurse, nurse practitioner, nurse's aide, home health aide, or employee of an in-home health service;

(C) Employee of the Department of Human Services, county health department, community mental health and developmental disabilities pro-

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gram or a nursing facility, or a person who contracts to provide services to a nursing facility;

(D) Peace officer;

(E) Clergy;

(F) Licensed clinical social worker, licensed professional counselor, or licensed marriage and family therapist;

(G) Physical, speech, or occupational therapist, audiologist, or speech language pathologist;

(H) Senior center employee;

(I) Information and referral or outreach worker;

(J) Area Agency on Aging employee;

(K) For nursing facility abuse, all of the above, plus legal counsel, guardian, or family member of the resident;

(L) Firefighter;

(M) Emergency Medical Technician;

(N) Psychologist; and

(O) Licensee of an adult foster home or an employee of the licensee.

(22) "Multidisciplinary Team (MDT)" means a county-based investigative and assessment team that provides protective services for the allegations of adult abuse and self-neglect. The team may consist of designees of law enforcement, local district attorney office, local AAA/SPD offices, community mental health and developmental disability programs, plus advocates for older adults and persons with disabilities and individuals specially trained in abuse.

(23) "Multidisciplinary Team (MDT) Member" means an individual or a representative of an agency that is allowed by law and recognized to participate on the MDT.

(24) "Older Adult," for the purpose of these rules, means any person 65 years of age or older.

(25) "Relevant" means tending to prove or disprove the allegation at hand.

(26) "Reported Perpetrator" (RP) means the facility, an agent or employee of the facility, or any individual reported to have committed wrongdoing.

(27) "Reported Victim" (RV) means the individual person whom wrongdoing or self-neglect is reported to have been committed against.

(28) "Risk Assessment" means the process by which a person is evaluated for risk of harm and for the physical and cognitive abilities to protect his or her interests and personal safety. The living situation, support system and other relevant factors are also evaluated to determine their impact on the person's ability to become or remain safe.

(29) "Self-Determination" means an adult's ability to decide his or her own fate or course of action without undue influence.

(30) "Self-Neglect" means the inability of an adult to understand the consequences of his or her actions or inaction when that inability leads to or may lead to harm or endangerment to self or others.

(31) "Serious Risk of Harm" means that without intervention the person is likely to incur substantial injury or loss.

(32) "Services" as used in the definition of abuse includes but is 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 well-being of an adult.

(33) "Substantiated" means that the preponderance (majority) of the evidence gathered and analyzed in an investigation indicates that the allegation is true.

(34) "Undue Influence" means the process by which a person uses his or her role and power to exploit the trust, dependency, and fear of another person and to deceptively gain control over the decision making of the second person.

(35) "Unsubstantiated" means that the preponderance (majority) of the evidence gathered and analyzed in an investigation indicates that the allegation is not true.

(36) "Wrongdoing" for the purposes of a facility investigation means an act that violates a licensing or other rule without regard to the intent of the reported perpetrator or the outcome to the reported victim. "Wrongdoing" for the purposes of a community investigation is an action or inaction that meets the definition of abuse as defined in OAR 411-020-0002, without regard to the intent of the reported perpetrator or the outcome to the reported victim.

Stat. Auth.: ORS 410.070, 411.116, 441.635, 443.500 & 443.767

Stats. Implemented: ORS 410.070 & 411.116

Hist.: SSD 5-1994, f. & cert. ef. 11-15-94; SSD 5-1995, f. 5-31-95, cert. ef. 6-1-95; SPD 6-2005, f. 4-29-05, cert. ef. 7-1-05; SPD 10-2006, f. 3-23-06, cert. ef. 4-1-06; SPD 33-2006, f. & cert. ef. 12-21-06; SPD 21-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10

## 411-020-0020

### Reporting of Abuse and Neglect

(1) Mandatory reporters must report instances of suspected elder abuse (as defined in ORS 124.050) or abuse of residents in nursing facilities (as defined in ORS 441.630) to a Department designated local office or a local law enforcement agency. A psychiatrist or psychologist does not have to report privileged information covered under ORS 40.225 to 40.295.

(2) Reporting of instances involving abuse or neglect of older adults and adults with disabilities is highly encouraged for non-mandatory reporters. Anyone participating in the making of a report of elder abuse on reasonable

grounds and good faith shall have immunity from any civil liability. The same immunity applies to participating in any judicial proceeding resulting from the report.

(3) The identity of the person reporting the suspected abuse must be confidential and may be disclosed only with the consent of that person, by judicial process (including administrative hearing), or as required to perform the investigation by the Department or a law enforcement agency.

Stat. Auth.: ORS 410.070, 411.116, 441.635, 443.500 & 443.767

Stats. Implemented: ORS 410.070 & 411.116

Hist.: SSD 5-1994, f. & cert. ef. 11-15-94; SPD 6-2005, f. 4-29-05, cert. ef. 7-1-05; SPD 10-2006, f. 3-23-06, cert. ef. 4-1-06; SPD 33-2006, f. & cert. ef. 12-21-06; SPD 21-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10

## 411-020-0025

### Multidisciplinary Team (MDT)

(1) The local SPD/AAA office must participate in their county MDT on staff protective services for the abuse and self-neglect of older adults and adults with physical disabilities.

(2) All confidential information protected by federal and state law that is shared or obtained by the MDT members in the exercise of their duties on the MDT is confidential and cannot be further disclosed except by law, authorization by the adult, or by court order.

Stat. Auth.: ORS 410.070, 411.116, 441.635, 443.500, & 443.767

Stats. Implemented: ORS 410.070 & 411.116

Hist.: SPD 21-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10

## 411-020-0030

### Confidentiality

(1) Oregon and federal statutes provide for the confidentiality of the identity of certain persons and information obtained as a result of an adult protective service intervention. Confidentiality of information is important to protect the privacy of individuals, to encourage the reporting of abuse and neglect, and to facilitate the obtaining of information.

(2) All information involving non-facility based investigations is confidential and may be disclosed only by judicial process, or as required by specific exceptions under state and federal law, or with the consent of the victim, but no names may be released without the consent of the person named except as provided in sub-section (4).

(3) If the investigation involves a licensed care facility, information regarding the complaint and subsequent findings shall be made available to the general public upon request. On these types of complaints, information regarding the identity of the complainant, the reported victim, and all witnesses, and the protected health information of any party shall remain confidential, unless release is specifically authorized by the affected person or otherwise dictated by judicial process.

(4) Where the Department deems it is appropriate, the names of the complainant, reported victim, witnesses and any investigative report may be made available to the following sources:

(a) Any law enforcement agency;

(b) An agency that licenses or certifies a facility where the reported abuse occurred, or licenses or certifies the person who practices there;

(c) The Long Term Care Ombudsman;

(d) Any governmental or private non-profit agency providing protective services to the reported victim when that agency meets the confidentiality standards of ORS 124.090; or

(e) MDT as defined in these rules for the purpose of protective services for the abuse and self-neglect of older adults and adults with physical disabilities.

Stat. Auth.: ORS 410.070, 411.116, 441.635, 443.500 & 443.767

Stats. Implemented: ORS 410.070 & 411.116

Hist.: SSD 5-1994, f. & cert. ef. 11-15-94; SPD 6-2005, f. 4-29-05, cert. ef. 7-1-05; SPD 10-2006, f. 3-23-06, cert. ef. 4-1-06; SPD 21-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10

## 411-020-0085

### Law Enforcement Notification

(1) The Department may immediately notify law enforcement if any of the following conditions exist and proceeding collaboratively in a way that does not further endanger the reported victim. Any law enforcement officer accompanying the investigator must be identified as such to any party interviewed. Conditions include:

(a) There is reasonable cause to believe a crime has been committed;

(b) Access to the reportedly abused person is denied and legal assistance is needed in gaining access;

(c) The situation presents a credible danger to the Department worker or others and police escort is advisable; or

(d) Forensic photographic or other evidence is needed.

(2) When the local SPD/AAA office notifies a law enforcement agency of suspected crime committed against a reported victim, the local office must track the progress as reported from the law enforcement agency on the investigation and the district attorney's office on the prosecution of the crime.

Stat. Auth.: ORS 410.070, 411.116, 441.635, 443.500, & 443.767

Stats. Implemented: ORS 410.070 & 411.116

Hist.: SPD 21-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10

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## 411-020-0100

### Community Investigation, Documentation and Notification

(1) Investigation is the process of determining whether abuse or neglect occurred. The investigation results in a finding as to whether the initial complaint is substantiated or unsubstantiated, or whether the results of the investigation are inconclusive.

(2) An investigation is to be completed and documented when a perpetrator is reported to have abused or neglected a victim.

(3) Investigations are to be objective, professional and complete.

(4) In completing the investigation, the adult protective service worker is responsible for carrying out the following steps:

(a) Identifying the reported victim(s), the reported perpetrator(s) and any parties reported to have information relevant to proving or disproving the allegation;

(b) Conducting unannounced interviews with the above parties to gather all relevant available evidence. All interviews are to be private unless the person being interviewed requests the presence of someone else. Any persons sitting in shall be advised of the confidential nature of the investigation;

(c) Obtaining and reviewing any available and relevant documentary or physical evidence;

(d) Creating additional investigatory aids, such as maps or drawings that may aid in proving or disproving the allegation;

(e) Maintaining a record of interviews and evidentiary review, in notes, tape recordings, copies, photographs, or other appropriate means;

(f) Determining the facts of the case based on a fair and objective review of the available relevant evidence;

(g) Concluding whether the preponderance (majority) of the evidence indicates whether the incident occurred and whether abuse or neglect is substantiated or unsubstantiated, or determining that the evidence is inconclusive.

(5) The local office must document the investigation in a timely manner and in a standard report format consistent with Department policy.

(a) Documentation of community assessments and investigations must include, but not necessarily be limited to:

(A) A summary of the findings;

(B) Conclusions; and

(C) Any plans of action that are recommended or taken.

(b) Data in the report must include:

(A) Characteristics of the reported victim;

(B) Relationship of the reported victim to the complainant, witnesses and reported perpetrator;

(C) Type of reported mistreatment/abuse;

(D) Conclusion; and

(E) Outcome.

(c) Reports are to be written and closed on a Department-approved system, (e.g., Oregon ACCESS).

(6) When a community complaint investigation has been completed, the complainant, the reported victim, and the reported perpetrator may be informed (verbally, unless notification in writing is requested) that appropriate action is being taken, and that no abuse was found (unsubstantiated) or abuse was found (substantiated) or that the investigation was 'inconclusive'.

Stat. Auth.: ORS 124.050-124.095, 410.070, 411.116, 441.635, 443.500, 443.767

Stats. Implemented: ORS 410.040, 410.070 & 411.116

Hist.: SPD 6-2005, f. 4-29-05, cert. ef. 7-1-05; SPD 33-2006, f. & cert. ef. 12-21-06; SPD 21-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10

## 411-020-0120

### Facility Investigation, Documentation and Notification

(1) Investigations are to be objective, professional, and complete.

(2) In completing the investigation, the adult protective services worker is responsible for carrying out the following steps:

(a) Identifying the reported victim, the reported perpetrator, and any parties reported to have information relevant to proving or disproving the allegation;

(b) Conducting interviews with the above parties to gather all relevant available evidence. Interviews shall be unannounced whenever possible. All interviews are to be private unless the person being interviewed requests the presence of someone else. Any persons sitting in shall be advised of the confidential nature of the investigation;

(c) Obtaining and reviewing any available and relevant documentary or physical evidence;

(d) Creating additional investigatory aids, such as maps or drawings that may aid in proving or disproving the allegation;

(e) Maintaining a record of interviews and evidentiary review, in notes, tape recordings, copies, photographs, or other appropriate means;

(f) Determining the facts of the case based on a fair and objective review of the available relevant evidence;

(g) Concluding whether the preponderance (majority) of the evidence indicates the incident occurred and whether wrongdoing was substantiated or unsubstantiated, or determining that the evidence is inconclusive. The determination as to whether substantiated wrongdoing meets the definitions of abuse shall be determined by the Department's Central Office.

(3) In conducting facility abuse investigations, the Department protocols governing activities of investigations further include:

(a) Notifying the Department's Client Care Monitoring Unit (CCMU) if:

(A) A situation exists in a nursing facility that meets criteria for CCMU to complete the investigation. Where CCMU shall conduct the investigation, the field office must provide coordination to assure victim safety;

(B) A situation exists in a residential care facility or an assisted living facility that could cause CCMU to conduct a survey. This includes reports of facility-wide issues.

(b) Providing an opportunity for the complainant or a designee of the complainant, or both, to accompany the investigator to the site of the reported violation for the sole purpose of identifying persons or objects relevant to the investigation;

(c) Conducting an unannounced site visit to the facility;

(d) Arranging for immediate protection. The worker is to direct the provider to correct any substantiated problem immediately.

(4) The local office shall submit detailed investigation reports written on the Departments Facility Report Writing System (723) to the Office of Licensing and Quality of Care in Central Office. The local office is to refer these reports to the appropriate office within 60 days of the receipt of the complaint for a community based care facility and within 62 days for a nursing facility.

(a) Facility investigations are to be written at the local office on the Departments Facility Report Writing System (723). Documentation of facility investigations must include, for each allegation:

(A) A statement of the allegation;

(B) Summary of witness statements;

(C) Investigator observations, including documentary review;

(D) Findings of fact;

(E) Conclusion.

(b) When wrongdoing is substantiated, findings in the investigation may be used to support civil or criminal sanctions against the perpetrator or care facility.

(c) The local office retains hard copies of facility investigation reports for a period of ten years after last activity.

(5) When a facility investigation has been completed, notification to the complainant and other appropriate parties must be done according to procedures as specified in the relevant facility licensing rules or policy.

(6) If the reported abuse is also the subject of a law enforcement report or criminal prosecution, copies of investigation reports must be forwarded to the law enforcement agency having jurisdiction.

(7) The Department may collect standardized statewide data on all types of Adult Protective Services including, but not limited to, information on the number of cases, types of incidents, person characteristics, and outcomes.

Stat. Auth.: ORS 410.070, 410.610 - 410.700, 411.116, 441.635, 443.500 & 443.767

Stats. Implemented: ORS 410.070 & 411.116

Hist.: AFS 5-1980, f. & ef. 1-25-80; Renumbered from 461-011-0005 by Ch. 784, OL 1981 & AFS 69-1981, f. 9-30-81, ef. 10-1-81; SSD 5-1994, f. & cert. ef. 11-15-94; Renumbered from 411-020-0050, SPD 6-2005, f. 4-29-05, cert. ef. 7-1-05; SPD 33-2006, f. & cert. ef. 12-21-06; SPD 21-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10

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**Rule Caption:** Adult Foster Homes.

**Adm. Order No.:** SPD 22-2009(Temp)

**Filed with Sec. of State:** 12-31-2009

**Certified to be Effective:** 1-1-10 thru 6-30-10

**Notice Publication Date:**

**Rules Amended:** 411-050-0400, 411-050-0410, 411-050-0412, 411-050-0415, 411-050-0420, 411-050-0440, 411-050-0444, 411-050-0455, 411-050-0460, 411-050-0480, 411-050-0481, 411-050-0487

**Subject:** To comply with the 2009 legislative changes from House Bill 2442, Senate Bill 670, Senate Bill 162, and Senate Bill 287, the Department of Human Services, Seniors and People with Disabilities Division (SPD) is temporarily amending the adult foster home rules in OAR chapter 411, division 050 to:

- Expand the definition of abuse for incidents occurring on or after January 1, 2010;

- Provide a list of crimes that will prevent an individual from being licensed or working in any capacity in an adult foster home;

- Increase the allowable civil penalty amounts for certain types of abuse;

- Provide increased privacy protection for residents, complainants, and witnesses to a complaint investigation;

- Allow revocation or license denial if the applicant or licensee has a history of substantial non-compliance in any other licensed facilities;

- Require the licensee to make complaint investigation reports that find substantiated abuse to be made available to the residents, their families, and the general public;

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- Make the licensee and their employees mandatory reporters for some instances of elder abuse; and
- Require SPD to issue a written notice of findings for each allegation of wrongdoing.

**Rules Coordinator:** Christina Hartman—(503) 945-6398

## 411-050-0400

### Definitions

For the purpose of these rules, authorized under ORS 443.705 to 443.825, the following definitions apply:

(1) "AAA" means an Area Agency on Aging (AAA) which is an established public agency within a planning and service area designated under Section 305 of the Older Americans Act which has responsibility for local administration of programs within the State of Oregon's Department of Human Services, Seniors and People with Disabilities. For the purpose of this rule, Type B AAAs contract with the Department to perform specific activities in relation to licensing adult foster homes including processing applications, conducting inspections and investigations, issuing licenses, and making recommendations to the Division regarding adult foster home license denial, revocation, suspension, non-renewal and civil penalties.

(2) "Abuse" for incidents that occur on or before December 31, 2009, means any of the following:

(a) Any physical injury to a resident that has been caused by other than accidental means. This includes injuries that a reasonable and prudent person would have been able to prevent, such as those resulting from hitting, pinching, striking, rough handling or corporal punishment. These instances of abuse are presumed to cause physical harm, including pain, to all residents, including those in a coma or otherwise incapable of expressing harm.

(b) Failure to provide basic care or services to a resident, which failure results in physical harm, unreasonable discomfort or serious loss of human dignity. Abuse under this definition includes abandonment, improper use of restraints and the deprivation by an individual, including a caregiver, of goods or services that are necessary to attain or maintain physical, mental and psychosocial well-being.

(c) Sexual contact with a resident, including fondling, by an employee or agent of a long-term care facility by: use of physical force, physical or verbal threat of harm, or deprivation to the resident or others; use of position, authority or misinformation to compel the resident to do what that resident would not otherwise do; or where the resident has no reasonable ability to consent. For the purpose of this rule, consent means a voluntary agreement or concurrence of wills and may be demonstrated by resident behavior as well as by verbal acknowledgment. Mere failure of the resident to object does not, in and of itself, constitute an expression of consent.

(d) Theft or diversion of a resident's property, including money, personal property and medications; illegal or improper use of a resident's resources for the personal profit or gain of another person; borrowing resident funds; spending resident funds without the resident's consent; if the resident is not capable of consenting, spending resident funds for items or services from which the resident cannot benefit or appreciate; spending resident funds to acquire items for use in common areas when such purchase is not initiated by the resident; or acting as a resident's guardian, conservator, trustee or attorney in fact unless related by birth, marriage or adoption, to the resident as follows: parent, child, brother, sister, grandparent, grandchild, aunt, uncle, niece or nephew. Nothing in this rule shall be construed to prevent an owner, administrator or employee from acting as a representative payee for the resident.

(e) Verbal or mental abuse, as prohibited by federal law, which includes in extreme forms: the use of oral, written or gestured communication that willfully includes disparaging and derogatory terms to the resident, or within their hearing distance, regardless of their age, ability to comprehend or disability; humiliation; intimidation; harassment; threats of punishment or deprivation directed toward the resident; and unwanted or inappropriate crude or sexual language, questions, comments or other communication. Examples of verbal and mental abuse include, but are not limited to: threats of harm; saying things to frighten a resident, such as telling a resident that he or she shall never be able to see his or her family again; and making unwanted sexual comments about a resident's body. Verbal or mental abuse is distinguished from a resident rights violation by the extreme or offensive nature of the communication.

(f) Involuntary seclusion for convenience or discipline. Involuntary seclusion is defined as the separation of a resident from other residents or from his or her room, or confinement to his or her room (with or without roommates) against the resident's will or the will of the resident's legal representative. Emergency or short-term, monitored separation from other residents may not be considered involuntary seclusion and may be permitted if used: for a limited period of time as a therapeutic intervention to reduce agitation until professional staff may develop a plan of care to meet the resident's needs; or as part of an inter-disciplinary care plan after other interventions have been attempted.

(3) "Abuse" for incidents that occur on or after January 1, 2010, means any of the following:

(a) Physical abuse, including:

(A) The use of physical force that may result in bodily injury, physical pain, or impairment.

(B) Any physical injury to a resident caused by other than accidental means, or which appears to be at variance with the explanation given of the injury.

(i) Conduct resulting in a physical injury caused by other than accidental means may include but is not limited to:

(I) Acts of violence such as striking (with or without an object), hitting, beating, punching, shoving, shaking, kicking, pinching, choking, or burning; or

(II) The use of force-feeding or physical punishment.

(ii) Physical abuse is presumed to cause physical injury, including pain, to residents in a coma or residents otherwise incapable of expressing injury or pain.

(b) Neglect, including:

(A) The failure of a person who is responsible to provide care or services to make a reasonable effort to protect a resident from abuse; or

(B) Failure to provide the care, supervision, or services necessary to maintain the physical and mental health of a resident that results in, or creates a serious risk of, physical harm or significant emotional harm to the resident.

(i) Such failure may occur whether intentional, careless, or due to inadequate experience, training, or skill, and may include the administration of an incorrect medication or dose of medication by other than accidental means.

(ii) The expectation for care, supervision, or services may exist as a result of an assumed responsibility or a legal or contractual agreement, including but not limited to where a person has a fiduciary responsibility to assure the continuation of necessary care.

(iii) A failure to maintain the mental health of a resident, for the purposes of this definition, may mean active or passive failure to maintain the emotional well-being of the resident, including but not limited to causing unreasonable discomfort or serious loss of personal dignity, but is not intended to establish an expectation for providing professional mental health services where such services are not expected or intended.

(c) Abandonment, including:

(A) Desertion or willful forsaking of a resident for any period of time by a person who has assumed responsibility for providing care, when that desertion or forsaking would place the resident at serious risk of harm; or

(B) The withdrawal or neglect of duties and obligations owed a resident by a person who is responsible to provide care or services, when that withdrawal or neglect of duties would place the resident at serious risk of harm.

(d) Verbal abuse.

(A) Verbal abuse includes threatening significant physical or emotional harm to a resident through the use of:

(i) Derogatory or inappropriate names, insults, verbal assaults, profanity, or ridicule; or

(ii) Harassment, coercion, threats, intimidation, humiliation, mental cruelty, or inappropriate sexual comments.

(B) For the purposes of this definition:

(i) Conduct that may be considered verbal abuse includes but is not limited to the use of oral, written, or gestured communication that is directed to a resident or within their hearing distance, regardless of their ability to comprehend; or

(ii) The emotional harm that may result from verbal abuse may include but is not limited to anguish, distress, or fear.

(e) Financial exploitation, including:

(A) Wrongfully taking, by means including but not limited to deceit, trickery, subterfuge, coercion, harassment, duress, fraud, or undue influence, the assets, funds, property, or medications belonging to or intended for the use of a resident;

(B) Alarming a resident by conveying a threat to wrongfully take or appropriate money or property of the resident if the resident 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 a resident; or

(D) Failing to use the income or assets of a resident effectively for the support and maintenance of the resident;

(i) Effectively, for the purposes of this definition, means in a manner that is for the benefit of the person;

(ii) In a facility, such failure includes but is not limited to:

(I) An owner or employee borrowing from a resident;

(II) If the resident is not capable of consenting, spending resident funds for items or services that the resident cannot benefit from or appreciate; or

(III) Spending resident funds to acquire items for use in common areas when such purchase is not initiated by the resident.

(f) Sexual abuse, including:

(A) Sexual contact with a non-consenting resident or with a resident considered incapable of consenting to a sexual act. Consent, for purposes of this definition, means a voluntary agreement or concurrence of wills. Mere failure to object does not, in and of itself, constitute an expression of consent;

(B) Sexual harassment or sexual exploitation of a resident, or inappropriately exposing a resident to, or making a resident the subject of, sexually explicit material or language;

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(C) Any sexual contact between an employee of a facility or paid caregiver and a resident served by the facility or caregiver, unless a pre-existing relationship existed. Sexual abuse does not include consensual sexual contact between a resident and a paid caregiver who is the spouse or domestic partner of the resident;

(D) Any sexual contact between a resident and a relative of the resident other than a spouse, where relative means a parent, grandparent, children, brother, sister, uncle, aunt, nieces, nephews, half brothers, half sisters, step-parents, or stepchildren;

(E) Any sexual contact that is achieved through force, trickery, threat, or coercion; or

(F) An act that constitutes a crime under ORS 163.375, 163.405, 163.411, 163.415, 163.425, 163.427, 163.465, or 163.467.

(g) Involuntary seclusion of a resident for the convenience of a caregiver or to discipline the resident.

(A) Involuntary seclusion may include:

(i) Confinement of a resident to his or her room;

(ii) Placing restrictions on a resident's ability to associate, interact, or communicate with other individuals; or

(iii) Placing restrictions on a resident's freedom of movement by restriction to a specific area.

(B) Emergency or short-term, monitored separation from other residents may not be considered involuntary seclusion and may be permitted if used for a limited period of time as a therapeutic intervention to reduce agitation until professional staff may develop a plan of care to meet the resident's needs, or as part of the care plan.

(h) A wrongful use of a physical or chemical restraint of a resident.

(A) A wrongful use of a physical restraint, including the wrongful use of a supportive device with restraining qualities, includes situations where:

(i) The resident has not requested or approved of the device;

(ii) A licensed health professional has not conducted a thorough assessment; or

(iii) Less restrictive alternatives have not been evaluated prior to the use of the device.

(B) A wrongful use of a chemical restraint includes but is not limited to the wrongful use of a medication or controlled substance for the purpose of sedation.

(4) "Activities of Daily Living (ADL)" means those personal functional activities required by an individual for health and safety. For the purpose of these rules, ADLs consist of eating, dressing and grooming, bathing and personal hygiene, mobility (ambulation and transfer), elimination (toileting, bowel and bladder management), and cognition and behavior management.

(a) "Independent" means the resident may perform an ADL without help.

(b) "Assist" means the resident is unable to accomplish with all tasks of an ADL, even with assistive devices, without the assistance of another person.

(c) "Full Assist" means the resident is unable to do any part of an ADL task, even with assistive devices, without the assistance of another person. This means the resident requires the hands-on assistance of another person through all phases of the activity, every time the activity is attempted.

(5) "Adult Foster Home (AFH)" means any family home or other facility in which residential care is provided in a home-like environment for compensation to five or fewer adults who are elderly or physically disabled and are not related to the licensee or resident manager by blood, marriage or adoption. For the purpose of this rule, adult foster home does not include any house, institution, hotel or other similar living situation that supplies room or board only, if no resident thereof requires any element of care.

(6) "Advance Directive for Health Care" means the legal document signed by the resident giving health care instructions if he or she may no longer be able to give directions regarding his or her wishes. The directive gives the resident the means to continue to control her/his own health care in any circumstance.

(7) "Applicant" means any person who completes an application for a license who shall also be an owner of the business.

(8) "Approved" (pertaining to the criminal records check process) means that a subject individual has completed the criminal records check process and has been found to have no potentially disqualifying criminal record; or following an evaluation of factors identified in OAR 411-050-0412, the Authorized Designee determined the subject individual's criminal record does not indicate a likelihood of behavior that could endanger the welfare of persons receiving care.

(9) "Authorized Designee (AD)" means an employee of the Department of Human Services, Seniors and People with Disabilities or an Area Agency on Aging who is qualified to have access to the Law Enforcement Data System (LEDS) information.

(10) "Behavioral Interventions" means those interventions that shall modify the resident's behavior or the resident's environment.

(11) "Board of Nursing Rules" means the standards for Registered Nurse Teaching and Delegation to Unlicensed Persons according to the Statutes and rules of the Oregon State Board of Nursing, ORS 678.010 to 678.445 and OAR chapter 851, division 047.

(12) "Care" means the provision of room, board, services and assistance with activities of daily living, such as assistance with bathing, dressing,

grooming, eating, money management, recreation or medication management, except that assistance with self-medication is not included as part of care for purposes of these rules. Care also means assistance to promote maximum independence and enhance the quality of life for residents.

(13) "Caregiver" means any person responsible for providing care and services to residents, including the licensee; the resident manager; shift caregiver; and any temporary, substitute or supplemental staff or other person designated to provide care and services to residents.

(14) "Care Plan" means the licensee's written description of a resident's needs, preferences, and capabilities, including by whom, when, and how often care and services shall be provided.

(15) "Classification" means a designation of license assigned to a licensee based on the qualifications of the licensee, resident manager, and shift caregiver's qualifications, as applicable.

(16) "Client" means a resident in an adult foster home for whom the Department pays for care and for whom case management services are provided. "Client" also means a Medicaid recipient.

(17) "Compensation" means monetary or in-kind payments by or on behalf of a resident to a licensee in exchange for room, board, care and services. Compensation does not include the voluntary sharing of expenses between or among roommates.

(18) "Complaint" means an allegation that a licensee or caregiver has violated the adult foster home rules or an expression of dissatisfaction relating to the resident(s) or the condition of the adult foster home.

(19) "Condition" means a provision attached to a new or existing license that limits or restricts the scope of the license or imposes additional requirements on the licensee.

(20) "Criminal Records Check Rules" refers to OAR 407-007-0200 to 407-007-0370.

(21) "Day Care" means care, assistance, and supervision of a person who does not stay overnight.

(22) "Delegation" means the process by which a registered nurse teaches and supervises a skilled nursing task.

(23) "Denied" (pertaining to the criminal records check process) means that a subject individual, following a final fitness determination, has been determined to pose a risk to the physical, emotional, or financial well-being of the elderly or persons with disabilities according to OAR 407-007-0200 to 407-007-0370 and 411-050-0412.

(24) "Department" means the State of Oregon Department of Human Services.

(25) "Director" means the Director of the Department of Human Services or that person's designee.

(26) "Disabled" means a person with a physical, cognitive, or emotional impairment which, for the individual, constitutes or results in a functional limitation in one or more activities of daily living.

(27) "Division" means the Seniors and People with Disabilities (SPD) of the Department of Human Services. Division also includes the local Division units and the AAAs who have contracted to perform specific functions of the licensing process.

(28) "Elderly" or "Aged," for the purposes of these rules, means any person age 65 or older.

(29) "Exception" means a variance from a regulation or provision of these rules, granted in writing by the Division, upon written application by the licensee.

(30) "Exempt Area" means a county where there is a county agency that provides similar programs for licensing and inspection of adult foster homes which the Director finds are equal to or superior to the requirements of ORS 443.705 to 443.825 and which the Director has exempted from the license, inspection, and fee provisions of ORS 443.705 to 443.825. Exempt area county licensing rules must be submitted to the Director for review and approval prior to implementation.

(31) "Family Member," for the purpose of these rules, means husband or wife, natural parent, child, sibling, adopted child, adoptive parent, step-parent, 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.

(32) "Fitness Determination" means an evaluation by an Authorized Designee (AD) of the subject individual's criminal records and any mitigating information that is provided by that subject individual.

(33) "Home" means the physical structure in which residents live. Home is synonymous with adult foster home.

(34) "Home-like" means an environment that promotes the dignity, security and comfort of residents through the provision of personalized care and services and encourages independence, choice, and decision-making by the residents.

(35) "House Policies" mean written and posted statements addressing house activities in an adult foster home.

(36) "Legal Representative" means a person who has the legal authority to act for the resident. For health care decisions, this is a court-appointed guardian, a health care representative under an Advance Directive for Health Care, or Power of Attorney for Health Care. For financial decisions, this is a legal conservator, an agent under a power of attorney, or a representative payee.

# ADMINISTRATIVE RULES

(37) "License" means a certificate issued by the Division to applicants who are in compliance with the requirements of these rules.

(38) "Licensed Health Care Professional" means an individual who possesses a professional medical license that is valid in the State of Oregon. Examples include, but are not limited to, a registered nurse (RN), nurse practitioner (NP), licensed practical nurse (LPN), medical doctor (MD), osteopathic physician (DO), respiratory therapist (RT), physical therapist (PT) or occupational therapist (OT).

(39) "Licensee" means the person(s) who applied for, was issued a license, and whose name(s) is on the license and who is responsible for the operation of the home(s). The licensee of the adult foster home does not include the owner or lessor of the building in which the adult foster home is situated unless he or she is also the operator. "Licensee" is synonymous with "licensed provider".

(40) "Limited License" means a license is issued to a licensee who intends to provide care for compensation to a specific individual who is unrelated to the licensee but with whom there is an established relationship.

(41) "Liquid Resource" means cash or those assets that may readily be converted to cash such as a life insurance policy that has a cash value or stock certificates, or a guaranteed line of credit from a financial institution.

(42) "National Criminal Records Check" means a review by the Department of a subject individual's criminal records outside of the State of Oregon obtained from the Federal Bureau of Investigation (FBI) through the submission of fingerprint cards.

(43) "Neglect" (whether intentional, careless, or due to inadequate experience, training, or skill) means failure to seek appropriate medical care or failure to provide care necessary to ensure the health, safety, and well-being of a resident; failure to follow the care plan; failure to make a reasonable effort to discover what care is necessary for the well-being of a resident; improper administration of medication; or failure to provide a safe and sanitary environment.

(44) "Nursing Care" means the practice of nursing by a licensed nurse, including tasks and functions relating to the provision of nursing care that are taught or delegated under specified conditions by a registered nurse to persons other than licensed nursing personnel, as governed by ORS chapter 678 and rules adopted by the Oregon State Board of Nursing in OAR chapter 851.

(45) "Occupant" means anyone residing in or using the facilities of the adult foster home including residents, licensees, resident managers, friends or family members, day care persons, and boarders.

(46) "Ombudsman" means the State of Oregon Long-Term Care Ombudsman or an individual designee appointed by the Long-Term Care Ombudsman to serve as a representative of the Ombudsman Program in order to investigate and resolve complaints on behalf of the adult foster home residents.

(47) "Physical Restraint" means any manual method or physical or mechanical device, material, or equipment attached to, or adjacent to, the resident's body which the resident cannot easily remove and restricts freedom of movement or normal access to his or her body. Physical restraints include, but are not limited to, wrist or leg restraints, soft ties or vests, hand mitts, wheelchair safety bars, lap trays, and any chair that prevents rising (such as a Geri-chair). Side rails (bed rails) are considered restraints when they are used to prevent a resident from getting out of a bed. The side rail is not considered a restraint when a resident requests a side rail for the purpose of assistance with turning.

(48) "P.R.N. (pro re nata) Medications and Treatments" means those medications and treatments that have been ordered by a qualified practitioner to be administered as needed.

(49) "Provider" means any person operating an adult foster home (i.e., licensee, resident manager or shift caregiver). "Provider" does not include the owner or lessor of the building in which the adult foster home is situated unless the owner or lessor is also the operator of the adult foster home.

(50) "Potentially Disqualified" means the Division has determined a subject individual has a conviction for a potentially disqualifying crime or there is a discrepancy between the history disclosed by the subject individual and the information obtained through the criminal records check. The Authorized Designee must then make a fitness determination.

(51) "Provisional License" means a 60-day license issued to a qualified person in an emergency situation when the licensed provider is no longer overseeing the operation of the adult foster home. The qualified person must meet the standards of OAR 411-050-0440 and 411-050-0443 except for completing the training and testing requirements. (See OAR 411-050-0415(9))

(52) "Psychoactive Medications" means various medications used to alter mood, anxiety, behavior or cognitive processes. For the purpose of these rules, they include, but are not limited to, antipsychotics, sedatives, hypnotics, and anti-anxiety medications.

(53) "Relative" means those persons identified as family members in section (30) of this rule.

(54) "Relative Adult Foster Home" means a home in which care and services are provided only to adult family members of the licensed provider who are 18 years or older and are elderly or physically disabled. The adult family member receiving care must be eligible for Medicaid assistance from the Department. A spouse is not eligible for compensation as a relative adult foster care licensee.

(55) "Reside" means for a person to make an adult foster home his or her residence on a frequent or continuous basis.

(56) "Resident" means any person who is receiving room, board, care, and services for compensation in an adult foster home on a 24-hour day basis.

(57) "Residential Care" means the provision of care on a 24-hour day basis.

(58) "Resident Manager" means an employee of the licensee who lives in the home and is directly responsible for the care of residents on a 24-hour day basis for five consecutive days.

(59) "Resident Rights" or "Rights" means civil, legal or human rights, including but not limited to those rights listed in the Adult Foster Home Residents' Bill of Rights. (See ORS 443.739)

(60) "Respite Resident" means a person who receives care for a period of 14 days or less or who only stays overnight.

(61) "Room and Board" means receiving compensation for the provision of meals, a place to sleep, laundry and housekeeping to adults who are elderly or physically disabled and do not need assistance with their activities of daily living. Room and board facilities for two or more persons must register with the Division under OAR chapter 411, division 068.

(62) "Self-Administration of Medication" means the act of a resident placing a medication in or on his or her own body. The resident identifies the medication, the time and manner of administration, and places the medication internally or externally on his or her own body without assistance.

(63) "Self-Preservation" in relation to fire and life safety means the ability of residents to respond to an alarm without additional cues and reach a point of safety without assistance.

(64) "Services" means activities that help the residents develop skills to increase or maintain their level of functioning or which assist them to perform personal care or activities of daily living or individual social activities.

(65) "Shift Caregivers" mean caregivers who, by written exception of the Division, are responsible for providing care for regularly scheduled periods of time, such as 8 or 12 hours per day, in homes where there is no licensee or resident manager living in the home.

(66) "SPD" means Seniors and People with Disabilities of the State of Oregon, Department of Human Services.

(67) "Subject Individual" means any person, 16 years of age or older who has regular contact with residents, resides, receives training, works in an adult foster home or is the recipient of a Medicaid service payment in a relative adult foster home. A resident and his or her visitors are not "subject individuals".

(68) "Substitute Caregiver" means any person other than the licensee, resident manager, or shift caregiver who provides care and services in an adult foster home under the jurisdiction of Seniors and People with Disabilities.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 443.705

Hist.: SSD 14-1985, f. 12-31-85, ef. 1-1-86; SSD 11-1988, f. 10-18-88, cert. ef. 11-1-88; SSD 3-1992, f. 5-26-92, cert. ef. 6-1-92; SSD 3-1992, f. 5-26-92, cert. ef. 6-1-92; SSD 3-1996, f. 3-29-96, cert. ef. 4-1-96; SSD 4-2001, f. & cert. ef. 3-1-01; SPD 31-2006, f. 12-27-06, cert. ef. 1-1-07; SPD 22-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10

## 411-050-0410

### License Application and Fees

(1) The Department's application form must be completed and submitted with the non-refundable fee by the licensee applicant. The application is not complete until all of the required application information is submitted to the Division. Incomplete applications are void after 60 days from the date the licensing office receives the application form and nonrefundable fee. Failure to provide accurate information may result in the denial of the application.

(2) A separate application is required for each location where an adult foster home is to be operated.

(3) An application for a home that has a resident manager must include a Department's completed application form for the resident manager.

(4) The license application must include:

(a) Verification of attendance at a local office Orientation and successful completion of the Division's Basic Training examination. (See OAR 411-050-0440(1)(g)(A) and (B))

(b) The maximum resident capacity requested, relatives needing care, room and board occupants, and day care persons. The application must also include the name(s) of any other occupants in the home;

(c) The classification being requested with information and supporting documentation regarding qualifications, relevant work experience, and training of staff as required by the Division;

(d) A Health History and Physician or Nurse Practitioner's Statement (form SDS 903) regarding the individual's ability to provide care;

(e) A completed Financial Information sheet (SDS 448A); a budget for operating the home that includes payroll expenses; and proof of at least two months' liquid resources;

(f) The applicant must provide the Division with a list of all unsatisfied judgments, liens and pending lawsuits in which a claim for money or property is made against the applicant; all bankruptcy filings by the applicant; and all unpaid taxes due from the applicant. The Division shall require the applicant provide proof of having the amount of resources necessary to pay those



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claims. The Division may require or permit the applicant to provide a current credit report to satisfy this financial requirement;

(g) If the home is leased or rented, the applicant must submit a copy of the lease or rental agreement. The agreement shall be a standard lease or rental agreement for residential use and include the following:

- (A) The owner and landlord's name;
- (B) Verification that the rent is a flat rate; and
- (C) Signatures and date by the landlord and applicant;

(h) If the applicant is purchasing or owns the home, verification of purchase or ownership must be submitted with the application. The financial information may not be included in the public file;

(i) A signed Criminal Records Request form provided by the Department for each person who shall have regular contact with the residents, including the licensee(s), the resident manager, shift caregivers, substitute caregivers and any occupants 16 years of age and older, excluding residents;

(j) The applicant must submit a current and accurate floor plan that indicates:

- (A) The size of rooms;
- (B) Which rooms are to be resident bedrooms and which are to be caregiver bedrooms;
- (C) The location of all the exits on each level of the home, including emergency exits such as windows;
- (D) The location of wheelchair ramp(s), if applicable;
- (E) Where the fire extinguishers and smoke alarms are located; and
- (F) The planned evacuation routes;

(k) If requesting a license to operate more than one home, a plan covering administrative responsibilities, staffing qualifications, and additional evidence of financial responsibility;

(l) A \$20 per bed non-refundable fee for each non-relative resident;

(m) Three personal references who are not family members of the applicant. (See OAR 411-050-0400(30)) Current or potential licensees and co-workers of current or potential licensees are not eligible as personal references;

(n) If the applicant or licensee intends to use a resident manager or shift caregiver, a Department's supplemental application completed by the resident manager or shift caregiver must be submitted; and

(o) Written information describing the operation plan for the adult foster home, including the use of substitute caregivers, other staff, a back-up licensed provider or approved resident manager, and a plan on coverage for resident manager or shift caregiver absences, if applicable.

(5) Shift Caregivers. Shift caregivers may be used in lieu of a resident manager if granted a written exception by the Division. Use of shift caregivers detracts from the intent of a home-like environment, but shall be allowed for specific resident populations. The type of residents served must be a specialized population with intense care needs such as those with Alzheimer's Disease, AIDS, or head injuries. If shift caregivers are used, they must meet or exceed the experience and training qualifications for the license classification requested.

(6) After receipt of the completed application materials, including the non-refundable fee the Division must investigate the information submitted including pertinent information received from outside sources, inspect the home, and conduct a personal interview with the applicant.

(7) If cited violations from the home inspection are not corrected within the time frames specified by the Division, the issuance of the license must be denied.

(8) The applicant may withdraw his or her application at any time during the application process by written notification to the Division.

(9) An applicant whose license has been revoked, voluntarily surrendered during a revocation or non-renewal process, or whose application for licensure has been denied shall not be permitted to make a new application for one year from the date the revocation, surrender, or denial was final, or for a longer period if specified in the order revoking or denying the license.

(10) All fees collected under ORS 443.790 to 443.815 shall be paid to the Quality Care Fund.

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

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 443.735

Hist.: SSD 14-1985, f. 12-31-85, ef. 1-1-86; SSD 11-1988, f. 10-18-88, cert. ef. 11-1-88; SSD 3-1992, f. 5-26-92, cert. ef. 6-1-92; SSD 3-1992, f. 5-26-92, cert. ef. 6-1-92; SSD 3-1996, f. 3-29-96, cert. ef. 4-1-96; SDS 4-2001, f. & cert. ef. 3-1-01; SPD 31-2006, f. 12-27-06, cert. ef. 1-1-07; SPD 22-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10

## 411-050-0412

### Criminal Records Check

(1) No person may be a licensee, resident manager, shift caregiver, substitute caregiver, or otherwise be in training, employed by a licensee or reside in or on the property of an adult foster home who has not been approved by the Department to work with adults who are elderly or physically disabled in accordance with OAR 407-007-0200 to 407-007-0370, Criminal Records Check Rules. The approval must be maintained as required.

(a) On or after January 1, 2010, no person may be a licensee, resident manager, shift caregiver, substitute caregiver, or otherwise be in training, employed in an adult foster home, or reside in or on the property of an adult

foster home, who has a conviction for the delivery or manufacture of drugs in the past ten years.

(b) On or after January 1, 2010, no person may be approved to be a licensee, resident manager, shift caregiver, substitute caregiver, or otherwise be in training, employed in an adult foster home, or reside in or on the property of an adult foster home, who has ever been convicted:

(A) Of a crime listed in Exhibit 50-1;

(B) Of an attempt, conspiracy, or solicitation to commit a crime listed in Exhibit 50-1; or

(C) Of a crime in another jurisdiction that is substantially equivalent to a crime listed in Exhibit 50-1.

(2) Section (1) of this rule does not apply to:

(a) Residents of the adult foster home;

(b) Anyone under the age of 16 years old; or

(c) Persons who live or work on the property who do not access the home for meals, or use the appliances or facilities, and do not have unsupervised access to residents or their personal property.

(3) In a relative adult foster home, the person receiving payment for providing services to the client is the only person who must be approved by the Department, in accordance with OAR 411-050-0412.

(4) The Department shall conduct criminal records checks and obtain information from the Law Enforcement Data System (LEDS) and if necessary, the Federal Bureau of Investigation (FBI), other law enforcement agencies or the courts.

(5) A national criminal records check is required for any subject individual who has lived outside the State of Oregon for 60 or more consecutive days during the previous three years or for the reasons described in OAR 407-007-0200 to 407-007-0370, Criminal Records Check Rules. Resident managers, shift caregivers and substitute caregivers may work in the home pending the outcome of the national criminal records check if the Oregon criminal records check does not reveal any potentially disqualifying crimes and no out-of-state convictions were self-disclosed on the Department's Criminal Records Request form. The Department may determine a national criminal records check is not required if the subject individual, according to the Department's Criminal Records Check, passed a national check within the previous three years and has not lived outside of Oregon during those three years.

(6) An Authorized Designee (AD) shall make the fitness determination on all licensee applicants, all licensed providers and all subject individuals.

(7) A subject individual must NOT work, receive training or reside in an adult foster home if the subject individual refuses to cooperate with the criminal records check process (e.g., refuses to be fingerprinted when requested, refuses to complete the Department's Criminal Records Request form).

(8) The licensee must have written verification from the Division that the required criminal records checks have been completed for all employees, trainees, and occupants of the home other than residents. (See OAR 411-050-0444(6)(a)(A))

(9) The Division must provide for the expedited completion of a criminal records check for the State of Oregon when requested by a licensed provider because of an immediate staffing need.

Stat. Auth.: ORS 181, 410.070 & 443

Stats. Implemented: ORS 181.537 & 443.735

Hist.: SDS 4-2001, f. & cert. ef. 3-1-01; SPD 31-2006, f. 12-27-06, cert. ef. 1-1-07; SPD 22-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10

## 411-050-0415

### Issuance

(1) The Division shall issue a license within 60 days after the completed application materials have been received if the home and applicant are in compliance with these rules. The license shall state the name of the resident manager, or shift caregivers as applicable, the name(s) of the licensee(s) who have met the requirements to operate the adult foster home, the address of the premises to which the license applies, the license classification, the maximum number of residents and the expiration date. The license must be posted in a prominent place in the home and be available for inspection at all times.

(2) The licensee shall be given a copy of the Division inspection report forms SDS 517A and 517B, identifying any areas of non-compliance and specifying a time frame for correction, not exceeding 30 days from date of inspection. The licensee must post the most recent inspection reports in the entry or equally prominent place and must, upon request, provide a copy of the reports to each resident, person applying for admission to the home, or the legal representative, guardian or conservator of a resident.

(3) The Division may attach conditions to the license that limit, restrict or specify other criteria for operation of the home. The conditions must be posted with the license (See OAR 411-050-0483).

(4) A limited license may be issued to a licensee for the care of a specific person(s). A licensee with this limitation shall make no other admissions and at a minimum, must meet the requirements of licensure for a relative adult foster home. A licensee with a limited license may be subject to the requirements specified in the Standards and Practices for Care and Services. (See OAR 411-050-0447)

(5) The Division may not issue an initial license unless:

# ADMINISTRATIVE RULES

(a) The applicant and adult foster home are in compliance with ORS 443.705 to 443.825, and OAR chapter 411, division 050, Adult Foster Homes;

(b) The applicant currently operates, or has operated, any other facility licensed by the applicant in substantial compliance with ORS 443.705 to 443.825;

(c) The Division has completed an inspection of the adult foster home;

(d) The Department has completed a criminal records check in accordance with OAR 411-050-0412;

(e) The Division has checked the record of sanctions available from its files;

(f) The Division has determined that the nursing assistant registry maintained under 42 CFR 483.156 contains no finding that the applicant or any nursing assistant employed by the applicant has been responsible for abuse; and

(g) The applicant has demonstrated to the Division the financial ability and resources necessary to operate the adult foster home.

(6) A license is valid for one year unless revoked or suspended by the Division.

(7) In seeking an initial license, the burden of proof shall be upon the applicant of the adult foster home to establish compliance with ORS 443.705 to 443.825, and OAR chapter 411, division 050, Adult Foster Homes.

(8) The Division may not issue a license to operate an additional adult foster home to a licensee who has failed to achieve and maintain substantial compliance with the rules and regulations while operating his or her existing home or homes.

(9) Notwithstanding any other provision of this rule or ORS 443.725 or 443.738, the Division may issue a 60-day provisional license to a qualified person if the Division determines that an emergency situation exists after being notified that the licensed provider is no longer overseeing the operation of the adult foster home for purposes of this rule. A person shall be considered qualified if they are 21 years of age and meet the requirements of a substitute caregiver.

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

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 443.735

Hist.: SSD 14-1985, f. 12-31-85, ef. 1-1-86; SSD 11-1988, f. 10-18-88, cert. ef. 11-1-88; SSD 3-1992, f. 5-26-92, cert. ef. 6-1-92; SSD 3-1992, f. 5-26-92, cert. ef. 6-1-92; SSD 3-1996, f. 3-29-96, cert. ef. 4-1-96; SDDS 4-2001, f. & cert. ef. 3-1-01; SPD 31-2006, f. 12-27-06, cert. ef. 1-1-07; SPD 22-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10

## 411-050-0420

### Renewal

(1) At least 60 days prior to the expiration of a license, the Division shall mail a reminder notice and renewal application to the licensed provider. The Division may investigate any information in the renewal application and shall conduct an unannounced inspection of the adult foster home prior to the license renewal.

(2) Renewal Application Requirements. The licensee, resident manager and shift caregivers, as applicable, must submit complete and accurate renewal applications prior to the expiration date to keep the license in effect until the Division takes action. The licensee's renewal application must include:

(a) The Department's license renewal application form;

(b) A \$20 non-refundable fee for each resident based on the license capacity requested;

(c) The Department's Criminal Records Request form, completed for each person who shall have regular contact with the residents, including the licensee, the resident manager, all other caregivers, and any occupants 16 years of age and over, excluding residents;

(d) A completed Financial Information Sheet (form SDS 0448A) if the licensee's financial information has changed since the prior application; and

(e) A Health History and Physician or Nurse Practitioners' Statement must be updated every third year or sooner if there is reasonable cause for health concerns.

(3) Late Renewal Requirements (Unlicensed Adult Foster Home). The home shall be treated as an unlicensed facility, subject to Civil Penalties, if the required renewal information and fee are not submitted prior to the expiration date and residents remain in the home. (See OAR 411-050-0487)

(4) The licensee shall be given a copy of the Division's inspection report forms SDS 517A and 517B citing any violations and a time frame for correction, which shall be no longer than 30 days from the date of inspection.

(5) The Division shall require the licensee to correct violations relating to the health, safety, and welfare of residents prior to issuing the renewal license. If cited violations are not corrected within the time frame specified by the Division, the renewal license may be denied.

(6) The Division may not renew a license unless the following requirements are met.

(a) The applicant and the adult foster home are in compliance with OAR chapter 411, division 050;

(b) The applicant currently operates, or has operated, any other facility licensed by the applicant in substantial compliance with ORS 443.705 to 443.825;

(c) The Division has completed an inspection of the adult foster home;

(d) The Department has completed a criminal records check in accordance with OAR 411-050-0412;

(e) The Division has checked the record of sanctions available from its files; and

(f) The Department has determined that the nursing assistant registry maintained under 42 CFR 483.156 contains no finding that the applicant or any nursing assistant employed by the applicant has been responsible for abuse;

(7) In seeking a renewal of a license when an adult foster home has been licensed for less than 24 months, the burden of proof shall be upon the licensee to establish compliance with ORS 443.705 to 443.825, OAR chapter 411, division 050, and OAR 411-050-0412.

(8) In proceedings for renewal of a license when an adult foster home has been licensed for 24 or more continuous months, the burden of proof shall be upon the Division to establish noncompliance with ORS 443.705 to 443.825, and OAR chapter 411, division 050.

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

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 443.735

Hist.: SSD 14-1985, f. 12-31-85, ef. 1-1-86; SSD 11-1988, f. 10-18-88, cert. ef. 11-1-88; SSD 3-1992, f. 5-26-92, cert. ef. 6-1-92; SSD 3-1992, f. 5-26-92, cert. ef. 6-1-92; SSD 3-1996, f. 3-29-96, cert. ef. 4-1-96; SDDS 4-2001, f. & cert. ef. 3-1-01; SPD 31-2006, f. 12-27-06, cert. ef. 1-1-07; SPD 9-2007, f. 6-27-07, cert. ef. 7-1-07; SPD 22-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10

## 411-050-0440

### Qualification and Training Requirements for Licensees, Resident Managers and Other Caregivers

(1) Licensee Requirements – Adult foster home licensees must meet and maintain the requirements specified in this section. Adult foster home applicants and licensees must:

(a) Live in the home that is to be licensed unless there is an approved resident manager, or an exception for shift caregivers has been granted according to OAR 411-050-0440(4);

(b) Be at least 21 years of age;

(c) Possess physical health, mental health, good judgment and good personal character, including truthfulness, determined necessary by the Division to provide 24-hour care for adults who are physically disabled or elderly. Applicants must have a statement from a physician or other qualified practitioner indicating they are physically, cognitively, and emotionally capable of providing care to residents. Applicants with documented history or substantiated complaints of substance abuse or mental illness must provide evidence satisfactory to the Division of successful treatment, rehabilitation or references regarding current condition;

(d) Be approved annually to have contact with adults who are elderly or physically disabled in accordance with OAR 411-050-0412 and maintain that approval as required;

(e) Be literate in the English language and demonstrate the ability to communicate in English verbally and in writing with residents and their family members or representatives, emergency personnel (e.g., emergency operator, paramedics and fire fighters), physicians, nurses, case managers, Division staff and other professionals involved in the care of residents;

(f) Be able to respond appropriately to emergency situations at all times; and

(g) Training Requirements – Applicants and licensees must have the education, experience, and training to meet the requirements of their requested classification. (See OAR 411-050-0443) The following training requirements must be completed prior to obtaining a license:

(A) Potential applicants must attend a Division-approved orientation program offered by the local licensing authority.

(B) Potential applicants must pass the Division's Basic Training Course examination to meet application requirements for licensure. Potential applicants who fail the first examination may take the examination a second time, however successful completion of the examination must take place within 90 days of the end of the Basic Training Course. Potential applicants who fail a second test must retake the Division's Basic Training Course prior to repeating the examination.

(2) Financial Requirements. Applicants and licensees must have the financial ability and maintain sufficient liquid resources to pay the operating costs of the adult foster home for at least two months without solely relying on potential resident income. If an applicant is unable to demonstrate the financial ability and resources required by this section, the Division may require the applicant to furnish a financial guarantee such as a line of credit or guaranteed loan as a condition of initial licensure.

(3) Resident Manager Requirements. Applicants for resident manager must meet and maintain the qualification and training requirements specified in OAR 411-050-0440(1)(a) through (1)(g)(B). An applicant may not be approved as a resident manager until the Division has verified that all the requirements have been satisfied.

(4) Shift Caregiver Requirements. Applicants for shift caregiver must meet and maintain the qualifications outlined in OAR 411-050-0440(1)(b) through (1)(g)(B). An applicant may not be approved as a shift caregiver until the Division has verified that all the requirements have been satisfied. (See OAR 411-050-0410(4)(n))

# ADMINISTRATIVE RULES

(5) Employment Application. An application for employment in any capacity in an adult foster home must include a question asking whether the applicant has been found to have committed abuse.

(6) Training Within First Year of Licensing: Licensees, resident managers and shift caregivers must complete within the first year of obtaining an initial license a Basic First Aid course, a cardiopulmonary resuscitation (CPR) course, and attend Fire and Life Safety training as available. The Division and the Office of the State Fire Marshal or the local fire prevention authority may coordinate the Fire and Life Safety training program.

(7) Annual Training Requirements for Licensees, Resident Managers, and Shift Caregivers for License Renewal:

(a) Each year after the first year of licensure, licensees, resident managers and shift caregivers are required to complete at least 12 hours of Division-approved training related to the care of adults who are elderly or physically disabled. Up to four of those hours may be related to the business operation of an adult foster home.

(b) Licensees, resident managers and shift caregivers, as applicable, must maintain their CPR certification.

(c) Registered nurse delegation or consultation, CPR certification and First Aid training or consultation with an accountant do not count toward the 12 hours of the annual training requirement.

(8) Substitute Caregiver Requirements. Substitute Caregivers, or any other person left in charge of residents for any period of time must not be a resident, and must at a minimum, meet the following qualifications:

(a) Be at least 18 years of age;

(b) Be approved annually to work with adults who are elderly or have physical disabilities in accordance with OAR 411-050-0412 and maintain that approval as required.

(c) Be literate in the English language and demonstrate the ability to communicate in English verbally and in writing with residents, residents' representatives and family members, emergency personnel (e.g., emergency operator, paramedics and fire fighters), physicians, case managers, Division staff, and other professionals involved in the care of residents;

(d) Be able to respond appropriately to emergency situations at all times;

(e) Have a clear understanding of their job responsibilities, have knowledge of the residents' care plans and be able to provide the care specified for each resident including appropriate delegation or consultation by a registered nurse;

(f) Possess physical health, mental health, good judgment, and good personal character, including truthfulness, determined necessary by the Division to provide care for adults who are elderly or physically disabled, as determined by reference checks and other sources of information; and

(g) Training Requirements for Substitute Caregivers:

(A) Substitute caregivers must be oriented to the home and to the residents by the licensee or resident manager including the location of any fire extinguishers; demonstration of evacuation procedures; location of residents' records; location of telephone numbers for the residents' physicians, the licensee and other emergency contacts; location of medications and key for medication cabinet; introduction to residents; instructions for caring for each resident; and delegation by a registered nurse for nursing tasks if applicable.

(B) A substitute caregiver must complete the Department's Caregiver Preparatory Training Study Guide (SDS 9030) and Workbook (SDS 9031), and must receive instruction in specific care responsibilities from the licensee or resident manager. The Workbook must be completed by the substitute caregiver without the help of any other person and be considered part of the required orientation to the home and residents.

(C) Substitute caregivers left in charge of an adult foster home for any period that exceeds 48 continuous hours, may be required to meet the education, experience and training requirements of a resident manager if the licensing authority determines that such qualifications are necessary based on the resident impairment levels in the home.

(D) The Division may grant an exception to the Caregiver Preparatory Training Study Guide and Workbook requirement in paragraph (7)(g)(B) of this rule for a substitute caregiver who holds a current Oregon license as a health care professional such as a physician, registered nurse, or licensed practical nurse who demonstrates the ability to provide adequate care to residents based on similar training or at least one year of experience providing direct care to adults who are elderly or physically disabled. A certified nursing assistant (CNA) must complete the Caregiver Preparatory Training Workbook and have a certificate of completion signed by the licensee.

(9) If a licensee is not in compliance with one or more of these rules or the classification for which he or she is licensed, the Division may require, by condition, additional training in the deficient area(s).

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

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 443.735 & 443.738

Hist.: SSD 14-1985, f. 12-31-85, ef. 1-1-86; SSD 11-1988, f. 10-18-88, cert. ef. 11-1-88; SSD 3-1992, f. 5-26-92, cert. ef. 6-1-92; SSD 3-1995, f. & cert. ef. 3-15-95; SSD 3-1992, f. 5-26-92, cert. ef. 6-1-92; SSD 3-1996, f. 3-29-96, cert. ef. 4-1-96; SDD 4-2001, f. & cert. ef. 3-1-01; SPD 31-2006, f. 12-27-06, cert. ef. 1-1-07; SPD 22-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10

## 411-050-0444

### Operational Standards

(1) General Practices.

(a) Licensees must own, rent or lease the home to be licensed, however the local licensing authority may grant exception to churches, hospitals, non-profit associations or similar organizations. If a licensee rents or leases the premises where the adult foster home is located, the licensee must not enter into a contract that requires anything other than a flat rate for the lease or rental. A licensed provider of a building in which an adult foster home is located must not allow the owner to interfere with the admission, discharge or transfer of any resident in the adult foster home unless the owner is a licensee or co-licensee named on the license.

(b) The licensee must cooperate with Division personnel in inspections, complaint investigations, planning for resident care, application procedures and other necessary activities. Department personnel have to all resident and facility records and may conduct private interviews with residents. The State Long-Term Care Ombudsman has access to all resident and facility records. Certified Ombudsman volunteers may have access to resident records with written permission from the resident and facility records relevant to caregiving.

(c) Information related to resident(s) must be kept confidential, except as may be necessary in the planning or provision of care or medical treatment, or related to an investigation or sanction action under these rules.

(d) Licensees must be able to arrange or provide for appropriate transportation for residents when needed.

(e) Staffing Standards. A licensee may not employ a resident manager or shift caregiver who does not meet or exceed the experience and training classification standard for the adult foster home.

(f) If a resident manager, or shift caregiver, changes during the period the license covers, the licensee must notify the Division immediately and identify who shall be providing care. This includes circumstances when the licensee assumes the role as the primary caregiver or shift caregiver when there has been a change in staff, in which case the licensee must submit an updated plan of 24-hour coverage to the Division. Otherwise:

(A) The licensee must submit a request for a change of resident manager, or shift caregiver as applicable, to the Division along with the Department's completed resident manager application form, a completed Health History and Physician or Nurse Practitioner's Statement (form SDS 903), the Department's Criminal Records Request form and a \$10 non-refundable fee.

(B) Upon a determination by the Division that the applicant meets the requirements of a resident manager, and the applicant has obtained the required training and passed the test, a revised license shall be issued with the name of the new resident manager or shift caregiver(s). The classification of the home shall be reevaluated based on the qualifications of the new resident manager or shift caregivers, and changed accordingly.

(g) Unexpected and Urgent Staffing Need. If the Division determines an unexpected and urgent staffing need exists, the Division may authorize a person who has not completed the Basic Training or passed the test to act as a resident manager or shift caregiver until training and testing are completed, or for 60 days, whichever period is shorter. The licensee must notify the Division of the situation in writing, satisfactorily demonstrate his or her inability to find a qualified resident manager, or shift caregiver as applicable, that the person is 21 years of age and meets the requirements of a substitute caregiver for the adult foster home.

(h) A licensee is responsible for the supervision, training and overall conduct of resident managers, other caregivers, family members and friends when acting within the scope of their employment, duties, or when present in the home.

(i) Sexual relations between residents and any employee of the adult foster home, licensee or any member of the licensee's household is prohibited unless a pre-existing relationship existed.

(j) A licensee must notify the Division in writing prior to any change of his or her residence or mailing address.

(2) Sale or Lease of Existing Adult Foster Homes and Transfer of Licenses:

(a) A license is not transferable and does not apply to any location or person(s) other than the location and the person(s) indicated on the license obtained from the Division.

(b) The licensee must inform real estate agents, prospective buyers, lessees, and transferees in all written communication including advertising and disclosure statements that the license to operate an adult foster home is not transferable and must refer them to the Division for information about licensing.

(c) When a home is to be sold or otherwise transferred or conveyed to another person who intends to operate the home as an adult foster home, that person must apply for and obtain a license from the Division prior to the transfer of operation of the home.

(d) The licensed provider must promptly notify the local Division's licensing program in writing about the licensee's intent to close or intent to convey the adult foster home to another individual. The licensee must provide written notice to the residents, their representatives and case managers as applicable, according to OAR 411-050-0444(12)(a).

# ADMINISTRATIVE RULES

(e) The licensed provider must inform an individual intending to assume operation of an existing adult foster home that residents currently residing in the home must be given at least 30 days' written notice of the licensee's intent to close the adult foster home for the purpose of conveying the home to another person.

(f) The licensee must remain licensed and responsible for the operation of the home and care of the residents in accordance with these rules until the home is closed and the residents have been relocated, or the home is conveyed to a new licensee who is licensed by the Division at a level appropriate to the care needs of the residents in the home.

(3) Sanitation and Safety Precautions in the Adult Foster Home:

(a) Commodes and Incontinence Garments – If used, commodes must be emptied frequently and cleaned daily, or more frequently if necessary. Incontinence garments must be disposed of in closed containers.

(b) Laundry — Soiled linens and clothing must be stored in closed containers prior to laundering in an area that is separate from food storage, kitchen and dining areas. Pre-wash attention must be given to soiled and wet bed linens. Sheets and pillowcases must be laundered at least weekly and more often if soiled.

(c) Pets or Other Animals — Sanitation for household pets and other domestic animals on the premises must be adequate to prevent health hazards. Proof of rabies vaccinations and any other vaccinations that are required for the pet by a licensed veterinarian must be maintained on the premises. Pets not confined in enclosures must be under control and must not present a danger to residents or guests.

(d) Infection Control — Standard precautions for infection control must be followed in resident care. Hands and other skin surfaces must be washed immediately and thoroughly if contaminated with blood or other body fluids.

(e) Disposal of Sharps — Precautions must be taken to prevent injuries caused by needles, scalpels, and other sharp instruments or devices during procedures. After they are used, disposable syringes and needles, scalpel blades, and other sharp items must be placed in a puncture-resistant, red container for disposal. The puncture-resistant container must be located as close as practical to the use area. Disposal must be according to local regulations and resources (ORS 459.386 through 459.405).

(f) Water Temperature — Residents who are unable to safely regulate the water temperature must be supervised.

(g) Resident access to or use of swimming or other pools, hot tubs, saunas, or spas on the premises must be supervised. (See also General Conditions, 411-050-0445(1)(f))

(h) There must be current, basic first-aid supplies and a first-aid manual readily available in the home.

(4) Meals:

(a) Three nutritious meals must be served daily at times consistent with those in the community. Each daily menu must include food from the basic food groups according to the United States Department of Agriculture (USDA's) food pyramid and include fresh fruit and vegetables when in season. Consideration must be given to residents' cultural and ethnic background in food preparation.

(b) A schedule of meal times and menus for the coming week must be prepared and posted weekly in a location accessible to residents and families. Meal substitutions in compliance with subsection (4)(a) of this rule and with resident approval are acceptable.

(c) There must be no more than a 14-hour span between the evening and morning meals. (Snacks do not substitute for a meal determining the 14-hour span.) Nutritious snacks and liquids must be offered to fulfill each resident's nutritional requirements.

(d) Food must not be used as an inducement to control the behavior of a resident.

(e) Home-canned foods must be processed according to the current guidelines of the Oregon State University Extension Service. Freezing is the most acceptable method of food preservation; milk must be pasteurized.

(f) Special consideration must be given to residents with chewing difficulties and other eating limitations. Special diets are to be followed as prescribed in writing by the resident's physician or nurse practitioner.

(g) Adequate storage must be available to maintain food at a proper temperature, including a properly working refrigerator.

(h) The household utensils, dishes, glassware and household food must not be stored in resident bedrooms, bathrooms, or living areas.

(i) Meals must be prepared and served in the home where residents live. Payment for meals eaten away from home for the convenience of the licensee (e.g., restaurants, senior meal sites) is the responsibility of the licensee. Meals and snacks, as part of an individual recreational outing by choice, are the responsibility of the resident.

(j) Utensils, dishes and glassware must be washed in hot soapy water, rinsed, and stored to prevent contamination. A dishwasher with a sani-cycle is recommended.

(k) Food preparation areas and equipment, including utensils and appliances, must be clean, free of offensive odors and in good repair.

(l) Reasonable precautions must be taken to prevent pests (e.g., ants, cockroaches, other insects and rodents).

(5) Telephone:

(a) The home must have a working, landline telephone with a listed number that is separate from any other number the home has, such as but not limited to, Internet or fax lines, unless the system includes features that notify the caregiver of an incoming call, or automatically switches to the appropriate mode. If the licensee has a caller identification service on the home number, the blocking feature must be disabled to allow incoming calls to be received unhindered. A licensee may have only one phone line as long as it complies with the requirements of these rules.

(b) The licensee must notify the Division, residents, the residents' families, legal representatives and case managers, as applicable, of any change in the adult foster home's telephone number within 24 hours of the change.

(c) Restrictions on the use of the telephone by residents are to be specified in the written house policies and must not violate residents' rights. Individual restrictions must be well documented in the care plan.

(d) The licensee must make available and accessible for residents' use a telephone that is in good working order with reasonable accommodation for privacy during telephone conversations. Residents with hearing impairments, to the extent that they cannot hear normal telephone conversation, must be provided with a telephone that is amplified with a volume control or is hearing aid compatible.

(6) Facility Records:

(a) Facility records must be maintained in the adult foster home and be available for inspection. Facility records include, but are not limited to:

(A) Proof that the licensee has the Department's approval as a result of a criminal records check, for each subject individual, who is 16 years of age and older, to have contact with adults who are elderly or physically disabled as a result of a criminal records check.

(B) Proof that the licensee and all other caregivers have met and maintained the minimum qualifications as required by OAR 411-050-0440. The following documentation must be available for review upon request:

(i) Proof of required continuing education according to OAR 411-050-0440. Documentation must include the date of each training, subject matter, name of agency or organization providing the training and number of classroom hours.

(ii) Completed certificates to document caregivers' completion of the Department's Caregiver Preparatory Training Study Guide and Workbook.

(iii) Documentation of all substitute caregivers' orientation to the adult foster home as required by OAR 411-050-0440(8).

(iv) The names, addresses, and telephone numbers of the substitute caregivers employed or used by the licensee.

(b) Copies of notices to the Division pertaining to changes in the resident manager, shift caregiver(s) or other primary caregiver.

(c) Proof of required vaccinations for animals on the premises.

(d) Well water tests, if required, according to OAR 411-050-0445(2)(a). Test records must be retained for a minimum of three years.

(e) Contracts with the Department including a copy of the adult foster home's private-pay contract.

(f) Records of evacuation drills according to OAR 411-050-0445(5)(o), including the date, time for evacuation of all occupants, names of all residents and which residents required assistance. The records must be kept at least three years.

(g) Required Posted Items – The licensee must post the following items in the entryway or other equally prominent place where residents, visitors and others may easily read them:

(A) The adult foster home license;

(B) Conditions, if any are attached to the license;

(C) A copy of a current floor plan meeting the requirements of OAR 411-050-0445(5)(p);

(D) The Residents' Bill of Rights;

(E) The home's current house policies, which have been reviewed and approved by the Division;

(F) The Division's procedure for making complaints;

(G) The Long-Term Care Ombudsman poster;

(H) The Division's most recent inspection form;

(I) The Division's notice pertaining to the use of any intercoms, monitoring devices and video cameras that may be used in the adult foster home;

(J) A weekly menu according to section (4) of this rule; and

(K) The Division's written notice issued under OAR 411-050-0455(10).

(h) Post by Phone – Emergency telephone numbers including the contact number for at least one licensed provider or approved resident manager who has agreed to respond in person in the event of an emergency and an emergency contact number for the licensee(s), if the licensee(s) does not live in the home. The list must be readily visible and posted by a central telephone in the adult foster home.

(7) Resident Records:

(a) An individual resident record must be developed, kept current, and readily accessible on the premises for each person admitted to the adult foster home. The record must be legible and kept in an organized manner so as to be utilized by staff. The record must contain the following information:

(A) An initial screening assessment;

(B) General information according to OAR 411-050-0447(2)(a); and

(C) Documentation on Form SDS 913 that the licensee has informed private-pay residents of the availability of a long-term care assessment;

# ADMINISTRATIVE RULES

## (D) Financial Information:

(i) Detailed records and receipts if the licensee manages or handles a resident's money. Resident account record form SDS 713 or other expenditure forms may be used if the licensee manages or handles a resident's money. The record must show amounts and sources of funds received and issued to, or on behalf of, the resident and be initialed by the person making the entry. Receipts must document all deposits and purchases of \$5 or more made on behalf of a resident.

(ii) Contracts signed by residents or their representatives who are paying privately may be kept in a separate file but must be made available for inspection by the Division.

## (E) Medical and legal information including, but not limited to:

(i) Medical history, if available;

(ii) Current physician or nurse practitioner's orders;

(iii) Nursing instructions, delegations and assessments as applicable;

(iv) Completed medication administration records retained for at least the last six months or from the date of admission, whichever is less (Older records may be stored separately); and

(v) Copies of Guardianship, Conservatorship, Advance Directive for Health Care, Health Care Power of Attorney, and Physician's Order for Life Sustaining Treatment (POLST) documents, as applicable.

(F) A complete and current care plan;

(G) Copies of the current house policies and the current Residents' Bill of Rights, signed and dated by the resident or his or her representative;

(H) Significant Events — A written report (using form SDS 344 or its equivalent) of all significant incidents relating to the health or safety of the resident including how and when the incident occurred, who was involved, what action was taken by the licensee and staff, as applicable, and the outcome to the resident;

(I) Narrative of Resident's Progress — Narrative entries describing each resident's progress must be documented at least weekly and maintained in each resident's individual record. They must be signed and dated by the person writing them; and

(J) Non-confidential information or correspondence pertaining to the care needs of the resident.

## (b) Access to Resident Records:

(A) Resident records must be readily available at the adult foster home to all caregivers working in the home and to representatives of the Department conducting inspections or investigations, as well as to residents, their authorized representatives or other legally authorized persons.

(B) The State Long-Term Care Ombudsman has access to all resident and facility records. Certified Ombudsman volunteers have access to facility records relevant to caregiving and resident records with written permission from the resident or the resident's legal representative. (See OAR 114-005-0030)

(c) Record Retention — Records, including any financial records for residents must be kept for a period of three years.

(d) In all other matters pertaining to confidential records and release of information, licensees must be guided by the principles and definitions described in [OAR chapter 411, division 005], Privacy of Protected Information. A copy of these rules shall be made available by the Division upon request.

(8) House Policies — House policies must be in writing and a copy given to the resident and the resident's family or representative, at the time of admission. House policies established by the licensee must:

(a) Include any restrictions the adult foster home may have on the use of alcohol, tobacco, pets, visiting hours, dietary restrictions or religious preferences.

(b) Indicate the home's policy regarding the presence and use of legal marijuana on the premises.

(c) Not be in conflict with the Residents' Bill of Rights, the family atmosphere of the home or any of these administrative rules.

(d) Be reviewed and approved by the Division prior to the issuance of a license and prior to implementing any changes.

(e) Be posted where they may easily be seen and read by residents and visitors.

(9) Resident Moves, Transfers and Discharges — The Department encourages licensees to support a resident's choice to remain in his or her living environment while recognizing that some residents may no longer be appropriate for the adult foster care setting due to safety and medical limitations.

(a) If a resident moves out of an adult foster home for any reason, at the time of move-out the licensee must submit copies of pertinent information from the resident's record to the resident's new place of residence. Pertinent information must include at a minimum:

(A) Copies of current medication sheets and an updated care plan.

(B) Documentation of actions taken by the adult foster home staff, resident or the resident's representative pertaining to the move, transfer or discharge.

(C) A copy of the Department's current Notice of Resident Move, Transfer or Discharge form (SDS 901) must be maintained at least three years for all involuntary moves.

(b) Licensees must immediately document in the resident's record voluntary and involuntary moves, transfers and discharges from the adult foster home, as events take place. (See OAR 411-050-0444(10) and 411-050-0444(11))

## (10) Voluntary Moves, Transfers and Discharges

(a) If a Department client or a client's representative gives notice of the client's intent to leave the adult foster home, or the client leaves the home abruptly, the licensee must promptly notify the client's case manager.

(b) The licensee must obtain prior authorization from the resident, the resident's legal representative, and case manager, as applicable, prior to:

(A) Moving voluntarily from one bedroom to another in an adult foster home.

(B) Transferring voluntarily from one adult foster home to another that has a license issued to the same person.

(C) Moving voluntarily to any other location.

(c) Notifications and authorizations must be documented and available in the resident's record.

## (11) Involuntary Moves, Transfers and Discharges

(a) Mandatory Written Notice — A resident may not be moved involuntarily from the adult foster home, or to another room within the adult foster home, or transferred to another adult foster home for a temporary stay without a minimum of 30 days' written notice to the resident and the resident's legal representative, guardian, conservator and case manager, as applicable. The written notice must be on the Department's Notice of Resident Move, Transfer or Discharge form (SDS 901), be completed by the licensee and contain the specific reasons the facility is unable to meet the resident's needs, as determined by the facility's evaluation.

(b) Residents may only be moved, transferred or discharged for the following reasons:

(A) Medical Reasons — The resident has a medical or nursing condition that is complex, unstable or unpredictable and exceeds the level of health services the facility provides as specified in the facility's disclosure information.

(B) The adult foster home is unable to accomplish evacuation of the adult foster home in accordance with OAR 411-050-0445(5)(o).

(C) Welfare of the Resident or Other Residents.

(i) The resident exhibits behavior that poses an imminent danger to self or others including acts that result in the resident's arrest or detention.

(ii) The resident engages in behavior or actions that repeatedly and substantially interferes with the rights, health, or safety of residents or others.

(iii) The resident engages in illegal drug use, or commits a criminal act that causes potential harm to the resident or others.

(D) Failure to make payment for care.

(E) The adult foster home has had its license revoked, not renewed, or it was voluntarily surrendered by the licensee.

(F) The resident engages in the use of medical marijuana in violation of the homes written policies or contrary to Oregon Law under the Oregon Medical Marijuana Act, ORS 475.300 to 475.346.

(c) Less Than 30 Days' Written Notice — A licensee may give less than 30 days' written notice in specific circumstances as identified in paragraphs (A) or (B) below, but must do so as soon as possible using the Department's Notice of Resident Move, Transfer or Discharge form (SDS 901). This notice must be given to the resident, the resident's representative, guardian, conservator, and case manager, as applicable. A licensee may give less than 30 days' notice ONLY if:

(A) Undue delay in moving the resident would jeopardize the health, safety or well-being of the resident.

(i) The resident has a medical emergency that requires the immediate care of a level or type that the adult foster home is unable to provide.

(ii) The resident exhibits behavior that poses an immediate danger to self or others.

(B) The resident is hospitalized or is temporarily out of the home, and the licensee determines that he or she is no longer able to meet the needs of the resident.

(d) Written Notice of Involuntary Moves — The licensee must complete the Department's Notice of Resident Move, Transfer or Discharge form (SDS 901). The written notice must include the following information:

(A) The resident's name;

(B) The reason for the proposed move, transfer or discharge;

(C) The date of the proposed change;

(D) The location to which the resident is going, if known;

(E) A notice of the right to hold an informal conference and hearing;

(F) The name, address and telephone number of the person giving the notice; and

(G) The date the notice is issued.

(e) Involuntary Moves and Resident Rights — A person who is to be involuntarily moved or refused the right of return or readmission, is entitled to an informal conference and hearing prior to an involuntary move, transfer or discharge as follows:

(A) Informal Conference — The Division shall hold an informal conference as promptly as possible after the request is received. The Division shall send written notice of the time and place of the conference to the licensee and all persons entitled to the notice. Participants may include the resident,

# ADMINISTRATIVE RULES

and at the resident's request, a family member, case manager, Ombudsman, legal representative of the resident; the licensee; and a representative from an adult foster home association if the licensee requests it. The purpose of the informal conference is to resolve the matter without an administrative hearing. If a resolution is reached at the informal conference, the Division shall document the outcome in writing and no administrative hearing shall be held.

(B) Administrative Hearing — If a resolution is not reached as a result of the informal conference, the resident or resident's representative may request an administrative hearing. If the resident is being moved, transferred or discharged with less than 30 days' notice according to subsection (11)(c) of this rule, the hearing must be held within seven days of the transfer or discharge. The licensee must hold a space available for the resident pending receipt of an administrative order. These administrative rules and ORS 441.605(4) governing transfer notices and hearings for residents of long-term care facilities apply to adult foster homes.

## (12) Closure of Adult Foster Homes

(a) Licensees must notify the Division prior to the voluntary closure of a home, proposed sale, or transfer of ownership, and give residents, their families, representatives, and case managers for Department clients, as appropriate, a minimum of 30 days' written notice on the Department's form (SDS 901) according to section (11) of this rule, Involuntary Moves, Transfers and Discharges.

(b) In circumstances where undue delay might jeopardize the health, safety or well-being of residents, licensees or staff, written notice, according to section (11) of this rule, Involuntary Moves, Transfers and Discharges, must be given as soon as possible.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 443.738

Hist.: SPD 31-2006, f. 12-27-06, cert. ef. 1-1-07; SPD 22-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10

## 411-050-0455

### Complaints

(1) The Division shall furnish each adult foster home with a Complaint Notice which states the telephone number of the Division, the Long-Term Care Ombudsman and the procedure for making complaints.

(2) Any person who believes these Administrative Rules have been violated may file a complaint with the Division. Licensees and adult foster home employees must immediately report to the Department or the applicable law enforcement agency if, when acting within the scope of the individual's employment, there is reasonable cause to believe:

(a) An elderly person has been or may have been abused; or

(b) Any individual with whom the licensee or employee has been in contact abused or may have abused an elderly person.

(3) The Division shall investigate complaints as quickly as possible. The primary purpose of the prompt response is to protect the residents and correct the situation. Investigations of complaints alleging injury, abuse or neglect must be completed as soon as possible and all investigations shall be completed within 60 days unless there is a concurrent criminal investigation that requires additional time.

(4) The adult foster home licensee must not retaliate against any resident after the resident or someone acting on the resident's behalf has filed a complaint in any manner, including but not limited to, increasing charges; decreasing services; rights or privileges; threatening to increase charges or; threatening to deny or decrease services, rights or privileges; taking or threatening to take any action to coerce or compel the resident to leave the facility or by abusing or threatening to harass or abuse a resident in any manner. (See OAR 411-050-0400(2))

(5) Licensees must ensure that any complainant, witness or employee of a facility must not be subject to retaliation by any adult foster home caregiver, (including their family and friends who may live in or frequent the adult foster home) for making a report, being interviewed about a complaint or being a witness, including but not limited to, restriction of access to the home or a resident or, if an employee, dismissal or harassment.

(6) As approved by law, the complainant shall have immunity from any civil or criminal liability with respect to the making or content of a complaint made in good faith. Immunity under this subsection does not protect self-reporting licensees from liability for the underlying conduct that is alleged in the complaint.

(7) Standards must be followed for investigations related to abuse, neglect, or injury.

(a) The Division shall cause an investigation within two hours if a complaint alleges that a resident has been injured, abused or neglected and that any resident's health or safety is in imminent danger or that the resident has died or been hospitalized due to abuse or neglect;

(b) The Division shall cause an investigation to begin by the end of the next working day if circumstances exist which could result in the injury, abuse, or neglect and that the circumstances could place the resident's health or safety in imminent danger;

(c) An unannounced on-site visit shall be conducted;

(d) The investigator shall interview the licensee and shall advise the licensee of the nature of the complaint; the licensee shall have an opportunity to submit relevant information to the investigator. All available witnesses identified by any sources as having personal knowledge relevant to the com-

plaint shall be interviewed. Interviews are confidential and conducted in private;

(e) All evidence and physical circumstances that are relevant and material to the complaint shall be considered;

(f) Immediate protection must be provided for the residents by the Division, as necessary. The licensee must correct any substantiated problem immediately;

(g) A report shall be written within 60 days of receipt of a complaint which includes the investigator's personal observations, a review of documents and records, a summary of all witness statements, and a conclusion; and

(h) Reports indicating the need for a sanction by either the local licensing authority or the Division shall be referred to the appropriate office for corrective action immediately upon completion of the investigation.

(8) The Division, through its local offices, shall mail a copy of the investigation report to the following people within seven days of the completion of the investigation:

(a) The complainant (unless the complainant requests anonymity);

(b) The resident(s) involved and any persons designated by the resident(s) to receive the information;

(c) The licensee; and

(d) The Long-Term Care Ombudsman;

(e) The report must protect as confidential the identity of the resident, the complainant, and any witnesses; and

(f) The report must be accompanied by a notice informing such persons of the right to give additional information about the content of the report to the Division's local office within seven days of receipt.

(9) The Division's local office must review the responses and reopen the investigation if additional evidence of a violation is received. A copy of the entire report must be sent to the Division upon completion of the investigation report, whether or not the investigation report concludes the complaint is substantiated.

(10) Within 60 days of receipt by SPD Central Office of a complainant investigation report, the Division shall issue a written notice of its findings.

(a) CONTENT. The written notice shall:

(A) Explain the nature of each allegation;

(B) Include the date and time of each occurrence;

(C) For each allegation, include a determination of whether the allegation is substantiated, unsubstantiated, or inconclusive;

(D) For each substantiated allegation, state whether the violation was abuse or another rule violation;

(E) Include a copy of the complaint investigation report;

(F) State that the complainant, any person reported to have committed wrongdoing, and the facility have 15 days to provide additional or different information; and

(G) For each allegation, explain the applicable appeal rights available.

(b) DISTRIBUTION.

(A) The written notice shall be mailed to the facility, any person reported to have committed wrongdoing, the complainant (if known), and the SPD or Type B AAA office; and

(B) A copy of the written notice shall be placed in the Division's facility complaint file.

(c) REVISION.

(A) The Division may reinvestigate a complaint or issue a revised written notice if the Division determines further information provided by the complainant or facility merits such action.

(B) If the Division issues a revised notice, the notice shall be distributed to all persons identified in section (10)(b) of this rule.

(11) Upon receipt of a notice that substantiates abuse, the licensee must make the report and findings readily accessible to the residents, residents' families, staff, and the general public.

(12) The Division must take appropriate corrective action within 60 days from completion of the investigation report.

(13) Licensees who acquire substantiated complaints pertaining to the health, safety or welfare of residents may be assessed civil penalties, may have conditions placed on their licenses, or may have their licenses suspended, revoked or not renewed.

(14) Complaint Reports. Copies of all completed complaint reports must be maintained and available to the public at the local Division. Individuals may purchase a photocopy upon requesting an appointment to do so.

(15) The Division may not disclose information about any resident that may be used to identify a resident in accordance with OAR 411-020-0030, Confidentiality, and federal HIPAA Privacy Rules. Completed reports placed in the public file must be in compliance with OAR 411-050-0450(10) and:

(a) Protect the privacy of the complainant and the resident. The identity of the person reporting suspected abuse must be confidential and may be disclosed only with the consent of that person, by judicial process (including administrative hearing), or as required to perform the investigation by the Department or a law enforcement agency;

(b) Treat the names of the witnesses as confidential information; and

(c) Clearly designate the final disposition of the complaint.

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(A) Pending Complaint Reports. Any information regarding the investigation of the complaint may not be filed in the public file until the investigation has been completed.

(B) Complaint Reports and Responses. The investigation reports, including copies of the responses, with confidential information deleted, must be available to the public at the local Division office along with other public information regarding the adult foster home.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 443.765

Hist.: SSD 14-1985, f. 12-31-85, ef. 1-1-86; SSD 11-1988, f. 10-18-88, cert. ef. 11-1-88; SSD 3-1992, f. 5-26-92, cert. ef. 6-1-92; SSD 3-1992, f. 5-26-92, cert. ef. 6-1-92; SSD 3-1996, f. 3-29-96, cert. ef. 4-1-96; SDSD 4-2001, f. & cert. ef. 3-1-01; SDSD 11-2001, f. 12-21-01, cert. ef. 1-1-02; SPD 31-2006, f. 12-27-06, cert. ef. 1-1-07; SPD 22-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10

## 411-050-0460

### Procedures for Correction of Violations

(1) If, as a result of an inspection or investigation, the Division determines that abuse has occurred, the licensee shall be notified verbally to immediately cease the abusive act. The Division shall follow-up with a written confirmation of the warning to cease the abusive act and shall include notification that further sanctioning may be imposed.

(2) If an inspection or investigation indicates a violation(s) of these rules other than abuse, the Division shall notify the licensee of the violation(s) in writing.

(3) The notice of violation may not include information that may be used to identify a resident in accordance with OAR 411-020-0030, Confidentiality, and federal HIPAA Privacy Rules. Completed reports placed in the public file must be in compliance with OAR 411-050-0450(10) and must include the following:

(a) A description of each condition that constitutes a violation;

(b) Each rule that has been violated;

(c) A specific time frame for correction, not to exceed 30 days after receipt of the notice, except in cases of imminent danger;

(d) The Division may approve a reasonable time in excess of 30 days if correction of the violation(s) within 30 days is determined to be impossible;

(e) Sanctions that may be imposed against the home for failure to correct the violation(s);

(f) The right of the licensee to contest the violation(s) if an administrative sanction is imposed; and

(g) The right of the licensee to request an exception as provided in OAR 411-050-0430.

(4) At any time after receipt of a notice of violation or an inspection report, the applicant, the licensee or the Division may request a meeting. The meeting shall be scheduled within 10 days of a request by either party.

(a) The purpose of the meeting is to discuss the violation(s) stated in the notice of violation, provide information and to assist the applicant or licensee in achieving compliance with the requirements of these Administrative Rules.

(b) The request for a meeting by an applicant or licensee or the Division may not extend any previously established time frame for correction.

(5) The applicant or licensee must notify the Division of correction of the violation(s) no later than the date specified in the notice of violation.

(6) The Division may conduct a reinspection of the home after the date the Division receives the report of compliance, or after the date by which the violation(s) must be corrected as specified in the notice of violation.

(7) For violation(s) that present an imminent danger to the health, safety or welfare of residents, the licensee must correct the violation(s) and abate the conditions no later than 24 hours after receipt of the notice of violation. The Division may inspect the home after the 24-hour period to determine if the violation(s) has been corrected as specified in the notice of violation.

(8) If residents are in immediate danger, the license may be immediately suspended and arrangements made to move the residents.

(9) If, after inspection of a home, the violations have not been corrected by the date specified in the notice of violation or if the Division has not received a report of compliance, the Division may institute one or more administrative sanctions.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 443.765

Hist.: SSD 14-1985, f. 12-31-85, ef. 1-1-86; SSD 11-1988, f. 10-18-88, cert. ef. 11-1-88; SSD 3-1992, f. 5-26-92, cert. ef. 6-1-92; SSD 3-1992, f. 5-26-92, cert. ef. 6-1-92; SSD 3-1996, f. 3-29-96, cert. ef. 4-1-96; SDSD 4-2001, f. & cert. ef. 3-1-01; SPD 31-2006, f. 12-27-06, cert. ef. 1-1-07; SPD 22-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10

## 411-050-0480

### Denial, Revocation or Non-Renewal of License

(1) The Division shall deny, revoke, or refuse to renew a license where it finds:

(a) There has been substantial non-compliance with these rules or where there is substantial non-compliance with local codes and ordinances or any other state or federal law or rule applicable to the health and safety of caring for residents in an adult foster home.

(b) The Department has conducted a criminal records check and determined the applicant or licensee is not approved in accordance with OAR 411-050-0412.

(c) The licensee allows a caregiver, or any other person, excluding the residents, to reside or work in the adult foster home, who has been convicted of potentially disqualifying crimes, and has been denied, or refused to cooperate with the Division in accordance with OAR 411-050-0412.

(d) The applicant or licensee falsely represents that he or she has not been convicted of a crime.

(2) The Division may deny, revoke, or refuse to renew an adult foster home license if the applicant or licensee:

(a) Submits incomplete or untrue information to the Division;

(b) Has a history of, or demonstrates financial insolvency, such as foreclosure, eviction due to failure to pay rent, termination of utility services due to failure to pay bill(s);

(c) Has a prior denial, suspension, revocation, or refusal to renew a certificate or license to operate a foster home or residential care facility in this or any other state or county;

(d) Is associated with a person whose license for a foster home or residential care facility was denied, suspended, revoked or refused to be renewed due to abuse or neglect of the residents, or creating a threat to the residents or failure to possess physical health, mental health or good personal character within three years preceding the present action, unless the applicant or licensee may demonstrate to the Division by clear and convincing evidence that the person does not pose a threat to the residents. For purposes of this subsection, an applicant or licensee is "associated with" a person if the applicant or licensee:

(A) Resides with the person;

(B) Employs the person in the foster home;

(C) Receives financial backing from the person for the benefit of the foster home;

(D) Receives managerial assistance from the person for the benefit of the foster home;

(E) Allows the person to have access to the foster home; or

(F) Rents or leases the adult foster home from the person.

(e) Has threatened the health, safety, or welfare of any resident;

(f) Has abused, neglected, or exploited any resident;

(g) Has a medical or psychiatric problem that interferes with the ability to provide foster care;

(h) Has previously been cited for the operation of an unlicensed adult foster home;

(i) Does not possess the good judgment or character deemed necessary by the Division;

(j) Fails to correct a violation within the specified time frame allowed;

(k) Refuses to allow access and inspection;

(l) Fails to comply with a final order of the Division to correct a violation of the Administrative Rules for which an administrative sanction has been imposed such as a License Condition;

(m) Fails to comply with a final order of the Division imposing an administrative sanction, including the imposition of a civil penalty;

(n) Fails to take or pass the Basic Training Course examination;

(o) Has failed to submit a current, completed Criminal Records Request form to the Division on more than one occasion before allowing persons 16 years or older to live, receive training or work in the adult foster home, or have unsupervised access to residents or their personal property; or

(p) Has previously surrendered a license while under investigation or administrative sanction during the last three years.

(3) If the license is revoked for the reason of abuse, neglect or exploitation of a resident, the licensee may request a review in writing within 10 days after receipt of the notice of the revocation. If a request is made, the Division administrator or designee shall review all material relating to the allegation of abuse, neglect or exploitation and the revocation within 10 days. The administrator or designee shall determine, based on a review of the material, whether to sustain the decision. If the administrator or designee does not sustain the decision, the license shall be restored immediately. The decision of the administrator or designee is subject to a contested case hearing under ORS 183.310 to 183.550.

(4) If a license is revoked or not renewed, the licensee must be entitled to a contested case hearing preceding the effective date of the revocation or non-renewal if the licensee requests a hearing in writing within 21 days after receipt of the notice. If no written request for a timely hearing is received, the Division shall issue the final order by default. The Division may designate its file as the record for purposes of default.

(5) A license subject to revocation shall remain valid during an administrative hearings process even if the hearing and final order are not issued until after the expiration date of the license.

(6) If an initial license is denied for any reason other than the results of a test or inspection, the applicant is entitled to a hearing if the applicant requests a hearing in writing within 60 days after receipt of the denial notice. If no written request for a hearing is timely received, the Division shall issue a final order by default. The Division may designate its file as the record for purposes of default.

(7) If a license is revoked or not renewed, the Division may arrange for residents to move for their protection.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 443.745

# ADMINISTRATIVE RULES

Hist.: SSD 14-1985, f. 12-31-85, ef. 1-1-86; SSD 2-1987(Temp), f. & ef. 5-5-87; SSD 10-1987, f. 10-29-87, ef. 11-1-87; SSD 11-1988, f. 10-18-88, cert. ef. 11-1-88; SSD 3-1992, f. 5-26-92, cert. ef. 6-1-92; SSD 3-1992, f. 5-26-92, cert. ef. 6-1-92; SSD 3-1996, f. 3-29-96, cert. ef. 4-1-96; SDSD 4-2001, f. & cert. ef. 3-1-01; SPD 31-2006, f. 12-27-06, cert. ef. 1-1-07; SPD 22-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10

## 411-050-0481

### Suspension of License

(1) The Division may immediately suspend a license for reason of abuse, neglect, or exploitation of a resident if:

(a) The Division finds that the abuse, neglect, or exploitation causes an immediate threat to any of the residents; or

(b) The licensee fails to operate or has failed to operate any other facility licensed by the licensee in substantial compliance with ORS 443.705 to 443.825.

(2) The licensee may request a review of the decision to immediately suspend a license by submitting a request, in writing, within 10 days after receipt of the notice and order of suspension. Within 10 days after receipt of the licensee's request for a review, the Division administrator or designee shall review all material relating to the allegation of abuse, neglect, or exploitation and to the suspension, including any written documentation submitted by the licensee within that time frame. The administrator or designee shall determine, based on a review of the material, whether to sustain the decision. If the administrator or designee does not sustain the decision, the suspension shall be rescinded immediately. The decision of the administrator or designee is subject to a contested case hearing under ORS 183.310 to 183.550 if requested within 90 days.

(3) If a license is suspended, the Division may arrange for residents to move for their protection.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 443.745

Hist.: SSD 3-1996, f. 3-29-96, cert. ef. 4-1-96; SDSD 4-2001, f. & cert. ef. 3-1-01; SPD 31-2006, f. 12-27-06, cert. ef. 1-1-07; SPD 22-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10

## 411-050-0487

### Civil Penalties

(1) Except as otherwise provided in this rule, civil penalties, not to exceed \$100 per violation to a maximum of \$250 may be assessed for a general violation of these rules.

(2) Mandatory penalties up to \$500 shall be assessed for falsifying resident or facility records or causing another to do so.

(3) A mandatory penalty of \$250 shall be imposed for failure to have either the licensee, qualified resident manager, qualified shift caregiver, or qualified substitute caregiver on duty 24 hours per day in the adult foster home.

(4) A mandatory penalty of \$250 shall be imposed for dismantling or removing the battery from any required smoke alarm or failing to install any required smoke alarm.

(5) The Division shall impose a civil penalty of not less than \$250 nor more than \$500 on a licensee who admits a resident knowing that the resident's care needs exceed the license classification of the licensee if the admission places the resident or other residents at risk of harm.

(6) Civil penalties up to a maximum of \$1,000 per occurrence may be assessed for substantiated abuse.

(7) If the Department investigates and makes a finding of abuse arising from deliberate or other than accidental action or inaction that is likely to cause a negative outcome, and if the abuse resulted in the death, serious injury, rape, sexual abuse, or sexual exploitation of a resident, the Department shall impose a civil penalty of not less than \$2,500 for each occurrence of substantiated abuse. For the purposes of this rule, the following definitions apply:

(a) "Serious Injury" means physical injury that creates a substantial risk of death or that causes serious and protracted disfigurement, protracted impairment of health, or protracted loss or impairment of the function of any bodily organ.

(b) "Rape" means rape in the first, second, or third degree as described in ORS 163.355, 163.365, and 163.375.

(c) "Sexual Abuse, including Sexual Exploitation" means any form of nonconsensual sexual contact, including but not limited to unwanted or inappropriate touching, sodomy, sexual coercion, sexually explicit photographing, and sexual harassment.

(8) In addition to any other liability or penalty provided by law, the Division may impose a penalty for any of the following:

(a) Operating the home without a license;

(b) The number of residents exceeds the licensed capacity;

(c) The licensee fails to achieve satisfactory compliance with the requirements of these Administrative Rules within the time specified, or fails to maintain such compliance;

(d) The home is unable to provide adequate level of care to residents;

(e) There is retaliation or discrimination against a resident, family, employee, or any other person for making a complaint against the home;

(f) The licensee fails to cooperate with the Division, physician, registered nurse, or other health care professional in carrying out a resident's care plan; or

(g) The licensee fails to obtain an approved criminal records check from the Department prior to employing that individual as a caregiver in the home.

(9) A civil penalty may be imposed for violations other than those involving health, safety, or welfare of a resident if the licensee fails to correct the violation as stated in subsections (8)(a) and (8)(b) of this rule; and

(a) A reasonable time frame for correction was given, not exceeding 30 days after the first notice of violation was received.

(b) Where more than 30 days are required to correct the violation, such time is specified in a plan of correction and found acceptable by the Division;

(c) The following rules relate to the health, safety or welfare of residents and protection from retaliation for making a complaint: 411-050-0440(1)(d) and (e); 411-050-0440(7)(b) and (c); 411-050-0443(3) and (4); 411-050-0444(1)(e); 411-050-0445; and 411-050-0447.

(10) Any civil penalty imposed under this section becomes due and payable ten days after the order imposing the civil penalty becomes final by operation of law or on appeal. The notice must be delivered in person, or sent by registered or certified mail and must include:

(a) A reference to the particular sections of the statute, rule, standard, or order involved;

(b) A short and plain statement of the matters asserted or charged;

(c) A statement of the amount of the penalty or penalties imposed; and

(d) A statement of the right to request a hearing.

(11) The person to whom the notice is addressed shall have 10 days after receipt of the notice in which to make written application for a hearing. If a written request for a hearing is not timely received, the Division shall issue a final order by default.

(12) All hearings shall be conducted according to the applicable provisions of ORS 183.310 to 183.550.

(13) When imposing a civil penalty the Division shall consider the following factors:

(a) The past history of the person 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 facility;

(c) The economic and financial conditions of the person incurring the penalty;

(d) The immediacy and extent to which the violation threatens or threatens the health, safety, or welfare of one or more residents; and

(e) The degree of harm to resident(s).

(14) If the person notified fails to request a hearing within the time specified, or if after a hearing the person is found to be in violation of a license, rule, or order, an order may be entered assessing a civil penalty.

(15) Unless the penalty is paid within 10 days after the order becomes final, the order constitutes a judgment and may be recorded by the County Clerk which becomes a lien upon the title to any interest in real property owned by that person. The Division may also initiate a Notice of Revocation for failure to comply with a final order.

(16) Civil penalties are subject to judicial review under ORS 183.480, except that the court may, at its discretion, reduce the amount of the penalty.

(17) All penalties recovered under ORS 443.790 to 443.815 shall be paid to the Quality Care Fund.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 443.775, 443.790 & 443.795

Hist.: SSD 11-1988, f. 10-18-88, cert. ef. 11-1-88; SSD 3-1992, f. 5-26-92, cert. ef. 6-1-92; SSD 3-1996, f. 3-29-96, cert. ef. 4-1-96; SDSD 4-2001, f. & cert. ef. 3-1-01; SPD 31-2006, f. 12-27-06, cert. ef. 1-1-07; SPD 22-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10

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**Rule Caption:** Residential Care and Assisted Living Facilities.

**Adm. Order No.:** SPD 23-2009(Temp)

**Filed with Sec. of State:** 12-31-2009

**Certified to be Effective:** 1-1-10 thru 6-30-10

**Notice Publication Date:**

**Rules Adopted:** 411-054-0133

**Rules Amended:** 411-054-0005, 411-054-0016, 411-054-0025, 411-054-0065, 411-054-0105, 411-054-0120

**Subject:** To comply with the 2009 legislative changes from House Bill 2139 and House Bill 2442, the Department of Human Services, Seniors and People with Disabilities Division (SPD) is temporarily amending the residential care and assisted living facility rules in OAR chapter 411, division 054 to:

• Expand the definition of abuse for incidents occurring on or after January 1, 2010;

• Provide a list of crimes that will prohibit an individual convicted of a specific crime from working in any capacity in a residential care or assisted living facility;

• Provide that SPD's Central Office shall issue a written notice of findings for each allegation of wrongdoing;



# ADMINISTRATIVE RULES

- Require the provider to post and make available to the residents, their families, and the general public written notice that finds substantiated abuse;
- Increase the civil penalty amount for certain incidents of abuse; and
- Authorize the appointment of a temporary manager.

**Rules Coordinator:** Christina Hartman—(503) 945-6398

## 411-054-0005

### Definitions

For the purpose of these rules, the following definitions apply:

(1) “Area Agency on Aging (AAA)” as defined in ORS 410.040 means the Department of Human Services designated agency charged with the responsibility to provide a comprehensive and coordinated system of services to seniors or individuals with disabilities in a planning and service area. For the purpose of these rules, the term Area Agency on Aging is inclusive of both Type A and B Area Agencies on Aging that contract with the Department of Human Services to perform specific activities in relation to residential care and assisted living facilities including:

- (a) Conducting inspections and investigations regarding protective service, abuse, and neglect;
- (b) Monitoring; and
- (c) Making recommendations to the Seniors and People with Disabilities Division regarding facility license approval, denial, revocation, suspension, non-renewal, and civil penalties.

(2) “Abuse” for incidents that occur on or before December 31, 2009, means:

(a) Any physical injury to a resident that has been caused by other than accidental means. This includes injuries that a reasonable and prudent person would be able to prevent, such as those resulting from hitting, pinching, striking, rough handling, or corporal punishment. These instances of abuse are presumed to cause physical injury, including pain, to all residents, including those in a coma or those who are otherwise incapable of expressing injury or pain.

(b) Failure to provide basic care or services to a resident that results in physical harm, unreasonable discomfort, or serious loss of human dignity. Abuse under this definition includes abandonment.

(c) Sexual contact with a resident, including fondling, by an employee or agent of a facility by:

- (A) Physical force;
- (B) Physical or verbal threat of harm or deprivation to the resident or others;

(C) Use of position, authority, or misinformation to compel a resident to do what the resident would not otherwise do; or

(D) Where the resident has no reasonable ability to consent. For the purpose of this rule, consent means a voluntary agreement or concurrence of wills. Mere failure of the resident to object does not, in and of itself, constitute an expression of consent.

(d) Theft or diversion of a resident’s property, including:

- (A) Money, personal property, and medications;
- (B) Illegal or improper use of a resident’s resources for the personal benefit, profit, or gain of another person;

(C) Borrowing resident funds;

(D) Spending resident funds without the resident’s consent;

(E) if the resident is not capable of consenting, spending resident funds for items or services that the resident cannot benefit from or appreciate; or

(F) Spending resident funds to acquire items for use in common areas when such purchase is not initiated by the resident.

(e) Verbal or mental abuse.

(A) Verbal or mental abuse includes, in extreme forms:

(i) The use of oral, written, or gestured communication that willfully includes disparaging and derogatory terms to the resident, or within their hearing distance, regardless of their age, ability to comprehend, or disability;

(ii) Humiliation;

(iii) Intimidation;

(iv) Harassment;

(v) Threats of punishment or deprivation directed toward the resident; and

(vi) Unwanted or inappropriate crude or sexual language, questions, comments, or other communication.

(B) Examples of verbal and mental abuse include but are not limited to:

(i) Threats of harm;

(ii) Saying things to frighten a resident, such as telling a resident that the resident may never be able to see the resident’s family again; and

(iii) Making unwanted sexual comments.

(C) Verbal and mental abuse is distinguished from resident rights violations by the extreme or offensive nature of the communication.

(f) Involuntary seclusion for convenience or discipline.

(A) Involuntary seclusion is defined as the separation of a resident from other residents or from their room or confinement to their room (with or with-

out roommates) against the resident’s will or the will of the resident’s legal representative.

(B) Emergency or short-term, monitored separation from other residents may not be considered involuntary seclusion and may be permitted if used for a limited period of time as a therapeutic intervention until professional staff develop a plan of care to meet the resident’s needs, or as part of an inter-disciplinary care plan after other interventions have been attempted.

(3) “Abuse” for incidents that occur on or after January 1, 2010, means any of the following:

(a) Physical abuse, including:

(A) The use of physical force that may result in bodily injury, physical pain, or impairment.

(B) Any physical injury to a resident caused by other than accidental means, or which appears to be at variance with the explanation given of the injury.

(i) Conduct resulting in a physical injury caused by other than accidental means may include but is not limited to:

(I) Acts of violence such as striking (with or without an object), hitting, beating, punching, shoving, shaking, kicking, pinching, choking, or burning; or

(II) The use of force-feeding or physical punishment.

(ii) Physical abuse is presumed to cause physical injury, including pain, to residents in a coma or residents otherwise incapable of expressing injury or pain.

(b) Neglect, including:

(A) The failure of a person who is responsible to provide care or services to make a reasonable effort to protect a resident from abuse; or

(B) Failure to provide the care, supervision, or services necessary to maintain the physical and mental health of a resident that results in, or creates a serious risk of, physical harm or significant emotional harm to the resident.

(i) Such failure may occur whether intentional, careless, or due to inadequate experience, training, or skill, and may include the administration of an incorrect medication or dose of medication by other than accidental means.

(ii) The expectation for care, supervision, or services may exist as a result of an assumed responsibility or a legal or contractual agreement, including but not limited to where a person has a fiduciary responsibility to assure the continuation of necessary care.

(iii) A failure to maintain the mental health of a resident, for the purposes of this definition, may mean active or passive failure to maintain the emotional well-being of the resident, including but not limited to causing unreasonable discomfort or serious loss of personal dignity, but is not intended to establish an expectation for providing professional mental health services where such services are not expected or intended.

(c) Abandonment, including:

(A) Desertion or willful forsaking of a resident for any period of time by a person who has assumed responsibility for providing care, when that desertion or forsaking would place the resident at serious risk of harm; or

(B) The withdrawal or neglect of duties and obligations owed a resident by a person who is responsible to provide care or services, when that withdrawal or neglect of duties would place the resident at serious risk of harm.

(d) Verbal abuse.

(A) Verbal abuse includes threatening significant physical or emotional harm to a resident through the use of:

(i) Derogatory or inappropriate names, insults, verbal assaults, profanity, or ridicule; or

(ii) Harassment, coercion, threats, intimidation, humiliation, mental cruelty, or inappropriate sexual comments.

(B) For the purposes of this definition:

(i) Conduct that may be considered verbal abuse includes but is not limited to the use of oral, written, or gestured communication that is directed to a resident or within their hearing distance, regardless of their ability to comprehend; or

(ii) The emotional harm that may result from verbal abuse may include but is not limited to anguish, distress, or fear.

(e) Financial exploitation, including:

(A) Wrongfully taking, by means including but not limited to deceit, trickery, subterfuge, coercion, harassment, duress, fraud, or undue influence, the assets, funds, property, or medications belonging to or intended for the use of a resident;

(B) Alarming a resident by conveying a threat to wrongfully take or appropriate money or property of the resident if the resident 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 a resident; or

(D) Failing to use the income or assets of a resident effectively for the support and maintenance of the resident;

(i) Effectively, for the purposes of this definition, means in a manner that is for the benefit of the person;

(ii) In a facility, such failure includes but is not limited to:

(I) An owner or employee borrowing from a resident;

(II) If the resident is not capable of consenting, spending resident funds for items or services that the resident cannot benefit from or appreciate; or

# ADMINISTRATIVE RULES

(III) Spending resident funds to acquire items for use in common areas when such purchase is not initiated by the resident.

(f) Sexual abuse, including:

(A) Sexual contact with a non-consenting resident or with a resident considered incapable of consenting to a sexual act. Consent, for purposes of this definition, means a voluntary agreement or concurrence of wills. Mere failure to object does not, in and of itself, constitute an expression of consent;

(B) Sexual harassment or sexual exploitation of a resident, or inappropriately exposing a resident to, or making a resident the subject of, sexually explicit material or language;

(C) Any sexual contact between an employee of a facility or paid caregiver and a resident served by the facility or caregiver, unless a pre-existing relationship existed. Sexual abuse does not include consensual sexual contact between a resident and a paid caregiver who is the spouse or domestic partner of the resident;

(D) Any sexual contact between a resident and a relative of the resident other than a spouse, where relative means a parent, grandparent, children, brother, sister, uncle, aunt, nieces, nephews, half brothers, half sisters, step-parents, or stepchildren;

(E) Any sexual contact that is achieved through force, trickery, threat, or coercion; or

(F) An act that constitutes a crime under ORS 163.375, 163.405, 163.411, 163.415, 163.425, 163.427, 163.465, or 163.467.

(g) Involuntary seclusion of a resident for the convenience of a caregiver or to discipline the resident.

(A) Involuntary seclusion may include:

(i) Confinement of a resident to his or her room;

(ii) Placing restrictions on a resident's ability to associate, interact, or communicate with other individuals; or

(iii) Placing restrictions on a resident's freedom of movement by restriction to a specific area.

(B) Emergency or short-term, monitored separation from other residents may not be considered involuntary seclusion and may be permitted if used for a limited period of time as a therapeutic intervention to reduce agitation until professional staff may develop a plan of care to meet the resident's needs, or as part of the care plan.

(h) A wrongful use of a physical or chemical restraint of a resident.

(A) A wrongful use of a physical restraint, including the wrongful use of a supportive device with restraining qualities, includes situations where:

(i) The resident has not requested or approved of the device;

(ii) A licensed health professional has not conducted a thorough assessment; or

(iii) Less restrictive alternatives have not been evaluated prior to the use of the device.

(B) A wrongful use of a chemical restraint includes but is not limited to the wrongful use of a medication or controlled substance for the purpose of sedation.

(4) "Activities of Daily Living (ADL)" means those personal functional activities required by an individual for continued well being, health, and safety. Activities consist of eating, dressing/grooming, bathing/personal hygiene, mobility (ambulation and transfer), elimination (toileting, bowel, and bladder management), and cognition/behavior.

(5) "Administrator" means the person who is designated by the licensee that is responsible for the daily operation and maintenance of the facility.

(6) "Advance Directive" means a document that contains a health care instruction or a power of attorney for health care.

(7) "Assistant Director" means the assistant director of the Department of Human Services, Seniors and People with Disabilities Division, or that individual's designee.

(8) "Assisted Living Facility" means a building, complex, or distinct part thereof, consisting of fully, self-contained, individual living units where six or more seniors and adult persons with disabilities may reside in homelike surroundings. The assisted living facility offers and coordinates a range of supportive services available on a 24-hour basis to meet the activities of daily living, health, and social needs of the residents as described in these rules. A program approach is used to promote resident self-direction and participation in decisions that emphasize choice, dignity, privacy, individuality, and independence.

(9) "Applicant" means the person, persons, or entity, required to complete a facility application for license. Applicant includes a sole proprietor, each partner in a partnership, and each member in a limited liability company, corporation, or entity that owns the residential care or assisted living facility business. Applicant also includes the sole proprietor, each partner in a partnership, and each member in a limited liability company, corporation, or entity that operates the assisted living or residential care facility on behalf of the facility business owner.

(10) "Caregiver" means a facility employee who is trained in accordance with OAR 411-054-0070 to provide personal care services to residents. The employee may be either a direct care staff or universal worker as defined in this rule.

(11) "Change of Condition — Short Term" means a change in the resident's health or functioning that is expected to resolve or be reversed with

minimal intervention or is an established, predictable, cyclical pattern associated with a previously diagnosed condition.

(12) "Change of Condition — Significant" means a major deviation from the most recent evaluation that may affect multiple areas of functioning or health that is not expected to be short term and imposes significant risk to the resident. Examples of significant change of condition include but are not limited to:

(a) Broken bones;

(b) Stroke, heart attack, or other acute illness or condition onset;

(c) Unmanaged high blood sugar levels;

(d) Uncontrolled pain;

(e) Fast decline in activities of daily living;

(f) Significant unplanned weight loss;

(g) Pattern of refusing to eat;

(h) Level of consciousness change; and

(i) Pressure ulcers (stage 2 or greater).

(13) "Choice" means a resident has viable options that enable the resident to exercise greater control over his or her life. Choice is supported by the provision of sufficient private and common space within the facility that allows residents to select where and how to spend time and receive personal assistance.

(14) "Condition" means a provision attached to a new or existing license that limits or restricts the scope of the license or imposes additional requirements on the licensee.

(15) "DHS" means the Department of Human Services.

(16) "Dignity" means providing support in such a way as to validate the self-worth of the individual. Creating an environment that allows personal assistance to be provided in privacy, supports dignity as does delivering services in a manner that shows courtesy and respect.

(17) "Direct Care Staff" means a facility employee whose primary responsibility is to provide personal care services to residents. These personal care services may include:

(a) Medication administration;

(b) Resident-focused activities;

(c) Assistance with activities of daily living;

(d) Supervision and support of residents; and

(e) Serving meals, but not meal preparation.

(18) "Directly Supervised" means that a qualified staff member maintains visual contact with the supervised person.

(19) "Disaster" means a sudden emergency occurrence beyond the control of the licensee, whether natural, technological, or manmade that renders the licensee unable to operate the facility or the facility is uninhabitable.

(20) "Disclosure" means the written information the facility is required to provide to consumers to enhance the understanding of facility costs, services, and operations.

(21) "Entity" means an individual, a trust, an estate, a partnership, a corporation, or a state or governmental unit, including associations, joint stock companies, and insurance companies, a state, or a political subdivision, or instrumentality including a municipal corporation.

(22) "Exception" means a written variance granted by the Seniors and People with Disabilities Division from a regulation or provision of these rules.

(23) "Facility" means the residential care or assisted living facility licensee and the operations, policies, procedures, and employees of the residential care or assisted living facility.

(24) "FPS" means the Facilities Planning and Safety Program within the Department of Human Services, Public Health Division.

(25) "Homelike Environment" means a living environment that creates an atmosphere supportive of the resident's preferred lifestyle. Homelike environment is also supported by the use of residential building materials and furnishings.

(26) "Incident of Ownership" means an ownership interest, an indirect ownership interest, or a combination of direct and indirect ownership interest.

(27) "Independence" means supporting resident capabilities and facilitating the use of those abilities. Creating barrier free structures and careful use of assistive devices supports independence.

(28) "Indirect Ownership Interest" means an ownership interest in an entity that has an ownership interest in another entity. Indirect ownership interest includes an ownership interest in an entity that has an indirect ownership interest in another entity.

(29) "Individuality" means recognizing variability in residents' needs and preferences and having flexibility to organize services in response to different needs and preferences.

(30) "Licensed Nurse" means an Oregon licensed practical or registered nurse.

(31) "Licensee" means the entity that owns the residential care or assisted living facility business, and to whom an assisted living or residential care facility license has been issued.

(32) "Managed Risk" means a process by which a resident's high-risk behavior or choices are reviewed with the resident. Alternatives to and consequences of the behavior or choices are explained to the resident and the resident's decision to modify behavior or accept the consequences is documented.

# ADMINISTRATIVE RULES

(33) "Management" or "Operator" means possessing the right to exercise operational or management control over, or directly or indirectly conduct, the day-to-day operation of a facility.

(34) "Modified Special Diet" means a diet ordered by a physician or other licensed health care professional that may be required to treat a medical condition (e.g., heart disease or diabetes).

(a) Modified special diets include but are not limited to:

- (A) Small frequent meals;
- (B) No added salt;
- (C) Reduced or no added sugar; and
- (D) Simple textural modifications.

(b) Medically complex diets are not included.

(35) "New Construction" means:

- (a) A new building;
- (b) An existing building or part of a building that is not currently licensed;
- (c) A major alteration to an existing building; or
- (d) Additions, conversions, renovations, or remodeling of existing buildings.

(36) "Nursing Care" means the practice of nursing as governed by ORS chapter 678 and OAR chapter 851, division 047.

(37) "Owner" means a person with an ownership interest.

(38) "Ownership Interest" means the possession of equity in the capital, the stock, or the profits of an entity.

(39) "Personal Incidental Funds (PIF)" means the monthly amount allowed each Medicaid resident for personal incidental needs. For purposes of this definition, personal incidental funds include monthly payments, as allowed, and previously accumulated resident savings.

(40) "Privacy" means a specific area or time over which the resident maintains a large degree of control. Privacy is supported with services that are delivered with respect for the resident's civil rights.

(41) "P.R.N." means those medications and treatments that have been ordered by a qualified practitioner to be administered as needed.

(42) "Psychoactive Medications" means medications used to alter mood, level of anxiety, behavior, or cognitive processes. Psychoactive medications include antidepressants, anti-psychotics, sedatives, hypnotics, and anti-anxiety medications.

(43) "Resident" means any person who is receiving room, board, care, and services on a 24-hour basis in a residential care or assisted living facility for compensation.

(44) "Residential Care Facility" means a building, complex, or distinct part thereof, consisting of shared or individual living units in a homelike surrounding where six or more seniors and adult persons with disabilities may reside. The residential care facility offers and coordinates a range of supportive services available on a 24-hour basis to meet the activities of daily living, health, and social needs of the residents as described in these rules. A program approach is used to promote resident self-direction and participation in decisions that emphasize choice, dignity, individuality, and independence.

(45) "Restraint" means any physical device that the resident cannot manipulate that is used to restrict movement or normal access to the resident's body.

(46) "Retaliation" means to threaten or intimidate, or take an action that is detrimental to a person (e.g., harassment, abuse, coercion, etc.)

(47) "SPD" means the Department of Human Services, Seniors and People with Disabilities Division.

(48) "Service Plan" means a written, individualized plan for services developed by a service planning team and the resident, or the resident's legal representative, that reflects the resident's capabilities, choices, and if applicable, measurable goals, and managed risk issues. The service plan defines the division of responsibility in the implementation of the services.

(49) "Service Planning Team" means two or more individuals, as set forth in OAR 411-054-0036 that assist the resident in determining what services and care are needed, preferred, and may be provided to the resident.

(50) "Services" means supervision or assistance provided in support of a resident's needs, preferences, and comfort, including health care and activities of daily living, that help develop, increase, maintain, or maximize the resident's level of independent, psychosocial, and physical functioning.

(51) "Supportive Device" means a device that may have restraining qualities that supports and improves a resident's physical functioning.

(52) "These Rules" means the rules in OAR chapter 411, division 054.

(53) "Underserved" means services are significantly unavailable within the service area in a comparable setting for:

- (a) The general public;
- (b) A specific population, including residents with dementia or traumatic brain injury; or
- (c) Recipients of Medicaid.

(54) "Unit" means an individual living space constructed as a completely private apartment, including living and sleeping space, kitchen area, bathroom, and adequate storage areas.

(55) "Universal Worker" means a facility employee whose assignments include other tasks (e.g., housekeeping, laundry, food service, etc.) in addition to providing direct resident services. Universal worker does not include

administrators, clerical or administrative staff, building maintenance staff, or licensed nurses who provide services as specified in OAR 411-054-0034.

Stat. Auth.: ORS 410.070 & 443.450

Stats. Implemented: ORS 443.400 - 443.455, 443.991

Hist.: SPD 14-2007, f. 8-31-07, cert. ef. 11-1-07; SPD 16-2008, f. 12-31-08, cert. ef. 1-1-09;

SPD 13-2009, f. 9-30-09, cert. ef. 10-1-09; SPD 23-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10

## 411-054-0016

### New Applicant Qualifications

For the purpose of this rule, "applicant" means each person, as defined in ORS 442.015, who holds ten percent or greater incident of ownership in the facility. Applicants for licensure (excluding license renewal, but including all changes of ownership, and management or operator) must meet the following criteria:

(1) CRIMINAL RECORDS. Each applicant may not have convictions of any of the crimes described in OAR 411-054-0025(2) and must complete a Criminal Records Check conducted by DHS in accordance with OAR 407-007-0200 to 407-007-0370.

(2) PERFORMANCE HISTORY. SPD shall consider an applicant's performance history, including repeat sanctions or rule violations, before issuing a license.

(a) Each applicant must be free of incident of ownership history in any facility in Oregon that provides or provided (at the time of ownership) care to children, elderly, ill, or persons with disabilities that had its license or certification involuntarily suspended or voluntarily terminated during any state or federal sanction process during the past five years;

(b) Applicants must be free of incident of ownership history in any facility in any state that had its license or certification involuntarily suspended or voluntarily terminated during any state or federal sanction process during the past five years;

(c) Failure to provide accurate information or demonstrate required performance history could result in SPD's denial of a license.

(3) FINANCIAL HISTORY. Each applicant must:

(a) Be free of incident of ownership history in any facility or business that failed to reimburse any state for Medicaid overpayments or civil penalties during the past five years;

(b) Be free of incident of ownership history in any facility or business that failed to compensate employees or pay worker's compensation, food supplies, utilities or other costs necessary for facility operation during the past five years;

(c) Have a record of good credit as evidenced by a credit check done by SPD;

(d) Submit proof of fiscal responsibility, including an auditor's certified financial statement, and other verifiable documentary evidence of fiscal solvency documenting that the prospective licensee has sufficient resources to operate the facility for 60 days. Proof of fiscal responsibility must include liquid assets sufficient to operate the facility for 45 days. Anticipated Medicaid income is not considered "liquid assets," but may be considered "financial resources." Liquid assets may be demonstrated by:

(A) An unencumbered line of credit;

(B) A performance bond; or

(C) Any other method satisfactory to SPD.

(e) Provide a pro forma (revenues, expenditures and resident days) by month for the first 12 months of operation of the facility and demonstrate the ability to cover any cash flow problems identified by the pro forma.

(4) EXPERIENCE. If an applicant does not have experience in the management of nursing facilities, assisted living or residential care, the applicant must employ the services of a consultant or management company with experience in the provision of assisted living or residential care for a period of at least six months. The consultant and the terms and length of employment are subject to the approval of SPD.

Stat. Auth.: ORS 410.070 & 443.450

Stats. Implemented: ORS 443.400 - 443.455, 443.991

Hist.: SPD 14-2007, f. 8-31-07, cert. ef. 11-1-07; SPD 23-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10

## 411-054-0025

### Facility Administration

(1) FACILITY OPERATION. The licensee is responsible for the operation of the facility and the quality of care rendered in the facility.

(2) CRIMINAL RECORDS CHECK REQUIREMENTS.

(a) On or after January 1, 2010, no person may be a licensee, or employed in any capacity in a residential care or assisted living facility, who has a conviction for the delivery or manufacture of drugs in the past ten years.

(b) On or after January 1, 2010, no person may be approved to be a licensee, or employed in any capacity, who has ever been convicted:

(A) Of a crime listed in Exhibit 54-1;

(B) Of an attempt, conspiracy, or solicitation to commit a crime listed in Exhibit 54-1; or

(C) Of a crime in another jurisdiction that is substantially equivalent to a crime listed in Exhibit 54-1;

(3) EMPLOYMENT APPLICATION. An application for employment in any capacity at a facility must include a question asking whether the applicant has been found to have committed abuse.

# ADMINISTRATIVE RULES

(4) Reasonable precautions must be exercised against any condition that could threaten the health, safety, or welfare of residents.

(a) The licensee is responsible for the supervision, training, and overall conduct of staff when acting within the scope of their employment duties.

(b) The licensee must obtain a criminal records check from any person 16 years of age or older, who operates, receives training, or works in a facility. A criminal records check must be submitted to an authorized division representative for a criminal fitness determination in accordance with the criminal records check rules in OAR chapter 407, division 007.

(c) The licensee is responsible for ensuring that the facility complies with the tuberculosis screening recommendations in OAR 333-019-0041.

(5) **REQUIRED POSTINGS.** Required postings must be posted in a routinely accessible and conspicuous location to residents and visitors and be available for inspection at all times. The licensee is responsible for posting the following:

(a) Facility license;

(b) The name of the administrator or designee in charge. The designee in charge must be posted by shift or whenever the administrator is out of the facility;

(c) The current facility-staffing plan;

(d) A copy of the most recent survey and plan of correction as applicable;

(e) The Division's written notice issued under OAR 411-054-0105; and

(f) Other notices relevant to residents or visitors required by state or federal law.

(6) **NOTIFICATION.** The facility must notify SPD program staff in Salem Central Office immediately by telephone, fax, or email, (if telephone communication is used the facility must follow-up within 72 hours by written or electronic confirmation) of the following:

(a) Any change of the administrator of record.

(b) Severe interruption of physical plant services in which the health or safety of residents is endangered, such as the provision of heat, light, power, water, or food;

(c) Occurrence of epidemic disease in the facility. The facility must also notify the Local Public Health Authority as applicable;

(d) Facility fire or any catastrophic event that requires residents to be evacuated from the facility;

(e) Unusual resident death or suicide; or

(f) A resident who has eloped from the facility and has not been found within 24 hours.

(7) **POLICIES AND PROCEDURES.** The facility must develop and implement written policies and procedures that promote high quality services, health and safety for residents, and incorporate the community-based care principles of individuality, independence, dignity, privacy, choice, and a homelike environment.

(a) The facility must develop and implement a policy on the possession of firearms and ammunition within the facility. The policy must be disclosed in writing and by one other means of communication commonly used by the resident or potential resident in their daily living.

(b) The facility must develop and implement a written policy that prohibits sexual relations between any facility employee and a resident who did not have a pre-existing relationship.

(c) The facility must develop and implement effective methods of responding to and resolving resident complaints.

(d) The facility must develop all additional requirements for written policies and procedures as established in OAR 411-054-0012 (Requirements for New Construction or Initial Licensure), OAR 411-054-0040 (Change of Condition Monitoring), OAR 411-054-0045 (Resident Health Services), and OAR 411-054-0085 (Refunds and Financial Management).

(e) The facility must develop and implement a policy on smoking.

(A) The smoking policy must be in accordance with:

(i) The Oregon Indoor Clean Air Act, ORS 433.835 to 433.875;

(ii) The rules in OAR chapter 333, division 015; and

(iii) Any other applicable state and local laws.

(B) The facility may designate itself as non-smoking.

(8) **RECORDS.** The facility must ensure the preparation, completeness, accuracy, and preservation of resident records.

(a) The facility must develop and implement a written policy that prohibits the falsification of records.

(b) Resident records must be kept for a minimum of three years after the resident is no longer in the facility.

(c) Upon closure of a facility the licensee must provide SPD with written notification of the location of all records.

(9) **QUALITY IMPROVEMENT PROGRAM.** The facility must develop and conduct an ongoing quality improvement program that evaluates services, resident outcomes, and resident satisfaction.

(10) **DISCLOSURE — RESIDENCY AGREEMENT.** The facility must provide a SPD designated Uniform Disclosure Statement (form SDS 9098A) to each person who requests information about the facility. The residency agreement and the disclosure information described in section (7)(a) of this rule are required to be provided to all potential residents prior to move-in. All disclosure information and residency agreements must be written in compliance with these rules.

(a) The residency agreement and the following disclosure information must be reviewed by SPD prior to distribution and must include the following:

(A) Terms of occupancy, including policy on the possession of firearms and ammunition;

(B) Payment provisions, including the basic rental rate, and what it includes, cost of additional services, billing method, payment system and due dates, deposits, and non-refundable fees, if applicable;

(C) The method for evaluating a resident's service needs and assessing the costs for the services provided;

(D) Policy for increases, additions, or changes to the rate structure. Disclosure must address the minimum requirement of 30 days prior written notice of any facility-wide increases or changes and the requirement for immediate written notice for individual resident rate changes that occur as a result of changes in the service plan;

(E) Refund and proration conditions;

(F) A description of the scope of services available according to OAR 411-054-0030 (Resident Services);

(G) A description of the service planning process;

(H) Additional available services;

(I) The philosophy of how health care and ADL services are provided to the resident;

(J) Resident rights and responsibilities;

(K) The facility system for packaging medications and that residents may choose a pharmacy that meets the requirements of ORS 443.437;

(L) Criteria, actions, circumstances, or conditions that may result in a move-out notification or intra-facility move;

(M) Resident's rights pertaining to notification of involuntary move-out;

(N) Notice that DHS has the authority to examine resident records as part of the evaluation of the facility; and

(O) Staffing plan.

(b) The facility may not include any provision in the residency agreement or disclosure information that is in conflict with these rules and may not ask or require a resident to waive any of the resident's rights or the facility's liability for negligence;

(c) The facility must retain a copy of the original and any subsequent signed and dated residency agreements and must provide copies to the resident or to their designated representative; and

(d) The facility must give residents 30 days prior written notice of any additions or changes to the residency agreement. Changes to the residency agreement must be faxed or mailed to SPD before distribution.

Stat. Auth.: ORS 410.070 & 443.450

Stats. Implemented: ORS 443.400 - 443.455, 443.991

Hist.: SPD 14-2007, f. 8-31-07, cert. ef. 11-1-07; SPD 13-2009, f. 9-30-09, cert. ef. 10-1-09; SPD 23-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10

## 411-054-0065

### Administrator Qualifications and Requirements

(1) **FULL-TIME ADMINISTRATOR.** Each licensed residential care and assisted living facility must employ a full-time administrator. The administrator must be scheduled to be on-site in the facility at least 40 hours per week.

(2) **ADMINISTRATOR QUALIFICATIONS:**

(a) Be at least 21 years of age, and possess a high school diploma or equivalent; and have at least two years professional or management experience that has occurred within the last five years, in a health or social service related field or program, or have a combination of experience and education; or

(b) Possess an accredited Bachelors Degree in a health or social service related field.

(3) **ADMINISTRATOR REQUIREMENTS:**

(a) Facility administrators must meet the following training requirements prior to employment:

(A) Complete a SPD approved classroom administrator-training program of at least 40 hours; or

(B) Complete a SPD approved administrator-training program that includes both a classroom training of less than 40 hours and a SPD approved 40-hour internship program with a SPD approved administrator; or

(C) Complete another SPD approved administrator-training program.

(b) **CONTINUING EDUCATION.** Administrators must have 20 hours of documented SPD approved continuing education credits each year. The approved administrator-training program fulfills the 20-hour continuing education requirement for the first year.

(c) Individuals who have met SPD approved training program requirements but have been absent from an administrator position for five years or less, do not have to re-take the administrator training, but must provide evidence of 20 hours of continuing education annually.

(d) Prior to employment as administrator of a facility, individuals must complete the requirements of OAR 407-007-0200 to 407-007-0370 (Criminal History Check Rules) and comply with 333-019-0041 (Tuberculosis). An administrator of a facility may not have convictions of any of the crimes described in OAR 411-054-0025(2).

# ADMINISTRATIVE RULES

(e) ADMINISTRATOR REFERENCE SUMMARY. Newly hired administrators are responsible for the completion of form SDS 0566, Administrator Reference Summary, and are required to fax the completed form to SPD upon hire. SPD may reject a form that has been falsified or is incomplete.

(f) DESIGNEE. The administrator must appoint a staff member as designee to oversee the operation of the facility in the administrator's absence. The administrator or a designee must be in charge on site at all times and ensure there are sufficient, qualified staff and that the care, health, and safety needs of the residents are met at all times.

## (4) ADMINISTRATOR TRAINING COURSE STANDARDS.

(a) The training curriculum for the administrator training must be approved by SPD and shall be re-evaluated by SPD at periodic intervals.

(b) Individuals, companies or organizations providing the administrator training course must be approved by SPD. SPD may withdraw approval under the following conditions:

- (A) Failure to follow SPD approved curriculum;
- (B) The trainer demonstrates lack of competency in training;
- (C) There is insufficient frequency of training to meet the need; or
- (D) Facilities owned or operated by the training entity have a pattern of substantial non-compliance with these rules.

(c) Approved training must be open and available to all applicants and must not be used to orient trainees to a specific company's management or operating procedures.

Stat. Auth.: ORS 410.070 & 443.450

Stats. Implemented: ORS 443.400 - 443.455, 443.991

Hist.: SPD 14-2007, f. 8-31-07, cert. ef. 11-1-07; SPD 23-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10

## 411-054-0105

### Inspections and Investigations

(1) The facility must cooperate with SPD personnel in inspections, complaint investigations, planning for resident care, application procedures, and other necessary activities.

(a) Records must be made available to SPD upon request. SPD personnel must have access to all resident and facility records and may conduct private interviews with residents. Failure to comply with this requirement shall result in regulatory action.

(b) The State Long Term Care Ombudsman must have access to all resident and facility records that relate to an investigation. Certified Ombudsman volunteers may have access to facility records that relate to an investigation and access to resident records with written permission from the resident or guardian.

(c) The State Fire Marshal or authorized representative must be permitted access to the facility and records pertinent to resident evacuation and fire safety.

(2) Staff of SPD shall visit and inspect every facility at least, but not limited to, once every two years to determine whether it is maintained and operated in accordance with these rules.

(a) Facilities not in compliance with these rules must submit a plan of correction that satisfies SPD, within ten days of receipt of the inspection report.

(b) In addition, SPD may impose sanctions for failure to comply with these rules.

(3) SPD staff may consult with and advise the facility administrator concerning methods of care, records, housing, equipment, and other areas of operation.

(4) A copy of the most current inspection report and any conditions placed upon the license must be posted with the facility's license in public view near the main entrance to the facility.

(5) WRITTEN NOTIFICATION. Within 60 days of receipt by SPD Central Office of a complainant investigation report, the Division shall issue a written notice of its findings.

(a) CONTENT. The written notice shall:

(A) Explain the nature of each allegation;

(B) Include the date and time of each occurrence;

(C) For each allegation, include a determination of whether the allegation is substantiated, unsubstantiated, or inconclusive;

(D) For each substantiated allegation, state whether the violation was abuse or another rule violation;

(E) Include a copy of the complaint investigation report;

(F) State that the complainant, any person reported to have committed wrongdoing, and the facility have 15 days to provide additional or different information; and

(G) For each allegation, explain the applicable appeal rights available.

(b) DISTRIBUTION.

(A) The written notice shall be mailed to the facility, any person reported to have committed wrongdoing, the complainant (if known), and the SPD or Type B AAA office; and

(B) A copy of the written notice shall be placed in the Division's facility complaint file.

(c) REVISION.

(A) The Division may reinvestigate a complaint or issue a revised written notice if the Division determines further information provided by the complainant or facility merits such action.

(B) If the Division issues a revised notice, the notice shall be distributed to all persons identified in section (5)(b) of this rule.

(6) Upon receipt of a notice that substantiates abuse, the provider must make the report and findings readily accessible to residents, staff, family members, and the general public. The notice must be posted in public view at all times.

Stat. Auth.: ORS 410.070 & 443.450

Stats. Implemented: ORS 443.400 - 443.455, 443.991

Hist.: SPD 14-2007, f. 8-31-07, cert. ef. 11-1-07; SPD 16-2008, f. 12-31-08, cert. ef. 1-1-09; SPD 23-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10

## 411-054-0120

### Civil Penalties

(1) For purposes of imposing civil penalties, facilities licensed under ORS 443.400 to 443.455 and subsection (2) of ORS 443.991 are considered to be long term care facilities subject to ORS 441.705 to 441.745.

(2) For purposes of this rule, "person" means a licensee under ORS 443.420 or a person who the Assistant Director of the Seniors and People with Disabilities Division finds shall be so licensed but is not; but does not include any employee of such licensee or person.

(3) For purposes of this rule, "resident rights" means that each resident must be assured the same civil and human rights accorded to other citizens as described in OAR 411 054 0027 (Resident Rights and Protections).

(4) SPD shall exercise the powers under ORS 441.705 to 441.745 and thereby issues the following schedule of penalties applicable to residential care and assisted living facilities:

(a) A Class I violation exists when there is non-compliance involving direct resident care or feeding, adequate staff, sanitation involving direct resident care or resident rights. A Class I violation may result in imposition of a fine for first and subsequent violations of no less than \$5 and no more than \$500 per occurrence, per day, not to exceed \$6,000 in any calendar quarter. However, if the Department investigates and makes a finding of abuse arising from deliberate or other than accidental action or inaction that is likely to cause a negative outcome, and if the abuse resulted in the death, serious injury, rape, or sexual abuse of a resident, the Department shall impose a civil penalty of not less than \$2,500 for each occurrence of substantiated abuse, not to exceed \$15,000 in any 90-day period. For the purposes of this rule, the following definitions apply:

(A) "Serious Injury" means physical injury that creates a substantial risk of death or that causes serious and protracted disfigurement, protracted impairment of health, or protracted loss or impairment of the function of any bodily organ.

(B) "Rape" means rape in the first, second, or third degree as described in ORS 163.355, 163.365, and 163.375.

(C) "Sexual Abuse" means any form of nonconsensual sexual contact, including but not limited to unwanted or inappropriate touching, sodomy, sexual coercion, sexually explicit photographing and sexual harassment.

(b) A Class II violation exists when there is non-compliance with the license requirements relating to a license required, the license requirements relating to administrative management, personal services (care) and activities. Class II violations may result in imposition of a fine for violations found on two consecutive monitorings of the facility. The fine may be no less than \$5 and no more than \$300 per occurrence, per day, not to exceed \$6,000 in any calendar quarter; and

(c) A Class III violation exists when there is non-compliance with the license requirements relating to building requirements and resident furnishings. Class III violations may result in imposition of a fine for violations found on two consecutive monitorings of the residential care facility. The fine may be no less than \$5 and no more than \$150 per occurrence, per day, not to exceed \$6,000 in any calendar quarter.

(5) For purposes of this rule, a monitoring occurs when a residential care or assisted living facility is surveyed, inspected or investigated by an employee or designee of SPD or an employee or designee of the State Fire Marshal.

(6) In imposing a penalty pursuant to the schedule published in section (4) of this rule, the Department's Assistant Director of the Seniors and People with Disabilities Division, or a designee, must consider the following factors:

(a) The past history of the person incurring a penalty in taking all feasible steps or procedures necessary or appropriate to correct any violation;

(b) Any prior violations of statutes or rules pertaining to residential care or assisted living facilities;

(c) The economic and financial conditions of the person incurring the penalty; and

(d) The immediacy and extent that the violation threatens the health, safety, and well being of residents.

(7) Any civil penalty imposed under ORS 443.455 and 441.710 shall become due and payable when the person incurring the penalty receives a notice in writing from the Department's Assistant Director of Seniors and People with Disabilities Division or a designee. The notice referred to in this rule shall be sent by registered or certified mail and shall include:

# ADMINISTRATIVE RULES

(a) A reference to the particular sections of the statute, rule, standard, or order involved;

(b) A short and plain statement of the matters asserted or charged;

(c) A statement of the amount of the penalty or penalties imposed; and

(d) A statement of the party's right to request a hearing.

(8) The person to whom the notice is addressed shall have ten days from the date of mailing the notice to make written application for a hearing before SPD.

(9) All hearings shall be conducted pursuant to the applicable provisions of ORS chapter 183.

(10) If the person notified fails to request a hearing within ten days, an order may be entered by SPD assessing a civil penalty.

(11) If, after a hearing, the person is found to be in violation of a license, rule, or order listed in ORS 441.710(1), an order may be entered by the SPD assessing a civil penalty.

(12) A civil penalty imposed under ORS 443.455 or 441.710 may be remitted or reduced upon such terms and conditions as the Department's Assistant Director of Seniors and People with Disabilities Division considers proper and consistent with the public health and safety.

(13) If the order is not appealed, the amount of the penalty is payable within ten days after the order is entered. If the order is appealed and is sustained, the amount of the penalty is payable within ten days after the court decision. The order, if not appealed or sustained on appeal, shall constitute a judgment and may be filed in accordance with the provisions of ORS 18.005 to 18.428. Execution may be issued upon the order in the same manner as execution upon a judgment of a court of record.

(14) A violation of any general order or final order pertaining to a residential care or assisted living facility issued by the Department's Assistant Director of Seniors and People with Disabilities Division is subject to a civil penalty in the amount of not less than \$5 and not more than \$500 for each and every violation.

(15) Judicial review of civil penalties imposed under ORS 441.710 shall be as provided under ORS 183.480, except that the court may, in its discretion, reduce the amount of the penalty.

(16) All penalties recovered under ORS 443.455 and 441.710 to 441.740 shall be paid to the Quality Care Fund.

Stat. Auth.: ORS 410.070 & 443.450

Stats. Implemented: ORS 443.400 - 443.455, 443.991

Hist.: SPD 14-2007, f. 8-31-07, cert. ef. 11-1-07; SPD 23-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10

## 411-054-0133

### Temporary Manager

(1) APPOINTMENT. SPD, with the consent of the licensee, may appoint a temporary manager to assume control of the day-to-day operation of the facility in accordance with Oregon Laws 2009, chapter 539, sections 14 through 18. The appointment may be for a period not to exceed six months.

(2) CRITERIA. A temporary manager may be appointed if SPD determines that the health or safety of residents in the facility are, or in the immediate future shall be, in jeopardy based upon:

(a) The licensee's unwillingness or inability to comply with DHS rules in the operation of the facility;

(b) The imminent insolvency of the facility;

(c) SPD's revocation or suspension of the license of the facility; or

(d) SPD's determination that the licensee intends to cease operations and to close the facility without adequate arrangements for the relocation of the residents.

(3) DUTIES AND POWERS. The temporary manager has all of the duties and powers, as agreed upon between SPD and the licensee, that are necessary to ensure the safety and well-being of the residents and the continued operation of the facility.

(4) QUALIFICATIONS. In order to qualify for appointment as temporary manager, the prospective appointee must:

(a) Be, or employ a person who is, qualified to serve as administrator for the type of facility being served;

(b) Be familiar with SPD's rules for the operation of the facility to be served;

(c) Be familiar with the needs of the resident population in the facility to be served; and

(d) Have a demonstrated history (five year minimum) of operating and managing a similar facility in substantial compliance with DHS rules.

Stat. Auth.: ORS 410.070 & 443.450

Stats. Implemented: ORS 443.400 to 443.455 & 443.991

Hist.: SPD 23-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10

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**Rule Caption:** Nursing Facilities, 2009 Legislative Changes.

**Adm. Order No.:** SPD 24-2009(Temp)

**Filed with Sec. of State:** 12-31-2009

**Certified to be Effective:** 1-1-10 thru 6-30-10

**Notice Publication Date:**

**Rules Adopted:** 411-089-0075

**Rules Amended:** 411-085-0005, 411-085-0020, 411-089-0030, 411-089-0140

**Rules Suspended:** 411-089-0150

**Subject:** To comply with the 2009 legislative changes from House Bill 2442, House Bill 2139, and Senate Bill 163, the Department of Human Services, Seniors and People with Disabilities Division (SPD) is temporarily amending the nursing facility rules in OAR chapter 411, division 085 and division 089 to:

- Change the definition of "public or private official";
- Clarify that nursing facility licensing fees will be deposited in the Quality Care Fund;
- Increase the civil penalty amount for certain incidents of abuse;
- Authorize the appointment of a temporary manager; and
- Provide that a nursing assistant has the right to appeal a finding of abuse by requesting a contested case hearing instead of an administrative review panel.

**Rules Coordinator:** Christina Hartman—(503) 945-6398

## 411-085-0005

### Definitions

As used in OAR chapter 411, divisions 70 and 85-89, unless the rule requires otherwise, the following definitions apply:

(1) "Abuse" means:

(a) Any physical injury to a resident that has been caused by other than accidental means. This includes injuries that a reasonable and prudent person would have been able to prevent, such as hitting, pinching or striking, or injury resulting from rough handling.

(b) Failure to provide basic care or services to a resident that results in physical harm, unreasonable discomfort, or serious loss of human dignity.

(c) Sexual contact with a resident, including fondling, caused by an employee, agent or other resident of a long-term care facility by force, threat, duress or coercion, or sexual contact where the resident has no ability to consent.

(d) Illegal or improper use of a resident's resources for the personal profit or gain of another person, borrowing resident funds, spending resident funds without the resident's consent or, if the resident is not capable of consenting, spending resident funds for items or services from which the resident cannot benefit or appreciate, or spending resident funds to acquire items for use in common areas when such purchase is not initiated by the resident.

(e) Verbal abuse as prohibited by federal law, including the use of oral, written or gestured communication to a resident or visitor that describes a resident in disparaging or derogatory terms.

(f) Mental abuse as prohibited by law including humiliation, harassment, threats of punishment or deprivation, directed toward the resident.

(g) Corporal punishment.

(h) Involuntary seclusion for convenience or discipline.

(2) "Abuse Complaint" means any oral or written communication to the Department of Human Services, one of its agents or a law enforcement agency alleging abuse.

(3) "Activities Program" means services offered to each resident that encourage the resident to participate in physical and mental exercises that are designed to maintain or improve physical and mental well-being and social skills.

(4) "Applicant" means the person or persons required to complete a nursing facility application for a license. Applicant includes a sole proprietor, each partner in a partnership, or the corporation that owns the nursing facility business. Applicant also includes the sole proprietor, each partner in a partnership, or the corporation that operates the nursing facility on behalf of the nursing facility business owner.

(5) "Area Agency on Aging" or "AAA" means a Type B Area Agency on Aging that is an established public agency within a planning and service area designated under the Older Americans Act, 42 U.S.C. 3025, that has responsibility for local administration of Seniors and People with Disabilities Division programs.

(6) "Assessment" means a written evaluation of the resident's abilities, condition and needs based upon resident interview, observation, clinical and social records, and other available sources of information.

(7) "Care" means services required to maximize resident independence, personal choice, participation, health, self-care, and psychosocial functioning, as well as to provide reasonable safety, all consistent with the preferences of the resident.

(8) "Certified Medication Assistant" or "Certified Medication Aide" means a certified nursing assistant who has successfully completed an Oregon State Board of Nursing approved training program for the administration of non-injectable medication.

(9) "Certified Nursing Assistant" means a person who has been certified as a nursing assistant pursuant to ORS chapter 678 and the rules adopted thereunder.

# ADMINISTRATIVE RULES

(10) "Change of Ownership" and "Change of Operator" means a change in the person who or entity that owns the facility business and/or a change in the person or entity responsible for the provision of services at the facility. Events that change ownership include, but are not limited to the following:

- (a) A change in the form of legal organization of the licensee;
- (b) Transfer of the title to the nursing facility enterprise by the owner to another party;
- (c) If the licensee is a corporation, dissolution of the corporation, merger of the corporation with another corporation, or consolidation of one or more corporations to form a new corporation;
- (d) If the licensee is a partnership, any event that dissolves the partnership;
- (e) Any lease, management agreement, or other contract or agreement that results in a change in the legal entity responsible for the provision of services at the facility; or
- (f) Any other event that results in a change of the operating entity.

(11) "Day Care Resident" means a person who receives services and care in a nursing facility for not more than 16 hours per day and who is not bedfast.

(12) "Department" means the Department of Human Services.

(13) "Drug" has the same meaning set forth in ORS chapter 689.005.

(14) "Entity" means "Person" as defined by these rules.

(15) "Establish a Nursing Facility" or "Maintain a Nursing Facility" means to possess or hold an incident of ownership in a nursing facility business.

(16) "Facility" or "Nursing Facility" means an establishment that is licensed by the Seniors and People with Disabilities Division as a nursing facility.

(17) "Health Care Facility" means a health care facility as defined in ORS 442.015, but also includes a residential care facility as defined in ORS 443.400 and an adult foster home as defined in ORS 443.705.

(18) "Hearing" means a contested case hearing according to the Administrative Procedures Act and the rules of the Department of Human Services.

(19) "Incident of Ownership" means:

- (a) An ownership interest;
- (b) An indirect ownership interest; or
- (c) A combination of direct and indirect ownership interest.

(20) "Indirect Ownership Interest" means an ownership interest in an entity that has an ownership interest in another entity. This term includes an ownership interest in an entity that has an indirect ownership interest in another entity.

(21) "Inpatient Beds" means a bed in a facility available for occupancy by a resident who is cared for and treated on an overnight basis.

(22) "Inspection" means any on-site visit to the facility by anyone designated by the Secretary of the U.S. Department of Health and Human Services, the Department of Human Services, or a "Type B" Area Agency on Aging and includes, but is not limited to, a licensing inspection, certification inspection, financial audit, Medicaid Fraud Unit review, monitoring, and/or complaint investigation.

(23) "Legal Representative" means an Attorney at Law, the person holding a general power of attorney or special power of attorney for health care, a guardian, a conservator, or any person appointed by a court to manage the personal or financial affairs of a resident, or person, or agency legally responsible for the welfare or support of a resident, other than the facility.

(24) "Licensed Nurse" means a registered nurse (RN) or a licensed practical nurse (LPN).

(25) "Licensed Practical Nurse (LPN)" means a person licensed under ORS chapter 678 to practice practical nursing.

(26) "Licensee" means the applicant to whom a nursing facility license has been issued.

(27) "Local Designee of the Department" means the local unit of the Seniors and People with Disabilities Division or the Type B Area Agency on Aging.

(28) "Long Term Care Facility" means nursing facility.

(29) "Major Alteration" means change other than repair or replacement of building materials or equipment with materials and equipment of a similar type.

(30) "Management" or "Control Interest" means possessing the right to exercise operational or management control over, or to directly or indirectly conduct the day-to-day operation of an institution, organization or agency, or an interest as an officer or director of an institution, organization or agency organized as a corporation.

(31) "New Construction" means:

- (a) A new building;
- (b) An existing building or part of a building that is not currently licensed as a nursing facility;
- (c) A part of an existing building that is not currently licensed for the purpose for which such part is proposed to be licensed (e.g., rooms that are proposed to be licensed as resident rooms, but that are not currently licensed as nursing facility resident rooms);

(d) A major alteration to an existing building, additions, conversions in use; or

(e) Renovation or remodeling of existing buildings.

(32) "NFPA" means National Fire Protection Association.

(33) "Nurse Practitioner" means a person certified under ORS chapter 678 as a nurse practitioner.

(34) "Nursing Assessment" means evaluation of fluids, nutrition, bowel/bladder elimination, respiration, circulation, skin, vision, hearing, musculoskeletal systems, allergies, personal hygiene, mental status, communicative skills, safety needs, rest, sleep, comfort, pain, other appropriate measures of physical status, and medication and treatment regimes. Nursing assessment includes data collection, comparison with previous data, analysis or evaluation of that data, and utilization of available resource information.

(35) "Nursing Assistant" or "Nurse Aide" means a person who assists licensed nurses in the provision of nursing care services. "Nursing Assistant" includes, but is not limited to, a certified nursing assistant, a certified medication assistant and persons who have successfully completed a state approved nurse assistant training course.

(36) "Nursing Care" means direct and indirect care provided by a registered nurse, licensed practical nurse, or nursing assistant.

(37) "Nursing Facility" means an establishment with permanent facilities including inpatient beds, that provide medical services, including nursing services, but excluding surgical procedures, and that provide care and treatment for two or more unrelated residents. In this definition, "treatment" means complex nursing tasks that cannot be delegated to an unlicensed person. "Nursing Facility" shall not be construed to include facilities licensed and operated pursuant to any Oregon Revised Statute (ORS) other than ORS 441.020(2).

(38) "Nursing Facility Law" means ORS chapter 441 and the Oregon Administrative Rules for nursing facilities adopted pursuant thereto.

(39) "Nursing Home" means nursing facility.

(40) "Nursing Home Administrator" means a person licensed under ORS chapter 678 who is responsible to the licensee and is responsible for planning, organizing, directing and controlling the operation of a nursing facility.

(41) "Nursing Staff" means registered nurses, licensed practical nurses and nursing assistants providing direct resident care in the facility.

(42) "Owner" means a person with an ownership interest.

(43) "Ownership Interest" means the possession of equity in the capital, the stock, or the profits of an entity.

(44) "Person" means an entity, including an individual, a trust, an estate, a partnership, a corporation, or a state or governmental unit, including associations, joint stock companies and insurance companies, a state, or a political subdivision or instrumentality, including a municipal corporation, as defined in ORS 442.015.

(45) "Pharmacist" has the same meaning as set forth in ORS 689.005.

(46) "Pharmacy" has the same meaning as set forth in ORS 689.005.

(47) "Physician" means a person licensed under ORS chapter 677 as a physician.

(48) "Physician's Assistant" means a person registered under ORS chapter 677 as a physician's assistant.

(49) "Podiatrist" means a person licensed under ORS chapter 677 to practice podiatry.

(50) "Prescription" has the same meaning as set forth in ORS 689.005.

(51) "Public or Private Official" means:

- (a) Physician, naturopathic physician, osteopathic physician, chiropractor, or podiatric physician and surgeon, including any intern or resident;
- (b) Licensed practical nurse, registered nurse, nurse's aide, home health aide, or employee of an in-home health agency;
- (c) Employee of the Department of Human Services, Area Agency on Aging, county health department, community mental health program, developmental disabilities program, or nursing facility;
- (d) Person who contracts to provide services to a nursing facility;
- (e) Peace officer;
- (f) Clergy person;
- (g) Licensed clinical social worker, psychologist, licensed professional counselor, and marriage and family therapist;
- (h) Physical, occupational, speech, or respiratory therapist;
- (i) Senior center employee;
- (j) Information and referral or outreach worker;
- (k) Any public official who comes in contact with elderly persons in the performance of the official's official duties;

(l) Firefighter or emergency medical technician;

(m) Legal counsel for the resident; or

(n) Guardian for, or family member of, the resident.

(52) "Registered Nurse (RN)" means a person licensed under ORS chapter 678.

(53) "Rehabilitative Services" means specialized services by a therapist or a therapist's assistant to a resident to attain optimal functioning, including but not limited to, physical therapy, occupational therapy, speech and language therapy, and audiology.

(54) "Relevant Evidence" means factual information that tends to either prove or disprove the following:

# ADMINISTRATIVE RULES

- (a) Whether abuse or other rule violation occurred;
- (b) How abuse or other rule violation occurred; or
- (c) Who was involved in the abuse or other rule violation.

(55) "Resident" means a person who has been admitted, but not discharged, from the facility.

(56) "Restorative Aide" means a certified nursing assistant primarily assigned to perform therapeutic exercises and activities to maintain or re-establish a resident's optimum physical function and abilities, according to the resident's restorative plan of care and pursuant to OAR 411-086-0150.

(57) "Restorative Services" or "Restorative Nursing" means those measures provided by nursing staff and directed toward re-establishing and maintaining the residents' fullest potential.

(58) "Safety" means the condition of being protected from environmental hazards without compromise to a resident's or legal guardian's choice, or undue sacrifice of the resident's independence.

(59) "Significant Other" means a person designated by the resident or by the court to act on behalf of the resident. If the resident is not capable of such designation, and there is no court-appointed person, then a significant other shall mean a family member or friend who has demonstrated consistent concern for the resident. No rule using this term is intended to allow release of, or access to, confidential information to persons who are not otherwise entitled to such information, or to allow such persons to make decisions that they are not entitled to make on behalf of a resident.

(60) "SPD" means the Department of Human Services, Seniors and People with Disabilities Division.

(61) "Suspected Abuse" means reasonable cause to believe that abuse may have occurred.

(62) "Trusteeship Fund" means a fund created under ORS 441.303 to meet expenses relating to the appointment of a trustee for a nursing facility or a residential care facility.

[Publications: Publications referenced are available from the agency.]  
Stat. Auth.: ORS 410.070, 441.055, 441.615 & 441.637  
Stats. Implemented: ORS 410.070, 441.055, 441.615, 441.630, 441.637, 441.650  
Hist.: SSD 19-1990, f. 8-29-90, cert. ef. 10-1-90; SSD 8-1993, f. & cert. ef. 10-1-93; SSD 1-1995, f. 1-30-95, cert. ef. 2-1-95; SPD 26-2004, f. 7-30-04, cert. ef. 8-1-04; SPD 1-2008(Temp), f. 2-8-08, cert. ef. 3-1-08 thru 8-28-08; SPD 10-2008, f. & cert. ef. 8-28-08; SPD 24-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10

## 411-085-0020

### License Fees, Special Assessment

#### (1) LICENSE APPLICATION FEES.

(a) License application fees may not be prorated for a partial year. The annual license fee is:

- (A) For 1 to 15 beds: \$180
- (B) For 16 to 49 beds: \$260
- (C) For 50 to 99 beds: \$520
- (D) For 100 to 150 beds: \$670
- (E) For more than 150 beds: \$750

(b) All monies received shall be deposited in the Quality Care Fund.

#### (2) SPECIAL TRUST FUND ASSESSMENT.

(a) Whenever the Department determines that the balance in the Trusteeship Fund created by Oregon statute is less than the amount established by the statute, a special assessment is levied against all licensees. The special assessment shall be pro-rated (based upon the annual fee of the licensee) in order to result in collection of an amount that shall result in a Trusteeship Fund balance of no more than the amount set by the statute. In no event may the special assessment be greater than the annual license fee. The special assessment may be levied only once each calendar year.

(b) Monies are disbursed from the Trusteeship Fund in accordance with ORS 441.277 to 441.323.

Stat. Auth.: ORS 410.070 & 441.055  
Stats. Implemented: ORS 441.020, 441.055, 441.303 & 441.615  
Hist.: SSD 19-1990, f. 8-29-90, cert. ef. 10-1-90; SSD 8-1993, f. & cert. ef. 10-1-93; SDD 13-1999, f. 12-30-99, cert. ef. 1-1-00; SPD 26-2004, f. 7-30-04, cert. ef. 8-1-04; SPD 18-2009, f. 12-23-09, cert. ef. 1-1-10; SPD 24-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10

## 411-089-0030

### Civil Penalties

(1) Considerations. In determining the amount of a civil penalty the Division shall consider:

(a) Any prior violations of statute or rule by the facility or licensee which relates to operation of a nursing facility;

(b) The financial benefits, if any, realized by the facility as a result of the violation, such as costs avoided as a result of not having obtained sufficient staffing, equipment or supplies;

(c) The gravity of the violation, including the actual and potential threat to health, safety and well-being of residents, the duration of the threat or number or times the threat occurred, and the number of residents threatened;

(d) The severity of the actual or potential harm caused by the violation, including whether the actual or potential harm included loss of life or serious physical or emotional injury;

(e) The facility's history of correcting violations and preventing recurrence of violations; and

(f) Exhibit 89-1, Civil Penalty Chart, which is incorporated by reference and is a part of this rule.

(2) Single Violation Civil Penalties. Violations of any requirement within any part of the following statutes, rules or sections of the following rules is a violation which may result in a civil penalty after a single occurrence:

(a) Violations involving direct resident care or feeding, or sanitation involving direct resident care, including any violation of the following OARs:

- (A) 411-085-0060 (Specialty Nursing Facilities);
- (B) 411-085-0200(2) (Facility Employees);
- (C) 411-085-0210 — 411-085-0220 (Facility Policies, Quality Assurance);

(D) 411-085-0360 (Abuse);

(E) 411-086-0010 — 411-086-0020 (Administrator, DNS);

(F) 411-086-0040 (except section (3)) (Admission of Residents);

(G) 411-086-0050 — 411-086-0060 (Day Care, Assessment, Care Plan);

(H) 411-086-0110 — 411-086-0150 (Nursing Services);

(I) 411-086-0200 — 411-086-0260 (Physician, Dental, Rehabilitative, Activity, Social, Dietary and Pharmaceutical Services);

(J) 411-086-0300 (except section (6)) (Clinical Records);

(K) 411-086-0310 — 411-086-0360 (Employee Orientation and Training, Disaster Preparation, Infection Control, Smoking, Furnishings and Equipment);

(L) 411-087-0100(1)(a) and (c) (Repair and Cleanliness);

(M) 411-087-0440 (Alarm and Nurse Call Systems).

(b) Violation involving failure to provide staff-to-resident ratio, including any violation of:

(A) 411-086-0030 (except section (1)) (RN Care Manager)

(B) 411-086-0100 (Nursing Staffing).

(c) Violation of any rule adopted pursuant to ORS 441.610, including:

(A) 411-085-0300 — 411-085-0350 (Resident Rights);

(B) 411-086-0040(3) (Advance Directives);

(C) 411-086-0300(6) (Record Retention);

(D) 411-088-0000 — 411-088-0080 (Rights Regarding Transfers).

(d) Violation of ORS 441.605 (Resident Rights), or OAR 411-085-0300 — 411-085-0350 (Resident Rights), any general or final order of the Division.

(3) Civil Penalties Requiring Repeat Violations. Violation of any Division rule not listed in section (2) of this rule is subject to a civil penalty under the following circumstances:

(a) Such violation is determined to exist on two consecutive surveys, inspections or visits; and

(b) The Division prescribed a reasonable time for elimination of the violation at the time of or subsequent to the first citation.

(4) Amount of Civil Penalty:

(a) Violation of any requirement or order listed in section (2) of this rule is subject to a civil penalty of not more than \$500 for each day the violation occurs, unless otherwise provided by this section;

(b) Violation of any requirement listed in section (3) of this rule is subject to a civil penalty of not more than \$500 per violation, unless otherwise provided by this section;

(c) Violation involving resident abuse which resulted in serious injury or death is subject to a civil penalty of not less than \$500 nor more than \$1,000, or as otherwise required by federal law (ORS 441.995(3));

(d) If the Division investigates and makes a finding of abuse arising from deliberate or other than accidental action or inaction that is likely to cause a negative outcome, and if the abuse resulted in the death, serious injury, rape, sexual abuse, or sexual exploitation of a resident, the Division shall impose a civil penalty of not less than \$2,500 for each occurrence of substantiated abuse, not to exceed \$15,000 in any 90-day period (ORS 441.715(1)(c)). For the purposes of this rule, the following definitions apply:

(A) "Serious Injury" means physical injury that creates a substantial risk of death or that causes serious and protracted disfigurement, protracted impairment of health, or protracted loss or impairment of the function of any bodily organ.

(B) "Rape" means rape in the first, second, or third degree as described in ORS 163.355, 163.365, and 163.375.

(C) "Sexual Abuse, including Sexual Exploitation" means any form of nonconsensual sexual contact including but not limited to unwanted or inappropriate touching, sodomy, sexual coercion, sexually explicit photographing, and sexual harassment.

(5) Payment to be Considered Admission of Violation. Unless the Division agrees otherwise, any payment of a civil penalty shall be treated by the Division as a violation of the statutes or rules alleged in the civil penalty notice for which the civil penalty was paid for purposes of history of the facility.

(6) All penalties recovered shall be deposited in the Quality Care Fund.

(7) Notice. The Division's notice of its intent to impose a civil penalty shall include the statements set out in OAR 411-089-0040(3)(a)-(f), and shall also include a statement that if the licensee fails to request a hearing within ten days of the date the notice was mailed, the licensee shall have waived the right to a hearing.

(8) Hearing Request:

(a) Right to Hearing. If the Division issues a notice of intent to impose a civil penalty, the licensee shall be entitled to a hearing in accordance with ORS Chapter 183;



# ADMINISTRATIVE RULES

(b) Request for Hearing. A request for a hearing must be in writing and must be received by the Division within ten (10) days of the date the notice of intent to impose a civil penalty was mailed to the licensee. The hearing request must include an admission or denial of each factual matter alleged in the notice and shall affirmatively allege a short plain statement of each relevant affirmative defense the licensee may have. The Division may extend the time allowed for submission of the admission/denial and affirmative defenses for up to 30 calendar days.

(9) Default Order. If a hearing is not timely requested, or if the licensee withdraws a hearing request or fails to appear at a scheduled hearing, the Division may enter a final order by default imposing the civil penalty. In the event of a default, the Division's file or files on the subject of the civil penalty automatically becomes a part of the record for purposes of proving the Division's prima facie case.

Stat. Auth.: ORS 441.615, 441.637, 441.710, 441.715 & 441.990  
Stats. Implemented: ORS 410.070, 441.615, 441.637, 441.055, 441.715 & 441.990  
Hist.: SSD 19-1990, f. 8-29-90, cert. ef. 10-1-90; SSD 8-1993, f. & cert. ef. 10-1-93; SSD 1-1995, f. 1-30-95, cert. ef. 2-1-95; SPD 24-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10

## 411-089-0075 Temporary Manager

(1) APPOINTMENT. The Division, with the consent of the licensee, may appoint a temporary manager to assume control of the day-to-day operation of the facility in accordance with Oregon Laws 2009, chapter 539, sections 14 through 18. The appointment may be for a period not to exceed six months.

(2) CRITERIA. A temporary manager may be appointed if the Division determines that the health or safety of residents in the facility are, or in the immediate future shall be, in jeopardy based upon:

- (a) The licensee's unwillingness or inability to comply with Division rules in the operation of the facility;
- (b) The imminent insolvency of the facility;
- (c) The Division's revocation or suspension of the license of the facility; or

(d) The Division's determination that the licensee intends to cease operations and to close the facility without adequate arrangements for the relocation of the residents.

(3) DUTIES AND POWERS. The temporary manager has all of the duties and powers, as agreed upon between the Division and the licensee, that are necessary to ensure the safety and well-being of the residents and the continued operation of the facility.

(4) QUALIFICATIONS. In order to qualify for appointment as temporary manager, the prospective appointee must:

- (a) Be familiar with the Division's rules for the operation of the facility to be served;
- (b) Be familiar with the needs of the resident population in the facility to be served; and
- (c) Have a demonstrated history (five year minimum) of operating and managing a similar facility in substantial compliance with Division rules.

Stat. Auth.: ORS 441.615, 441.637, 441.710, 441.715 & 441.990  
Stats. Implemented: ORS 410.070, 441.055, 441.615, 441.637, 441.715 & 441.990  
Hist.: SPD 24-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10

## 411-089-0140 Letters of Determination

Within 60 days of receipt by SPD Central Office of the Investigation Report, the Division shall issue a Letter of Determination.

(1) Content. The Letter of Determination shall:

- (a) Explain the nature of each allegation;
- (b) Include the date and time of each occurrence;
- (c) For each allegation, include a determination of whether the allegation is substantiated, unsubstantiated, or unable to substantiate;
- (d) For each substantiated allegation, state whether the violation was abuse or another rule violation;
- (e) For each substantiated allegation of abuse, explain the Division's determination of responsibility;
- (f) Include a copy of the complaint investigation report;
- (g) State that the complainant, any individual found responsible for abuse, and the facility have 10 days to provide additional or different information; and

(h) Explain, when applicable, if sanctions (e.g., civil penalty, license revocation) are pursued, a formal appeal process shall be available.

(2) Appeal Rights, Nursing Assistant. The Letter of Determination, in cases of substantiated abuse by a nursing assistant, shall explain the following:

- (a) The Division's intent to enter the finding of abuse into the Nursing Assistant Registry;
- (b) The nursing assistant may provide additional information for inclusion in the Nursing Assistant Registry if provided within 10 days;
- (c) The Nursing Assistant Registry;
- (d) The nursing assistant has 10 days to respond in writing with different or additional information, 30 days to request in writing a contested case hearing as provided in ORS 183.411 to 183.470 and the consequences of failure to respond; and

(e) If the opportunity to request a contested case hearing expires without a request for hearing by the nursing assistant, the nursing assistant shall be found responsible for the abuse and the finding shall be entered in the Nursing Assistant Registry.

(3) Distribution.

(a) The Letter of Determination shall be mailed to the facility, the complainant (if known), and the SPD or Type B AAA office;

(b) The Letter shall be sent by certified mail or delivered in person to any nursing assistant found responsible for abuse. In the case of a nursing assistant, notice sent to the nursing assistant's last known address is sufficient to meet the requirements of this rule;

(c) The Letter shall also be mailed to any health related board(s) or agency which certified or licensed a person determined to be responsible for abuse. EXCEPTION: If the party determined to be responsible is a nursing assistant, the Letter may not be mailed to the State Board of Nursing until the nursing assistant has exhausted all his or her appeal rights; and

(d) A copy of the Letter shall be placed in the Division's facility complaint file.

(4) Revision.

(a) The Division may reinvestigate a complaint and/or issue a revised Letter of Determination if the Division determines further information provided by the complainant, accused individual, or facility merits such action.

(b) If the Division issues a revised Letter, the Letter shall be distributed to all persons identified in section (3) of this rule.

(5) Failure to Request Hearing or to Appear.

(a) If the nursing assistant fails to request a contested case hearing in writing within 30 days of the Letter of Determination or, if scheduled to attend the hearing, fails to attend, the Division shall affirm the Letter of Determination and notify the State Board of Nursing of the Division's finding. The abuse finding shall be entered into the Nursing Assistant Registry.

(b) If the nursing assistant is scheduled to appear at a contested case hearing but fails to attend at the scheduled time, or within 15 minutes thereafter, the nursing assistant shall be considered to have waived the right to a hearing. The hearing may be rescheduled if:

(A) A written request to reschedule the hearing is received by the Division within 10 days after the scheduled hearing; and

(B) The causes for not attending at the scheduled time for the hearing and for not requesting a postponement of the hearing prior to the hearing were beyond the control of the nursing assistant.

(6) Judicial Review. The nursing assistant found to be responsible for abuse shall be provided notice of the opportunity for judicial review pursuant to ORS 183.484. This notice shall accompany or be incorporated within the Division's final order regarding the nursing assistant's responsibility for abuse.

Stat. Auth.: ORS 410.070, 441.055 & 441.637

Stats. Implemented: ORS 441.637 & 441.677

Hist.: SSD 1-1995, f. 1-30-95, cert. ef. 2-1-95; Administrative correction, 6-24-99; SPD 24-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10

## 411-089-0150 Administrative Review for Nursing Assistants (Abuse)

If the Division finds a nursing assistant to be responsible for abuse as defined in OAR 411-085-0005, the nursing assistant is entitled to an administrative review if requested in writing within 30 days of the mailing of the Letter of Determination.

(1) Review Panel. The administrative review shall be conducted by a panel of three persons, consisting of:

- (a) One person from the Division's management staff;
- (b) One person who is a registered nurse and is on the staff of or a member of the State Board of Nursing; and
- (c) One person who is on the staff of the Department of Human Services but not on the Division's staff and who has expertise in an area related to nursing care in a facility.

(2) Scheduling:

(a) The review panel shall be conducted in Salem unless the panel directs otherwise;

(b) The panel shall attempt to conduct the review at a time and date convenient to the nursing assistant; and

(c) The panel may allow participation by telephone.

(3) Format of Administrative Review:

(a) The review panel shall consider notarized statements of the nursing assistant and witnesses submitted by the nursing assistant. The nursing assistant may, instead of a notarized statement, submit a statement which concludes with the following: "I hereby swear (or affirm) the above statement is true;" the signature of the author of the statement, and the date the statement is signed.

(b) The nursing assistant may either appear before and address the panel in person, address the panel by telephone at a scheduled time, or submit a written reason why the Letter of Determination should be changed. The panel may ask the nursing assistant questions.

(c) The review panel shall consider the Letter of Determination and all written and oral statements of and submitted by the nursing assistant. The panel may request supplemental information from the Division. A copy of any supplemental information shall be provided to the nursing assistant. The

# ADMINISTRATIVE RULES

nursing assistant shall have an opportunity to respond to any supplementary information before the panel adopts a recommendation.

(d) The panel shall, based upon majority vote, submit a recommendation to the Division administrator or his/her designee identifying the information considered and recommend whether the Letter of Determination should be changed or adopted.

(4) Decision:

(a) Timeframe. The Division administrator or his/her designee shall issue a decision after consideration of the review panel's recommendation. The decision shall be issued within 120 days of the request for review.

(b) Basis. The decision must be supported by substantial evidence in the record.

(c) Content. The decision shall include Findings of Fact and Conclusions as to whether the abuse occurred and whether the nursing assistant is responsible.

(d) Distribution. The written decision shall be mailed to the nursing assistant and the facility. If a nursing assistant is determined by the Division administrator or his/her designee to be responsible for abuse, the Division shall ensure the information is provided to the State Board of Nursing and is placed in the Nursing Assistant Registry within 10 days.

(5) Failure to Request Review or to Appear:

(a) If the nursing assistant fails to request an administrative review in writing within 30 days of the Letter of Determination, or if scheduled to attend the review, fails to attend, the Division shall affirm the Letter of Determination and notify the State Board of Nursing of its finding. The abuse finding shall be entered into the Nursing Assistant Registry.

(b) If the nursing assistant is scheduled to appear, but fails to attend at the scheduled time or within 15 minutes thereafter, the nursing assistant shall be considered to have waived the right to the review. The review may be rescheduled if:

(A) A written request to reschedule the review is received by the Division within 10 days after the scheduled review; and

(B) The cause(s) for not attending at the scheduled time for the review and for not requesting a postponement from the review panel prior to the review were beyond the control of the nursing assistant.

(6) Judicial Review. The nursing assistant found to be responsible for abuse shall be provided notice of the opportunity for judicial review pursuant to ORS 183.484 (judicial review for orders other than contested cases). This notice shall accompany or be incorporated within the administrative review decision.

Stat. Auth.: ORS 410.070, 441.055 & 441.637

Stats. Implemented: ORS 441.637, 441.677 & 441.678

Hist.: SSD 1-1995, f. 1-30-95, cert. ef. 2-1-95; SSD 7-1995(Temp), f. & cert. ef. 7-17-95;

SSD 1-1996, f. & cert. ef. 2-1-96; Suspended by SPD 24-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10

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**Rule Caption:** Services for Individuals with Developmental Disabilities.

**Adm. Order No.:** SPD 25-2009(Temp)

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**Subject:** The Department of Human Services, Seniors and People with Disabilities Division (SPD) is temporarily amending:

• Various rules relating to services for individuals with developmental disabilities to implement House Bill 2442 (2009) by changing the definition of abuse for individuals with developmental disabilities, adding a requirement to inquire of an applicant if the applicant has been found to have committed abuse, adding a require-

ment to prohibit the use of public funds for purposes of employment when an individual has been convicted of certain crimes, and adding a requirement to prohibit hiring an individual when they have been convicted of certain crimes;

• OAR 411-308-0090 to remove language that prohibits the use of Medicaid state plan personal care services in conjunction with long-term support services for children with developmental disabilities; and

• OAR 411-345-0100 to implement a provider service payment limitation effective February 1, 2010 for employment and alternatives to employment services.

**Rules Coordinator:** Christina Hartman—(503) 945-6398

## 411-300-0110

### Definitions

(1) "Abuse" means abuse of a child as defined in ORS 419B.005.

(2) "Activities of Daily Living (ADL)" means activities usually performed in the course of a normal day in a child's life such as eating, dressing and grooming, bathing and personal hygiene, mobility (ambulation and transfer), elimination (toileting, bowel, and bladder management), and cognition and behavior (play and social development).

(3) "Assistant Director" means the assistant director of the Department of Human Services, Seniors and People with Disabilities Division, or that individual's designee.

(4) "Behavior Consultant" means a contractor with specialized skills who develops a behavior support plan.

(5) "Behavior Criteria (Form DHS-0521)" means the assessment tool used by the Seniors and People with Disabilities Division to evaluate the intensity of the challenges and care needs presented by children applying for, or eligible for, children's intensive in-home services, and to determine the service budget for eligible children.

(6) "Billing Provider" means an organization that enrolls and contracts with the Seniors and People with Disabilities Division to provide services through its employees and bills the Seniors and People with Disabilities Division for the provider's services.

(7) "Child" means an individual under the age of 18, eligible for developmental disability services, and accepted for children's intensive in-home services under the ICF/MR Behavioral Waiver.

(8) "CIIS" means children's intensive in-home services.

(9) "Cost Effective" means that in the opinion of the services coordinator, a specific service or item of equipment meets the child's needs and costs less than, or is comparable to, other service or equipment options considered.

(10) "Daily Activity Logs" mean the records of services provided to the child. The content and form of daily activity logs shall be agreed upon by both the child's parent and the services coordinator and documented in the Plan of Care.

(11) "Developmental Disability (DD)" means a disability that originates in the developmental years, that is likely to continue, and significantly impacts adaptive behavior as diagnosed and measured by a qualified professional. Developmental disabilities include mental retardation, autism, cerebral palsy, epilepsy, or other neurological disabling conditions that require training or support similar to that required by individuals with mental retardation, and the disability:

(a) Originates before the individual reaches the age of 22 years, except that in the case of mental retardation, the conditions must be manifested before the age of 18;

(b) Originates in and directly affects the brain and has continued, or must be expected to continue, indefinitely;

(c) Constitutes a significant impairment in adaptive behavior; and

(d) Is not primarily attributed to a mental or emotional disorder, sensory impairment, substance abuse, personality disorder, learning disability, or Attention Deficit Hyperactivity Disorder.

(12) "DHS" means the Department of Human Services.

(13) "Exit" means termination of a child from children's intensive in-home services.

(14) "Family Home" means a child's primary residence that is not under contract with the Department of Human Services to provide services as a licensed or certified foster home, residential care facility, assisted living facility, nursing facility, or other residential support program site.

(15) "Founded Reports" means the Department of Human Services, Children, Adults, and Families Division or Law Enforcement Authority (LEA) determination, 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.

(16) "ICF/MR Behavioral Waiver" means the waiver program granted by the federal Centers for Medicare and Medicaid Services that allows Medicaid funds to be spent on children living in the family home who otherwise would have to be served in an intermediate care facility for the mentally retarded if the waiver program was not available.

# ADMINISTRATIVE RULES

(17) "In-Home Daily Care (IHDC)" means Medicaid state plan funded essential supportive daily care delivered by a qualified provider that enables a child to remain in, or return to, the family home.

(18) "Parent" means biological parent, adoptive parent, stepparent, or legal guardian.

(19) "Plan of Care" means a written document developed and renewed annually for each eligible child by the services coordinator and the parent that describes the individual needs of the child, the needs and resources of the family that impact the child, and how those individual needs shall be met with family and public resources. The Plan of Care includes the Nursing Care Plan when one exists.

(20) "Positive Behavioral Theory and Practice" means a proactive approach to individual behavior and behavior interventions that:

(a) Emphasizes the development of functional alternative behavior and positive behavior intervention;

(b) Uses the least intervention possible;

(c) Ensures that abuse or demeaning interventions are never used; and

(d) Evaluates the effectiveness of behavior interventions based on objective data.

(21) "Primary Caregiver" means the child's parent, guardian, relative, or other non-paid parental figure that provides the direct care of the child at the times that a paid provider is not available.

(22) "Provider or Performing Provider" means the individual who is qualified to receive payment from the Seniors and People with Disabilities Division for in-home daily care that meets the requirements of OAR 411-300-0170. Providers work directly with children. Providers may be employees of billing providers, employees of the parent, or independent contractors.

(23) "Respite" means short-term care and supervision provided on a periodic or intermittent basis because of the temporary absence of, or need for relief of, the primary caregiver.

(24) "Service Budget" means the annual dollar amount allotted for the care of the child based on the behavior criteria level of care determination. The service budget consists of in-home daily care and waived services. The monthly service budget is 1/12th of the annual amount if the Plan of Care is developed for less than a full year. The service budget is flexible and may be distributed as necessary to meet the needs of the child as outlined in the Plan of Care.

(25) "Services Coordinator" means an employee of the Seniors and People with Disabilities Division, who ensures a child's eligibility for children's intensive in-home services and provides assessment, case planning, service implementation, and evaluation of the effectiveness of the services.

(26) "Social Benefit" means a service or financial assistance provided to a family solely intended to assist a child to function in society on a level comparable to that of an individual who does not have a developmental disability. Social benefits are pre-authorized by, and provided according to, the description and financial limits written in an eligible child's Plan of Care. Social benefits may not:

(a) Duplicate benefits and services otherwise available to individuals regardless of developmental disability;

(b) Replace normal parental responsibilities for the child's services, education, recreation, and general supervision;

(c) Provide financial assistance with food, clothing, shelter, and laundry needs common to individuals with or without disabilities;

(d) Replace other governmental or community services available to the child or the child's family; or

(e) Exceed the actual cost of supports that must be provided for the child to be supported in the family home.

(27) "SPD" means the Department of Human Services, Seniors and People with Disabilities Division.

(28) "Substantiated" means an abuse investigation has been completed by the Department of Human Services or its designee and the preponderance of the evidence establishes the abuse occurred.

(29) "Supplant" means take the place of.

(30) "Support" means assistance eligible children and their families require, solely because of the effects of developmental disability on the child, to maintain or increase the child's age-appropriate independence, achieve a child's age-appropriate community presence and participation, and to maintain the child in the family home. Support is flexible and subject to change with time and circumstances.

(31) "These Rules" means the rules in OAR chapter 411, division 300.

(32) "Waivered Services" means a menu of disability related services and supplies, exclusive of in-home daily care and the Oregon Health Plan, that are specifically identified by the Medicaid ICF/MR Behavioral Waiver.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 427.005, 427.007, 430.215

Hist.: SDSL 12-2002, f. 12-26-02, cert. ef. 12-28-02; SPD 19-2003(Temp), f. & cert. ef. 12-11-03 thru 6-7-04; SPD 13-2004, f. & cert. ef. 6-1-04; SPD 11-2009, f. 7-31-09, cert. ef. 8-1-09; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10

## 411-300-0155

### Using Children's Intensive In-Home Services Funds for Certain Purchases is Prohibited

(1) CIIS funds may not be used to support, in whole or in part, the employment in any capacity of a person who has been hired on or after

January 1, 2010, or is subject to criminal records checks after January 1, 2010 as required by administrative rule, and who has been convicted:

(a) Of a crime listed in Exhibit 300-1;

(b) In the last 10 years, of a crime involving the delivery or manufacture of a controlled substance;

(c) Of an attempt, conspiracy, or solicitation to commit a crime described in Exhibit 305-1; or

(d) Of a crime in another jurisdiction that is substantially equivalent to a crime described in Exhibit 305-1.

(2) CIIS funds may not be used for:

(a) Services, supplies, or supports that are illegal, experimental, or determined unsafe for the general public by recognized child and consumer safety agencies;

(b) Services or activities that are carried out in a manner that constitutes abuse of a child;

(c) Services from individuals who engage in verbal mistreatment and subject a child to the use of derogatory names, phrases, profanity, ridicule, harassment, coercion, or intimidation by threatening injury or withholding of services or supports;

(d) Services that restrict a child's freedom of movement by seclusion in a locked room under any condition;

(e) Purchase of family vehicles;

(f) Purchase of service animals or costs associated with the care of service animals;

(g) Health and medical costs that the general public normally must pay including but not limited to:

(A) Medical treatments;

(B) Health insurance co-payments and deductibles;

(C) Prescribed or over-the-counter medications;

(D) Mental health treatments and counseling;

(E) Dental treatments and appliances;

(F) Dietary supplements and vitamins; or

(G) Treatment supplies not related to nutrition, incontinence, or infection control.

(h) Ambulance services;

(i) Legal fees including but not limited to the costs of representation in educational negotiations, establishment of trusts, or creation of guardianship;

(j) Vacation costs for transportation, food, shelter, and entertainment that are not strictly required by the child's disability-created need for personal assistance in all home and community settings that would normally be incurred by anyone on vacation, regardless of disability;

(k) Services, training, or supervision that has not been arranged according to applicable state and federal wage and hour regulations;

(l) Unless under certain conditions and limits specified in the Plan of Care, employee wages or contractor payments for services when the child is not present or available to receive services including but not limited to employee paid time off, hourly "no show" charge, and contractor travel and preparation hours;

(m) Services, activities, materials, or equipment that are not necessary, cost effective, or do not meet the definition of support or social benefit as defined in OAR 411-300-0110;

(n) Education and services provided by schools as part of a free and appropriate education for children and young adults under the Individuals with Disabilities Education Act;

(o) Services, activities, materials, or equipment that SPD determines may be reasonably obtained by the family through other available means such as private or public insurance, philanthropic organizations, or other governmental or public services;

(p) Services or activities for which the legislative or executive branch of Oregon government has prohibited use of public funds;

(q) Purchase of services when there is sufficient evidence to believe that the child's parent or guardian, or the service provider chosen by the child's family, has engaged in fraud or misrepresentation, failed to use resources as agreed upon in the Plan of Care, refused to cooperate with record keeping required to document use of CIIS funds, or otherwise knowingly misused public funds associated with CIIS; or

(r) Notwithstanding abuse as defined in ORS 419B.005, services that, in the opinion of the child's services coordinator, are characterized by failure to act or neglect that leads to or is in imminent danger of causing physical injury, through negligent omission, treatment, or maltreatment of an individual, including but not limited to the failure to provide an individual with adequate food, clothing, shelter, medical services, supervision, or through condoning or permitting abuse of an individual by any other person. However, no individual may be considered neglected for the sole reason that the individual relies on treatment through prayer alone in lieu of medical treatment.

Stat. Auth.: ORS 409.050 & 417.346

Stats. Implemented: ORS 427.005, 427.007, 430.215

Hist.: SPD 11-2009, f. 7-31-09, cert. ef. 8-1-09; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10

## 411-300-0170

### Standards for Providers and Behavior Consultants

(1) PROVIDER QUALIFICATIONS.

(a) A provider must:

# ADMINISTRATIVE RULES

(A) Be at least 18 years of age;  
(B) Maintain a drug-free work place;  
(C) Provide evidence satisfactory to SPD, or its designee, that demonstrates, by background, education, references, skills, and abilities, the provider is capable of safely and adequately providing the services authorized;

(D) Consent to and pass a criminal records check by DHS as described in OAR 407-007-0200 to 407-007-0370, and be free of convictions or founded allegations of abuse by the appropriate agency, including but not limited to DHS. Criminal records rechecks must be performed biannually, or as needed if a report of criminal activity has been received by DHS. A person may not be authorized as a provider or meet qualifications as described in this rule if the person has been hired on or after January 1, 2010, or is subject to criminal records checks after January 1, 2010 as required by administrative rule, and who has been convicted:

(i) Of a crime listed in Exhibit 300-1;  
(ii) In the last 10 years, of a crime involving the delivery or manufacture of a controlled substance;  
(iii) Of an attempt, conspiracy, or solicitation to commit a crime described in Exhibit 300-1; or  
(iv) Of a crime in another jurisdiction that is substantially equivalent to a crime described in Exhibit 300-1.

(E) Not be on the current federal Centers for Medicare and Medicaid Services list of excluded or debarred providers (<http://exclusions.oig.hhs.gov/>);

(F) Not be a primary caregiver, parent, step parent, spouse, or legal guardian of the child;

(G) Sign a Medicaid provider agreement and be enrolled as a Medicaid provider prior to delivery of any in-home daily care services; and

(H) Sign a job description prior to delivery of any in-home daily care services.

(b) A provider is not an employee of DHS or the state of Oregon and is not eligible for state benefits and immunities including but not limited to the Public Employees' Retirement System or other state benefit programs.

(c) If the provider or billing provider is an independent contractor during the terms of the contract, the provider or billing provider must maintain in force at the providers own expense professional liability insurance with a combined single limit of not less than \$1,000,000 for each claim, incident, or occurrence. Professional liability insurance is to cover damages caused by error, omission, or negligent acts related to the professional services.

(A) The provider or billing provider must provide written evidence of insurance coverage to SPD prior to beginning work and at any time upon request by SPD.

(B) There must be no cancellation of insurance coverage without 30 days written notice to SPD.

(d) If the provider is an employee of the parent, the provider must submit to SPD, documentation of immigration status required by federal statute. SPD maintains documentation of immigration status required by federal statute, as a service to the parent who is the employer.

(e) If the provider is an employee of the parent, both the parent and provider must sign a job description. This job description must be provided to the services coordinator prior to the delivery of any services by the employee.

(f) A billing provider that wishes to enroll with SPD must maintain and submit evidence upon initial application and upon request by SPD of the following:

(A) Current criminal records checks on each employee who provides services in a family home that shows the employee has no disqualifying criminal convictions, including crimes as described in section (1)(a)(D) of this rule. Payment may not support, in whole or in part, the employment in any capacity of a person who has been hired on or after January 1, 2010, or is subject to criminal records checks after January 1, 2010 as required by administrative rule, and who has been convicted:

(i) Of a crime listed in Exhibit 300-1;  
(ii) In the last 10 years, of a crime involving the delivery or manufacture of a controlled substance;  
(iii) Of an attempt, conspiracy, or solicitation to commit a crime described in Exhibit 300-1; or  
(iv) Of a crime in another jurisdiction that is substantially equivalent to a crime described in Exhibit 300-1;

(B) Professional liability insurance that meets the requirements of section (1)(c) of this rule; and

(C) Any licensure required of the agency by the state of Oregon or federal law or regulation.

(g) A provider must immediately notify the parent and the services coordinator of injury, illness, accidents, or any unusual circumstances that may have a serious effect on the health, safety, physical, emotional well being, or level of service required by the child for whom CIIS are being provided.

(h) Providers described in ORS chapter 418 are required to report suspected child abuse to their local DHS office or to the police in the manner described in ORS chapter 418.

(2) BEHAVIOR CONSULTANTS. Behavior consultants providing specialized consultations must:

(a) Have education, skills, and abilities necessary to provide behavior consultation services as outlined in OAR 411-300-0150(4);

(b) Have current certification demonstrating completion of training in Oregon Intervention Systems; and

(c) Submit a resume or the equivalent to SPD indicating at least one of the following:

(A) A bachelor's degree in special education, psychology, speech and communication, occupational therapy, recreation, art or music therapy, or a behavioral science or related field and at least one year of experience with people with disabilities who present difficult or dangerous behaviors; or

(B) Three years experience with people with disabilities who present difficult or dangerous behaviors and at least one year of that experience must include providing the services of a behavior consultant as outlined in OAR 411-300-0150(4).

(d) Additional education or experience may be required to safely and adequately provide the services described in OAR 411-300-0150(4).

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 427.005, 427.007, 430.215

Hist.: SDDS 12-2002, f. 12-26-02, cert. ef. 12-28-02; SPD 13-2004, f. & cert. ef. 6-1-04; SPD 11-2009, f. 7-31-09, cert. ef. 8-1-09; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10

## 411-300-0200

### Payment for Children's Intensive In-Home Services

(1) Payment shall be made after CIIS are delivered as authorized and required documentation received by the services coordinator.

(2) Payment may not support, in whole or in part, the employment in any capacity of a person who has been hired on or after January 1, 2010, or is subject to criminal records checks after January 1, 2010 as required by administrative rule, and who has been convicted:

(a) Of a crime listed in Exhibit 300-1;  
(b) In the last 10 years, of a crime involving the delivery or manufacture of a controlled substance;

(c) Of an attempt, conspiracy, or solicitation to commit a crime described in Exhibit 300-1; or

(d) Of a crime in another jurisdiction that is substantially equivalent to a crime described in Exhibit 300-1.

(3) Service budgets shall be individually negotiated by SPD based on the individual needs of the child.

(4) Authorization must be obtained prior to the delivery of any CIIS for those services to be eligible for payment.

(5) Providers must request payment authorization for CIIS provided during an unforeseeable emergency on the first business day following the emergency service. The services coordinator must determine if the service is eligible for payment.

(6) SPD shall make payment to the employee of the parent on behalf of the parent. SPD shall pay the employer's share of the Federal Insurance Contributions Act tax (FICA) and withhold the employee's share of FICA as a service to the parent as the employer.

(7) The delivery of authorized CIIS must occur so that any individual employee of the parent does not exceed 40 hours per work week. SPD shall not authorize services that require the payment of overtime, without prior written authorization by the CIIS supervisor.

(8) SPD shall not authorize or pay for any hours of CIIS provided by an individual provider beyond 16 hours in any 24-hour period. Exceptions require written authorization by the CIIS supervisor.

(9) Holidays are paid at the same rate as non-holidays.

(10) Travel time to reach the job site is not reimbursable.

(11) Requests for payments must be submitted to SPD within three months of the delivery of CIIS.

(12) Payment by SPD for CIIS is considered full payment for the services rendered under Medicaid. Under no circumstances, may the provider or billing provider demand or receive additional payment for these services from the parent or any other source.

(13) Medicaid funds are the payor of last resort. The provider or billing provider must bill all third party resources until all third party resources are exhausted.

(14) SPD reserves the right to make a claim against any third party payer before or after making payment to the provider of CIIS.

(15) SPD may void without cause prior authorizations that have been issued.

(16) Upon submission of the billing form for payment, the provider must comply with:

(a) All rules in OAR chapter 407 and OAR chapter 411;

(b) 45 CFR Part 84 which implements Title V, Section 504 of the Rehabilitation Act of 1973;

(c) Title II and Title III of the Americans with Disabilities Act of 1991; and

(d) Title VI of the Civil Rights Act of 1964.

(17) All billings must be for CIIS provided within the provider's licensure.

# ADMINISTRATIVE RULES

(18) The provider must submit true and accurate information on the billing form. Use of a billing provider does not replace the provider's responsibility for the truth and accuracy of submitted information.

(19) No individual shall submit to SPD:

(a) A false billing form for payment;

(b) A billing form for payment that has been, or is expected to be, paid by another source; or

(c) Any billing form for CIIS that have not been provided.

(20) SPD shall only make payment to the enrolled provider who actually performs the CIIS or the provider's enrolled billing provider. Federal regulations prohibit SPD from making payment to collection agencies.

(21) Payments may be denied if any provisions of these rules are not complied with.

(22) SPD shall recoup all overpayments. The amount to be recovered:

(a) Is the entire amount determined or agreed to by SPD;

(b) Is not limited to the amount determined by criminal or civil proceedings; and

(c) Includes interest to be charged at allowable state rates.

(23) SPD shall deliver to the provider by registered or certified mail, or in person, a request for repayment of the overpayment or notification of recoupment of future payments.

(24) Payment schedules with the interest may be negotiated at the discretion of SPD.

(25) If recoupment is sought from a parent whose child received CIIS, hearing rights in OAR 411-300-0210 apply.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 427.005, 427.007, 430.215

Hist.: SDSL 12-2002, f. 12-26-02, cert. ef. 12-28-02; SPD 11-2009, f. 7-31-09, cert. ef. 8-1-09; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10

## 411-300-0220

### Provider Sanctions for Children's Intensive In-Home Services

(1) Sanctions may be imposed on a provider when any of the following conditions is determined by SPD to have occurred:

(a) The provider has been convicted of any crime that would have resulted in an unacceptable criminal records check upon hiring or issuance of a provider number, including crimes as described in OAR 411-300-0170(1)(a)(D);

(b) The provider has been convicted of unlawfully manufacturing, distributing, prescribing, or dispensing a controlled substance;

(c) The provider's license has been suspended, revoked, otherwise limited, or surrendered;

(d) The provider has failed to safely and adequately provide the CIIS authorized as determined by the parent or the services coordinator;

(e) The provider has had a founded report of child abuse or a substantiated abuse allegation;

(f) The provider has failed to cooperate with any investigation or grant access to or furnish, as requested, records or documentation;

(g) The provider has billed excessive or fraudulent charges or has been convicted of fraud;

(h) The provider has made a false statement concerning conviction of crime or substantiation of abuse;

(i) The provider has falsified required documentation;

(j) The provider has not adhered to the provisions of these rules; or

(k) The provider has been suspended or terminated as a provider by another division within DHS.

(2) SPD may impose the following sanctions on a provider:

(a) Termination from providing CIIS;

(b) Suspension from providing CIIS for a specified length of time or until specified conditions for reinstatement are met and approved by SPD; or

(c) Payments to the provider may be withheld.

(3) If SPD makes a decision to sanction a provider, the provider must be notified by mail of the intent to sanction.

(a) The provider may appeal a sanction by requesting an administrative review by the SPD Assistant Director.

(b) For an appeal to be valid, written notice of the appeal must be received by SPD within 45 days of the date the sanction notice was mailed to the provider.

(c) The provider must appeal a sanction separately from any appeal of audit findings and overpayments.

(4) At the discretion of SPD, providers who have previously been terminated or suspended by any division within DHS may not be re-enrolled as providers of Medicaid services.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 427.005, 427.007, 430.215

Hist.: SDSL 12-2002, f. 12-26-02, cert. ef. 12-28-02; SPD 13-2004, f. & cert. ef. 6-1-04; SPD 11-2009, f. 7-31-09, cert. ef. 8-1-09; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10

## 411-305-0010

### Statement of Purpose, Principles, and Philosophy

(1) PURPOSE. The rules in OAR chapter 411, division 305 prescribe standards, responsibilities, and procedures for providing family support services to children with developmental disabilities and their families within the principles and philosophy that are the foundation of all developmental dis-

ability services. Family support services are a social benefit provided to all children with developmental disabilities who are eligible to receive case management services through a community developmental disability program. Family support services and available funding are intended to reach as many children and families as possible and are individualized to each family. Family support services foster and strengthen flexible networks of community-based, private, public, formal, informal, family-centered, and family-directed supports designed to increase families' abilities to care for children with developmental disabilities and to support the integration and inclusion of children with developmental disabilities into all aspects of community life.

(2) PRINCIPLES AND PHILOSOPHY. Family support services are individualized and built on the principles of family support and self-determination. The principles of family support are based on the belief that all individuals, regardless of disability, chronic illness, or special need, have the right to a permanent and stable family and that supporting families in caring for their children at home is in the best interest of the children, families, and communities. The principles of self-determination are based on the belief that the surest, most cost effective ways to foster and preserve family and community membership may be constructed and managed by those receiving services.

Stat. Auth.: ORS 409.050, 410.070

Stats. Implemented: ORS 427.005, 427.007 & 430.610 - 430.695

Hist.: MHD 5-2003, f. & cert. ef. 7-1-03; Renumbered from 309-041-2000, SPD 20-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 4-2009, f. & cert. ef. 6-1-09; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10

## 411-305-0020

### Definitions

(1) "Abuse" means abuse of a child as defined in ORS 419B.005.

(2) "Activities of Daily Living (ADL)" mean activities usually performed in the course of a normal day in a child's life such as eating, dressing and grooming, bathing and personal hygiene, mobility (ambulation and transfer), elimination (toileting, bowel, and bladder management), and cognition and behavior (play and social development).

(3) "Annual Plan" means the written details of the supports, activities, costs, and resources required for a child to be supported by the family in the family home. The child's Annual Plan articulates decisions and agreements made through a child and family-centered process of planning and information-gathering conducted or arranged for by the child's services coordinator that involves the child (to the extent normal and appropriate for the child's age) and other persons who have been identified and invited to participate by the child's parent or guardian. The child's Annual Plan is the only plan of care required by the Seniors and People with Disabilities Division for a child receiving family support services.

(4) "Assistant Director" means the assistant director of the Department of Human Services, Seniors and People with Disabilities Division, or that person's designee.

(5) "Case Management" means an organized service to assist individuals to select, obtain, and utilize resources, and monitor services.

(6) "Child" means an individual under the age of 18 and eligible for family support services.

(7) "Child and Family-Centered Planning" means a process, either formal or informal, for gathering and organizing information that:

(a) Facilitates the full participation, choice, and control by families of children with developmental disabilities in decisions relating to the supports that meet the priorities of the family;

(b) Responds to the needs of the entire family in a timely and appropriate manner;

(c) Is easily accessible to and usable by families of children with disabilities;

(d) Helps a child and family to determine and describe choices about the child's life and goals and to design strategies for supporting the child and family in pursuit of these goals;

(e) Helps the child, the family, and others chosen by the child or the child's parent or guardian to identify and use existing abilities, relationships, and resources to strengthen naturally occurring opportunities for support in the family home and in the community; and

(f) Is conducted in a manner and setting consistent with the child's and family's needs and preferences, including but not limited to simple interviews with the child and family, informal observations in the family home and community settings, or formally structured meetings.

(8) "Community Developmental Disability Program (CDDP)" means an entity that is responsible for planning and delivery of services for individuals with developmental disabilities in a specific geographic service area of the state operated by or under contract with the Seniors and People with Disabilities Division or a local mental health authority.

(9) "Cost Effective" means that in the opinion of the services coordinator, a specific service or support meets the child's service needs and costs less than, or is comparable to, other service options considered.

(10) "Developmental Disability (DD)" means a disability that originates in the developmental years, that is likely to continue, and significantly impacts adaptive behavior as diagnosed and measured by a qualified professional. Developmental disabilities include mental retardation, autism, cerebral palsy, epilepsy, or other neurological disabling conditions that require

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training or support similar to that required by individuals with mental retardation, and the disability:

(a) Originates before the individual reaches the age of 22 years, except that in the case of mental retardation, the condition must be manifested before the age of 18;

(b) Originates and directly affects the brain and has continued, or must be expected to continue, indefinitely;

(c) Constitutes a significant impairment in adaptive behavior; and

(d) Is not primarily attributed to a mental or emotional disorder, sensory impairment, substance abuse, personality disorder, learning disability, or Attention Deficit Hyperactivity Disorder.

(11) "DHS" means the Department of Human Services.

(12) "Direct Assistance Funds" mean public funds contracted by the Department of Human Services to the community developmental disability program to assist families with purchase of supports for children in family support services according to each child's assessed need and the child's Annual Plan.

(13) "Employer-Related Supports" mean activities that assist a family with directing and supervising provision of services described in a child's Annual Plan. Supports to a family assuming the role of employer include but are not limited to:

(a) Education about employer responsibilities;

(b) Orientation to basic wage and hour issues;

(c) Use of common employer-related tools such as job descriptions; and

(d) Fiscal intermediary services.

(14) "Family" for determining a child's eligibility for family support services as a resident in the family home, for identifying persons who may apply, plan, and arrange for a child's supports, and for determining who may receive family training, means a unit of two or more persons that includes at least one child with developmental disabilities where the primary caregiver is:

(a) Related to the child by blood, marriage, or legal adoption; or

(b) In a domestic relationship where partners share:

(A) A permanent residence;

(B) Joint responsibility for the household in general (e.g. child-rearing, maintenance of the residence, basic living expenses); and

(C) Joint responsibility for supporting a child in the household with developmental disabilities and the child is related to one of the partners by blood, marriage, or legal adoption.

(15) "Family Home" means a child's primary residence that is not licensed, certified by, and under contract with the Department of Human Services as a foster home, residential care facility, assisted living facility, nursing facility, or other residential support program site.

(16) "Family Satisfaction" means the extent to which a service or support meets a need, solves a problem, or adds value for a family, as determined by the family receiving the service or support.

(17) "Family Support" means individualized planning and service coordination, assisting families to access information and supports required by the child for the child to live in the family home, and access to funding when available. Supports, resources, and other assistance are designed to:

(a) Support families in their efforts to raise their children with disabilities in the family home;

(b) Strengthen the role of the family as the primary caregiver;

(c) Support families in determining their needs and in making decisions concerning necessary, desirable, and appropriate services;

(d) Promote the use of existing formal and informal supports and social networks, strengthening natural sources of support, and helping build connections to existing community resources and services; and

(e) Involve youth with disabilities in decision-making about their own lives, consistent with their unique strengths, resources, priorities, concerns, abilities, and capabilities.

(18) "Family Support Policy Oversight Group" means a group appointed by the community developmental disability program to provide consumer-based leadership and advice regarding family support issues such as development of policy, evaluation of services, and use of resources. The Family Support Policy Oversight Group may be a subgroup of an advisory body that has a broader scope or it may be a separate body with a specific focus on family support services.

(19) "Fiscal Intermediary" means a person or entity that receives and distributes direct assistance funds on behalf of the family of an eligible child who employs persons to provide services, supervision, or training in the home or community according to the child's Annual Plan.

(20) "Founded Reports" means the Department of Human Services, Children, Adults, and Families Division or Law Enforcement Authority (LEA) determination, 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.

(21) "General Business Provider" means an organization or entity selected by the parent or guardian of an eligible child, and paid with direct assistance funds that:

(a) Is primarily in business to provide the service chosen by the child's parent or guardian to the general public;

(b) Provides services for the child through employees, contractors, or volunteers; and

(c) Receives compensation to recruit, supervise, and pay the persons who actually provide support for the child.

(22) "Guardian" means a person or agency appointed by the courts that is authorized by the court to make decisions about services for the child.

(23) "Incident Report" means a written report of any injury, accident, act of physical aggression, or unusual incident involving a child.

(24) "Independence" means the extent to which individuals exert control and choice over their own lives.

(25) "Independent Provider" means a person selected by a child's parent or guardian and paid with direct assistance funds that personally provide services to the child.

(26) "Individual" means a child with developmental disabilities for whom services are planned and provided.

(27) "Integration" means:

(a) The use by individuals with developmental disabilities of the same community resources used by and available to other persons;

(b) Participation by individuals in the same community activities in which persons without a developmental disability participate, together with regular contact with persons without a developmental disability; and

(c) Individuals reside in homes that are in proximity to community resources and foster contact with persons in their community.

(28) "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.

(29) "Nursing Care Plan" means a plan of care developed by a nurse that describes the medical, nursing, psychosocial, and other needs of a child and how those needs shall be met. The Nursing Care Plan includes which tasks shall be taught, assigned, or delegated to the qualified provider or family.

(30) "OHP" means the Oregon Health Plan.

(31) "Parent" means biological parent, adoptive parent, or stepparent.

(32) "Plan Year" The initial plan year begins on the start date specified on the child's first Annual Plan after entry into services are authorized by the child's parent or guardian and the services coordinator and ends in 365 days. A plan year may not exceed twelve consecutive months.

(33) "Positive Behavioral Theory and Practice" means a proactive approach to individual behavior and behavior interventions that:

(a) Emphasizes the development of functional alternative behavior and positive behavior intervention;

(b) Uses the least intervention possible;

(c) Ensures that abusive or demeaning interventions are never used; and

(d) Evaluates the effectiveness of behavior interventions based on objective data.

(34) "Primary Caregiver" means the child's parent, guardian, relative, or other non-paid parental figure that provides the direct care of the child at the times that a paid provider is not available.

(35) "Provider Organization" means an entity selected by a child's parent or guardian, and paid with direct assistance funds that:

(a) Is primarily in business to provide supports for individuals with developmental disabilities;

(b) Provides supports for the individual through employees, contractors, or volunteers; and

(c) Receives compensation to recruit, supervise, and pay the persons who actually provide support for the individual.

(36) "Quality Assurance" means a systematic procedure for assessing the effectiveness, efficiency, and appropriateness of services.

(37) "Self-Determination" means a philosophy and process by which individuals with developmental disabilities are empowered to gain control over the selection of support services 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 support services 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 a certain sum of resources in order to purchase support services;

(c) Autonomy. The arranging of resources and personnel, both formal and informal, that shall assist an individual to live a life in the community rich in community affiliations; and

(d) Responsibility. The acceptance of a valued role in an individual's 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 individuals.

(38) "Services Coordinator" means an employee of the community developmental disability program or other agency that contracts with the county or Seniors and People with Disabilities Division, who plans, procures, coordinates, and monitors the child's Annual Plan, and acts as a proponent for children with developmental disabilities and their families.

(39) "Social Benefit" means a service or financial assistance provided to a family solely intended to assist a child to function in society on a level

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comparable to that of a person who does not have such a developmental disability. Social benefits are pre-authorized by and provided according to the description and financial limits written in an eligible child's Annual Plan. Social benefits may not:

(a) Duplicate benefits and services otherwise available to persons regardless of developmental disability;

(b) Replace normal parental responsibilities for the child's services, education, recreation, and general supervision;

(c) Provide financial assistance with food, clothing, shelter, and laundry needs common to persons with or without disabilities;

(d) Replace other governmental or community services available to the child or the child's family; or

(e) Exceed the actual cost of supports that must be provided for the child to be supported in the family home.

(40) "SPD" means the Department of Human Services, Seniors and People with Disabilities Division.

(41) "Substantiated" means an abuse investigation has been completed by the Department of Human Services or its designee and the preponderance of the evidence establishes the abuse occurred.

(42) "Support" means assistance eligible children and their families require, solely because of the effects of developmental disability on the child, to maintain or increase the child's age-appropriate independence, achieve a child's age-appropriate community presence and participation, and to maintain the child in the family home. Support is flexible and subject to change with time and circumstances.

(43) "These Rules" mean the rules in OAR chapter 411, division 305. Stat. Auth.: ORS 409.050, 410.070

Stats. Implemented: ORS 427.005, 427.007 & 430.610 - 430.695

Hist.: MHD 5-2003, f. & cert. ef. 7-1-03; MHD 6-2003(Temp), f. & cert. ef. 7-1-03 thru 12-27-03; Renumbered from 309-041-2010, SPD 20-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 4-2009, f. & cert. ef. 6-1-09; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10

## 411-305-0023

### Family Support Services Administration and Operation

(1) FAMILY LEADERSHIP. The CDDP may appoint a Family Support Policy Oversight Group to advise and assist the CDDP in matters related to family support services such as evaluating the effectiveness of family support services, evaluating family satisfaction with family support services, improving availability of resources to meet children's support needs, and developing the plan for management of the direct assistance funds required by OAR 411-305-0090(1). When the CDDP elects to appoint such a group, the CDDP must develop and have available for review brief written descriptions of the group's purpose and scope, how membership is determined, and what process shall be used to resolve concerns or disagreements between the CDDP and the CDDP's Family Support Policy Oversight Group about the provision of family support services.

(2) SERVICES COORDINATOR TRAINING. The CDDP must provide or arrange for services coordinators to receive SPD-approved training needed to provide family support services, including but not limited to:

(a) Accessing community resources, information, and referral services;

(b) Child and family-centered planning processes;

(c) Employer-related supports and

(d) Individualized budgeting for supports.

(3) FISCAL INTERMEDIARY SERVICES. The CDDP must provide, or arrange a third party to provide, fiscal intermediary services for all families. The fiscal intermediary receives and distributes direct assistance funds on behalf of the family. The responsibilities of the fiscal intermediary include payments to vendors as well as all activities and records related to payroll and payment of employer-related taxes and fees as an agent of families who employ persons to provide services, supervision, or training in the family home or community. In this capacity, the fiscal intermediary may not recruit, hire, supervise, evaluate, dismiss, or otherwise discipline employees.

(4) GENERAL RECORD REQUIREMENTS.

(a) Confidentiality. The CDDP must maintain records of services to individuals in accordance with OAR 411-320-0070, ORS 179.505, ORS 192.515 through 192.518, 45 CFR 205.50, 45 CFR 164.512, Health Insurance Portability and Accountability Act (HIPAA), 42 CFR Part 2 HIPAA, and any DHS administrative rules and policies pertaining to individual service records.

(b) Disclosure. For the purpose of disclosure from individual medical records under these rules, CDDPs under these rules shall be considered "providers" as defined in ORS 179.505(1), and 179.505 shall be applicable.

(A) Access to records by DHS does not require authorization by the family.

(B) For the purposes of disclosure from non-medical individual records, all or portions of the information contained in the non-medical individual records may be exempt from public inspection under the personal privacy information exemption to the public records law set forth in ORS 192.502(2).

(c) Abuse. CDDP and provider organizations must maintain documentation in a separate provider file of inquiry into, and subsequent answer of, whether an independent provider or an employee of a provider organization has been found to have committed abuse. Records must also include any founded reports of child abuse or substantiated allegations of abuse against the independent provider or employee of a provider organization.

(d) Individual records. Records for children who receive family support services must be kept up-to-date and must include:

(A) An easily-accessed summary of basic information as described in OAR 411-320-0070(3) including date of enrollment in family support services as well as the date the child was placed on the wait list for direct assistance funds.

(B) Records related to receipt and disbursement of direct assistance funds, including type of fund used, expenditure authorizations, expenditure verification, copies of CPMS expenditure reports, verification that providers meet requirements of OAR 411-305-0140, and documentation of family acceptance or delegation of record keeping responsibilities outlined in this rule;

(C) Incident reports involving CDDP staff;

(D) Assessments used to determine supports required, preferences, and resources;

(E) The child's Annual Plan and reviews;

(F) Services coordinator correspondence;

(G) Services coordinator progress notes documenting case management activities, action plans, and outcomes; and

(H) Family satisfaction information.

(e) General financial policies and practices. The CDDP must:

(A) Maintain up-to-date accounting records consistent with generally accepted accounting principles that accurately reflect all family support services revenue by source, all expenses by object of expense, and all assets, liabilities, and equities; and

(B) Develop and implement written statements of policy and procedure as are necessary and useful to assure compliance with any DHS administrative rule pertaining to fraud and embezzlement.

(f) Records retention. Records must be retained in accordance with OAR chapter 166, division 150, Secretary of State, Archives Division.

(A) Financial records, supporting documents, statistical records, and all other records (except individual records) must be retained for a minimum of three years after the close of the contract period, or until audited.

(B) Individual records must be kept for a minimum of seven years.

(5) COMPLAINTS AND APPEALS. The CDDP must provide for review of complaints and appeals by or on behalf of children related to family support services as set forth in OAR 411-320-0170(2)(c).

Stat. Auth.: ORS 409.050 & 410.070

Stats. Implemented: ORS 427.005, 427.007, & 430.610 - 430.695

Hist.: MHD 5-2003, f. & cert. ef. 7-1-03; MHD 6-2003(Temp), f. & cert. ef. 7-1-03 thru 12-27-03; Renumbered from 309-041-2150, SPD 20-2003, f. 12-22-03, cert. ef. 12-28-03; Renumbered from 411-305-0150, SPD 4-2009, f. & cert. ef. 6-1-09; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10

## 411-305-0110

### Conditions for Direct Assistance Fund Purchases

(1) A CDDP must only use direct assistance funds to assist families to purchase supports for the purpose defined in OAR 411-305-0010(1) and in accordance with the child's Annual Plan that meets the requirements for development and content in accordance with OAR 411-305-0080.

(2) To be authorized and eligible for payment, all supports and services paid for with direct assistance funds must be determined by the services coordinator to be:

(a) Directly related to the eligible child's developmental disability and support needs;

(b) Used only to purchase goods or services necessary for a child to continue to be supported in the family home;

(c) Cost effective;

(d) Not typical for a family to provide a child of the same age; and

(e) Included in the child's approved Annual Plan and support documents or otherwise allowed in this rule.

(3) Goods and services purchased with direct assistance funds to support specific individual children and families must be provided only as social benefits as defined in OAR 411-305-0020.

(4) The CDDP must arrange for supports purchased with direct assistance funds to be provided:

(a) In settings and under purchasing arrangements and conditions that allow the family to freely redirect direct assistance funds to purchase supports and services from another qualified provider.

(A) The CDDP must provide written instruction about the limits and conditions of group services to families who choose to combine direct assistance funds to purchase services and supports from another qualified provider.

(B) Each child's support expenses must be separately projected, tracked, and expensed, including separate contracts, employment agreements, and timekeeping for staff working with more than one child.

(C) The CDDP must evaluate combined arrangements that result in creation of provider organizations or general business providers to determine whether license or certification is required under Oregon law for the organization to provide services for children.

(b) In a manner consistent with positive behavioral theory and practice and where behavior intervention is not undertaken unless the behavior:

(A) Represents a risk to health and safety of the child or others;

(B) Is likely to continue and become more serious over time;

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- (C) Interferes with community participation;
- (D) Results in damage to property; or
- (E) Interferes with learning, socializing, or vocation.
- (c) In accordance with applicable state and federal wage and hour regulations in the case of personal services, training, and supervision;
- (d) In accordance with applicable state or local building codes in the case of environmental accessibility adaptations to the family home;
- (e) In accordance with Oregon Board of Nursing rules in OAR chapter 851 when services involve performance of nursing services or delegation, teaching, and assignment of nursing tasks; and
- (f) In accordance with OAR 411-305-0140 governing provider qualifications.
- (5) When direct assistance funds are used to purchase services, training, supervision, or other personal assistance for children, the CDDP must require and document that providers are informed of:
  - (a) Mandatory responsibility to report suspected abuse;
  - (b) The CDDP's and provider organization's responsibility to inquire of an independent provider if the independent provider has been found to have committed abuse;
  - (c) Responsibility to immediately notify the child's parent or guardian, or any other person specified by the child's parent or guardian, of any injury, illness, accident, or unusual circumstance that occurs when the provider is providing individual services, training, or supervision that may have a serious effect on the health, safety, physical or emotional well-being, or level of services required;
  - (d) Limits of payment:
    - (A) Direct assistance fund payments for the agreed-upon services are considered full payment and the provider under no circumstances may demand or receive additional payment for these services from the family or any other source.
    - (B) The provider must bill all third party resources before using direct assistance funds unless another arrangement is agreed upon by the CDDP and described in the child's Annual Plan.
    - (c) The provisions of section (8) of this rule regarding sanctions that may be imposed on providers; and
    - (f) The requirement to maintain a drug-free workplace.
  - (6) The method and schedule of payment must be specified in written agreements between the CDDP and the child's parent or guardian and must include:
    - (a) Payment of vendors for authorized purchases and supplies. The CDDP may reimburse families for prior-authorized purchases and supplies agreed upon in the child's Annual Plan with corresponding purchase receipts.
    - (b) Payment of qualified providers of direct care services. The CDDP must issue payment, or arrange through fiscal intermediary services to issue payment, directly to the qualified provider on behalf of the family after approved services described in the child's Annual Plan have been satisfactorily delivered.
    - (7) The CDDP must inform families in writing of special records and procedures required in OAR 411-305-0160 regarding expenditure of direct assistance funds. During development of the child's Annual Plan, the services coordinator must determine the need or preference for the CDDP to provide support with documentation and procedural requirements and must delineate responsibility for maintenance of records in written service agreements.
    - (8) Sanctions for independent providers, provider organizations, and general business providers.
      - (a) A sanction may be imposed on a provider when the CDDP determines that, at some point after the provider's initial qualification and authorization to provide supports purchased with direct assistance funds, the provider has:
        - (A) Been convicted of any crime that would have resulted in an unacceptable criminal records check upon hiring or authorization of service, including crimes as described in OAR 411-305-0140(1);
        - (B) Been convicted of unlawfully manufacturing, distributing, prescribing, or dispensing a controlled substance;
        - (C) Surrendered his or her professional license or had his or her professional license suspended, revoked, or otherwise limited;
        - (D) Failed to safely and adequately provide the authorized services;
        - (E) Had a founded report of child abuse or a substantiated abuse allegation;
        - (F) Failed to cooperate with any DHS or CDDP investigation or grant access to or furnish, as requested, records or documentation;
        - (G) Billed excessive or fraudulent charges or been convicted of fraud;
        - (H) Made false statement concerning conviction of crime or substantiation of abuse;
        - (I) Falsified required documentation;
        - (J) Failed to comply with the provisions of section (5) of this rule and OAR 411-305-0115; or
        - (K) Been suspended or terminated as a provider by another division within DHS.
      - (b) The following sanctions may be imposed on a provider:
        - (A) The provider may no longer be paid with direct assistance funds;

(B) The provider may not be allowed to provide services for a specified length of time or until specified conditions for reinstatement are met and approved by the CDDP or SPD, as applicable; or

(C) The CDDP may withhold payments to the provider.  
(c) If the CDDP makes a decision to sanction a provider, the CDDP must notify the provider by mail of the intent to sanction.

(d) The provider may appeal a sanction within 30 days of the date the sanction notice was mailed to the provider. The provider must appeal a sanction separately from any appeal of audit findings and overpayments.

Stat. Auth.: ORS 409.050, 410.070

Stats. Implemented: ORS 427.005, 427.007, & 430.610 - 430.695

Hist.: MHD 5-2003, f. & cert. ef. 7-1-03; MHD 6-2003(Temp), f. & cert. ef. 7-1-03 thru 12-27-03; Renumbered from 309-041-2110, SPD 20-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 4-2009, f. & cert. ef. 6-1-09; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10

## 411-305-0115

### Using Direct Assistance Funds for Certain Purchases is Prohibited

(1) Direct assistance funds may not be used to support, in whole or in part, the employment in any capacity of a person who has been hired on or after January 1, 2010, or is subject to criminal records checks after January 1, 2010 as required by administrative rule, and who has been convicted:

(a) Of a crime listed in Exhibit 305-1;

(b) In the last 10 years, of a crime involving the delivery or manufacture of a controlled substance;

(c) Of an attempt, conspiracy, or solicitation to commit a crime described in Exhibit 305-1; or

(d) Of a crime in another jurisdiction that is substantially equivalent to a crime described in Exhibit 305-1.

(2) Direct assistance funds may not be used for:

(a) Services, supplies, or supports that are illegal, experimental, or determined unsafe for the general public by recognized child and consumer safety agencies;

(b) Services or activities that are carried out in a manner that constitutes abuse;

(c) Notwithstanding abuse as defined in OAR 411-305-0020, services from persons who engage in verbal mistreatment and subject a child to the use of derogatory names, phrases, profanity, ridicule, harassment, coercion, or intimidation by threatening injury or withholding of services or supports;

(d) Notwithstanding abuse as defined in OAR 411-305-0020, services that restrict a child's freedom of movement by seclusion in a locked room under any condition;

(e) Purchase of family vehicles;

(f) Purchase of service animals or costs associated with the care of service animals;

(g) Health and medical costs that the general public normally must pay, including but not limited to:

(A) Medical treatments;

(B) Health insurance co-payments and deductibles;

(C) Prescribed or over-the-counter medications;

(D) Mental health treatments and counseling;

(E) Dental treatments and appliances;

(F) Dietary supplements and vitamins; or

(G) Treatment supplies not related to nutrition, incontinence, or infection control.

(h) Ambulance services;

(i) Legal fees including but not limited to the costs of representation in educational negotiations, establishment of trusts, or creation of guardianship;

(j) Vacation costs for transportation, food, shelter, and entertainment that are not strictly required by the child's developmental disability-created need for personal assistance in all home and community settings that would normally be incurred by anyone on vacation, regardless of developmental disability;

(k) Services, training, or supervision that has not been arranged according to applicable state and federal wage and hour regulations;

(l) Employee wages or contractor payments for time or services when the child is not present or available to receive services including but not limited to employee paid time off, hourly "no show" charge, and contractor travel and preparation hours;

(m) Services, activities, materials, or equipment that are not necessary, cost effective, or do not meet the definition of support or social benefit;

(n) Education and services provided by schools as part of a free and appropriate education for children and young adults under the Individuals with Disabilities Education Act;

(o) Services, activities, materials, or equipment that the CDDP determines may be reasonably obtained by the family through other available means such as private or public insurance, philanthropic organizations, or other governmental or public services;

(p) Services or activities for which the legislative or executive branch of Oregon government has prohibited use of public funds; or

(q) Purchase of services when there is sufficient evidence to believe that the child's parent or guardian, or the service provider chosen by the child's family, has engaged in fraud or misrepresentation, failed to use resources as agreed upon in the child's Annual Plan, refused to cooperate with record



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keeping required to document use of direct assistance funds, or otherwise knowingly misused public funds associated with family support services.

Stat. Auth.: ORS 409.050, 410.070

Stats. Implemented: ORS 427.005, 427.007, & 430.610 - 430.695

Hist.: MHD 5-2003, f. & cert. ef. 7-1-03; Renumbered from 309-041-2130, SPD 20-2003, f. 12-22-03, cert. ef. 12-28-03; Renumbered from 411-305-0130, SPD 4-2009, f. & cert. ef. 6-1-09; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10

## 411-305-0140

### Standards for Providers Paid with Direct Assistance Funds

Independent providers, provider organizations, and general business providers paid with direct assistance funds must be qualified. At the discretion of SPD, providers who have previously been terminated or suspended by any DHS division may not be authorized as providers of service. Providers must meet the following qualifications:

(1) Each independent provider paid as a contractor, a self-employed person, or an employee of a child's parent or guardian to provide the services listed in OAR 411-305-0120 must:

(a) Be at least 18 years of age;

(b) Have approval to work based on a criminal records check completed by DHS in accordance with OAR 407-007-0200 to 407-007-0370. A person may not be authorized as a provider or meet qualifications as described in this rule if the person has been hired on or after January 1, 2010, or is subject to criminal records checks after January 1, 2010 as required by administrative rule, and who has been convicted:

(A) Of a crime listed in Exhibit 305-1;

(B) In the last 10 years, of a crime involving the delivery or manufacture of a controlled substance;

(C) Of an attempt, conspiracy, or solicitation to commit a crime described in Exhibit 305-1; or

(D) Of a crime in another jurisdiction that is substantially equivalent to a crime described in Exhibit 305-1;

(c) Be legally eligible to work in the United States;

(d) Not be a parent, stepparent, foster parent, or other person legally responsible for the child receiving supports;

(e) Demonstrate by background, education, references, skills, and abilities that he or she is capable of safely and adequately performing the tasks specified on the child's Annual Plan, with such demonstration confirmed in writing by the child's parent or guardian and including:

(A) Ability and sufficient education to follow oral and written instructions and keep any records required;

(B) Responsibility, maturity, and reputable character exercising sound judgment;

(C) Ability to communicate with the child; and

(D) Training of a nature and type sufficient to ensure that the provider has knowledge of emergency procedures specific to the child being cared for;

(f) Hold current, valid, and unrestricted appropriate professional license or certification where services and supervision requires specific professional education, training, and skill;

(g) Understand requirements of maintaining confidentiality and safeguarding information about the child and family;

(h) Not be on the current Centers for Medicare and Medicaid Services list of excluded or debarred providers (<http://exclusions.oig.hhs.gov/>); and

(i) If providing transportation services, have a valid driver's license and proof of insurance, as well as other license or certification that may be required under state and local law depending on the nature and scope of the transportation service.

(2) Nursing consultants must have a current Oregon nursing license and submit a resume to the CDDP indicating the education, skills, and abilities necessary to provide nursing services in accordance with state law, including at least one year of experience with people with developmental disabilities.

(3) Behavior consultants may include but are not limited to autism specialists, licensed psychologists, or other behavioral specialists who:

(a) Have education, skills, and abilities necessary to provide behavior consultation services, including knowledge and experience in developing plans based on positive behavioral theory and practice;

(b) Have received at least two days of training in the Oregon Intervention Services Behavior Intervention System, and have a current certificate; and

(c) Submit a resume to the CDDP indicating at least one of the following:

(A) A bachelor's degree in special education, psychology, speech and communication, occupational therapy, recreation, art or music therapy, or a behavioral science field and at least one year of experience with individuals who present difficult or dangerous behaviors; or

(B) Three years experience with individuals who present difficult or dangerous behaviors and at least one year of that experience must include providing the services of a behavior consultant.

(4) Provider organizations must hold any current license or certification required by Oregon law to provide services to children. In addition, all persons directed by the provider organization as employees, contractors, or volunteers to provide services paid for with direct assistance funds must meet the standards for qualification of independent providers described in section (1) of this rule.

(5) General business providers must hold any current license appropriate to function required by Oregon or federal law or regulation. Services purchased with direct assistance funds must be limited to those within the scope of the general business provider's license. Such licenses include, but are not limited to:

(a) A license under ORS 443.015 for a home health agency;

(b) A license under ORS 443.315 for an in-home care agency;

(c) A current license and bond as a building contractor as required by either OAR chapter 812, Construction Contractor's Board or OAR chapter 808, Landscape Contractors Board, as applicable for a provider of environmental accessibility adaptations involving family home renovation or new construction;

(d) Environmental modification consultants must be licensed general contractors and have experience evaluating homes, assessing the needs of the individual, and developing cost effective plans to make homes safe and accessible;

(e) Public transportation providers must be regulated according to established standards and private transportation providers must have business licenses and drivers licensed to drive in Oregon;

(f) Current retail business license for vendors and medical supply companies providing specialized equipment and supplies, including enrollment as Medicaid providers through the Division of Medical Assistance Programs if vending medical equipment;

(g) A current business license for providers of personal emergency response systems; and

(h) Retail business licenses for vendors and supply companies providing specialized diets.

Stat. Auth.: ORS 409.050, 410.070

Stats. Implemented: ORS 427.005, 427.007, & 430.610 - 430.695

Hist.: MHD 5-2003, f. & cert. ef. 7-1-03; Renumbered from 309-041-2140, SPD 20-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 4-2009, f. & cert. ef. 6-1-09; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10

## 411-308-0020

### Definitions

(1) "Abuse" means abuse of a child as defined in ORS 419B.005.

(2) "Activities of Daily Living (ADL)" means activities usually performed in the course of a normal day in the child's life such as eating, dressing and grooming, bathing and personal hygiene, mobility (ambulation and transfer), elimination (toileting, bowel, and bladder management), and cognition and behavior (play and social development).

(3) "Annual Support Plan" means the written details of the supports, activities, costs, and resources required for a child to be supported by the family in the family home. The child's Annual Support Plan articulates decisions and agreements made through a child- and family-centered process of planning and information-gathering conducted or arranged for by the child's services coordinator that involves the child (to the extent normal and appropriate for the child's age) and other persons who have been identified and invited to participate by the child's parent or guardian. The child's Annual Support Plan is the only plan of care required by the Seniors and People with Disabilities Division for a child receiving long-term support.

(4) "Assistant Director" means the assistant director of the Department of Human Services, Seniors and People with Disabilities Division, or that person's designee.

(5) "Child" means an individual under the age of 18 and eligible for long-term support.

(6) "Community Developmental Disability Program (CDDP)" means an entity that is responsible for planning and delivery of services for individuals with developmental disabilities in a specific geographic service area of the state operated by or under contract with the Seniors and People with Disabilities Division or a local mental health authority.

(7) "Cost Effective" means that a specific service or support meets the child's service needs and costs less than, or is comparable to, other service options considered.

(8) "CPMS" means the Client Processing Monitoring System.

(9) "Crisis" means:

(a) A situation where a child with a developmental disability is at imminent risk of placement outside the child's family home, or has already been placed outside the family home;

(b) The child requires supports due to the developmental disability to be able to safely remain in or return to the family home; and

(c) No alternative resources are available from which to obtain those supports.

(10) "Developmental Disability" means a disability that originates in the developmental years, that is likely to continue, and significantly impacts adaptive behavior as diagnosed and measured by a qualified professional. Developmental disabilities include mental retardation, autism, cerebral palsy, epilepsy, or other neurological disabling conditions that require training or support similar to that required by individuals with mental retardation, and the disability:

(a) Originates before the individual reaches the age of 22 years, except that in the case of mental retardation, the condition must be manifested before the age of 18;

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- (b) Originates and directly affects the brain and has continued, or must be expected to continue, indefinitely;
- (c) Constitutes a significant impairment in adaptive behavior; and
- (d) Is not primarily attributed to a mental or emotional disorder, sensory impairment, substance abuse, personality disorder, learning disability, or Attention Deficit Hyperactivity Disorder.
- (11) "DHS" means the Department of Human Services.
- (12) "Employer-Related Supports" mean activities that assist a family with directing and supervising provision of services described in a child's Annual Support Plan. Supports to a family assuming the role of employer include but are not limited to:
- (a) Education about employer responsibilities;
  - (b) Orientation to basic wage and hour issues;
  - (c) Use of common employer-related tools such as job descriptions; and
  - (d) Fiscal intermediary services.
- (13) "Family" for determining a child's eligibility for long-term support as a resident in the family home, for identifying persons who may apply, plan, and arrange for a child's supports, and for determining who may receive family training, means a unit of two or more persons that includes at least one child with developmental disabilities where the primary caregiver is:
- (a) Related to the child by blood, marriage, or legal adoption; or
  - (b) In a domestic relationship where partners share:
    - (A) A permanent residence;
    - (B) Joint responsibility for the household in general (e.g. child-rearing, maintenance of the residence, basic living expenses); and
    - (C) Joint responsibility for supporting a child in the household with developmental disabilities and the child is related to one of the partners by blood, marriage, or legal adoption.
- (14) "Family Home" means a child's primary residence that is not licensed, certified by, and under contract with the Department of Human Services as a foster home, residential care facility, assisted living facility, nursing facility, or other residential support program site.
- (15) "Fiscal Intermediary" means a person or entity that receives and distributes long-term support funds on behalf of the family of an eligible child according to the child's Annual Support Plan.
- (16) "Founded Reports" means the Department of Human Services, Children, Adults, and Families Division or Law Enforcement Authority (LEA) determination, 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.
- (17) "General Business Provider" means an organization or entity selected by the parent or guardian of an eligible child, and paid with long-term support funds that:
- (a) Is primarily in business to provide the service chosen by the child's parent or guardian to the general public;
  - (b) Provides services for the child through employees, contractors, or volunteers; and
  - (c) Receives compensation to recruit, supervise, and pay the persons who actually provide support for the child.
- (18) "Guardian" means a person or agency appointed by the courts that is authorized by the court to make decisions about services for the child.
- (19) "Incident Report" means a written report of any injury, accident, act of physical aggression, or unusual incident involving a child.
- (20) "Independent Provider" means a person selected by a child's parent or guardian and paid with long-term support funds that personally provide services to the child.
- (21) "Individual" means a person with developmental disabilities for whom services are planned and provided.
- (22) "Long-Term Support" means individualized planning and service coordination, arranging for services to be provided in accordance with Annual Support Plans, and purchase of supports that are not available through other resources that are required for children with developmental disabilities who are eligible for crisis diversion services to live in the family home. Long-term supports are designed to:
- (a) Prevent unwanted out-of-home placement and maintain family unity; and
  - (b) Whenever possible, reunite families with children with developmental disabilities who have been placed out of the home.
- (23) "Long-Term Support Funds" mean public funds contracted by the Department of Human Services to the community developmental disability program and managed by the community developmental disability program to assist families with the purchase of supports for children with developmental disabilities according to each child's Annual Support Plan. Long-term support funds are available only to children for whom the Department of Human Services designates funds to the community developmental disability program by written contracts that specify the children by name.
- (24) "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.
- (25) "Nursing Care Plan" means a plan of care developed by a nurse that describes the medical, nursing, psychosocial, and other needs of a child and how those needs shall be met. The Nursing Care Plan includes which

tasks shall be taught, assigned, or delegated to the qualified provider or family.

- (26) "OHP" means the Oregon Health Plan.
- (27) "Oregon Intervention System (OIS)" means a system of providing training to people who work with designated individuals to intervene physically or non-physically to keep individuals from harming self or others. The Oregon Intervention System is based on a positive approach that includes methods of effective evasion, deflection, and escape from holding.
- (28) "Plan Year" means twelve consecutive months used to calculate what long-term support funds may be made available annually to support an eligible child.
- (29) "Positive Behavioral Theory and Practice" means a proactive approach to individual behavior and behavior interventions that:
- (a) Emphasizes the development of functional alternative behavior and positive behavior intervention;
  - (b) Uses the least intervention possible;
  - (c) Ensures that abusive or demeaning interventions are never used; and
  - (d) Evaluates the effectiveness of behavior interventions based on objective data.
- (30) "Provider Organization" means an entity selected by a child's parent or guardian, and paid with long-term support funds that:
- (a) Is primarily in business to provide supports for individuals with developmental disabilities;
  - (b) Provides supports for the individual through employees, contractors, or volunteers; and
  - (c) Receives compensation to recruit, supervise, and pay the persons who actually provide support for the individual.
- (31) "Quality Assurance" means a systematic procedure for assessing the effectiveness, efficiency, and appropriateness of services.
- (32) "Regional Process" means a standardized set of procedures through which a child's Annual Support Plan and funding to implement the Annual Support Plan are reviewed for approval. The review is performed by a committee of stakeholder representatives from a child's geographic service area and includes review of the potential risk of out-of-home placement, the appropriateness of the proposed supports, and cost effectiveness of the Annual Support Plan.
- (33) "Services Coordinator" means an employee of the community developmental disability program or other agency that contracts with the county or Seniors and People with Disabilities Division, who plans, procures, coordinates, and monitors long-term support, and acts as a proponent for children with developmental disabilities and their families.
- (34) "SPD" means the Department of Human Services, Seniors and People with Disabilities Division.
- (35) "Substantiated" means an abuse investigation has been completed by the Department of Human Services or its designee and the preponderance of the evidence establishes the abuse occurred.
- (36) "Support" means assistance eligible children and their families require, solely because of the effects of developmental disability on the child, to maintain the child in the family home.
- (37) "These Rules" mean the rules in OAR chapter 411, division 308.  
Stat. Auth.: ORS 409.050, 410.070  
Stats. Implemented: ORS 427.005, 427.007, & 430.610 - 430.695  
Hist.: SPD 7-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; SPD 20-2009, f. 12-23-09, cert. ef. 12-28-09; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10
- ## 411-308-0030 Long-Term Support Administration and Operation
- (1) FISCAL INTERMEDIARY SERVICES. The CDDP must provide, or arrange a third party to provide, fiscal intermediary services for all families. The fiscal intermediary receives and distributes long-term support funds on behalf of the family. The responsibilities of the fiscal intermediary include payments to vendors as well as all activities and records related to payroll and payment of employer-related taxes and fees as an agent of families who employ persons to provide services, supervision, or training in the family home or community. In this capacity, the fiscal intermediary may not recruit, hire, supervise, evaluate, dismiss, or otherwise discipline employees.
- (2) GENERAL RECORD REQUIREMENTS.
- (a) Confidentiality. The CDDP must maintain records of services to individuals in accordance with OAR 411-320-0070, ORS 179.505, 192.515 - 192.518, 45 CFR 205.50, 45 CFR 164.512, Health Insurance Portability and Accountability Act (HIPAA), 42 CFR Part 2 HIPAA, and any DHS administrative rules and policies pertaining to individual service records.
  - (b) Disclosure. For the purpose of disclosure from individual medical records under these rules, CDDPs under these rules shall be considered "providers" as defined in ORS 179.505(1) and ORS 179.505 shall be applicable.
    - (A) Access to records by DHS does not require authorization by the family.
    - (B) For the purposes of disclosure from non-medical individual records, all or portions of the information contained in the non-medical individual records may be exempt from public inspection under the personal privacy information exemption to the public records law set forth in ORS 192.502(2).
    - (c) Abuse. CDDP and provider organizations must maintain documentation in a separate provider file of inquiry into, and subsequent answer of,

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whether an independent provider or an employee of a provider organization has been found to have committed abuse. Records must also include any founded reports of child abuse or substantiated allegations of abuse against the independent provider or employee of a provider organization.

(d) Individual records. Records for children who receive long-term support must be kept up-to-date and must include:

(A) An easily-accessed summary of basic information as described in OAR 411-320-0070(3) including date of enrollment in long-term support;

(B) Records related to receipt and disbursement of long-term support funds, including expenditure authorizations, expenditure verification, copies of CPMS expenditure reports, verification that providers meet requirements of OAR 411-308-0130, and documentation of family acceptance or delegation of record keeping responsibilities outlined in this rule. Records must include:

(i) Itemized invoices and receipts to record purchase of any single item;

(ii) Signed contracts and itemized invoices for any services purchased from independent contractors and professionals;

(iii) Written professional support plans, assessments, and reviews to document acceptable provision of behavior support, nursing, and other professional training and consultation services; and

(iv) Pay records, including timesheets signed by both employee and employer, to record employee services.

(C) Incident reports, including those involving CDDP staff;

(D) Assessments used to determine required supports, preferences, and resources;

(E) Documentation of the child's eligibility for crisis services and approval of the child's Annual Support Plan through a regional process;

(F) The child's Annual Support Plan and reviews;

(G) The services coordinator's correspondence and notes related to plan development and outcomes; and

(H) Family satisfaction information.

(e) General financial policies and practices. The CDDP must:

(A) Maintain up-to-date accounting records consistent with generally accepted accounting principles that accurately reflect all long-term support revenue by source, all expenses by object of expense, and all assets, liabilities, and equities; and

(B) Develop and implement written statements of policy and procedure as are necessary and useful to assure compliance with any DHS administrative rule pertaining to fraud and embezzlement.

(f) Records retention. Records must be retained in accordance with OAR chapter 166, division 150, Secretary of State, Archives Division.

(A) Financial records, supporting documents, statistical records, and all other records (except individual records) must be retained for a minimum of three years after the close of the contract period, or until audited.

(B) Individual records must be kept for a minimum of seven years.

(3) COMPLAINTS AND APPEALS. The CDDP must provide for review of complaints and appeals by or on behalf of children related to long-term support as set forth in OAR 411-320-0170(2)(c).

(4) OTHER OPERATING POLICIES AND PROCEDURES. The CDDP must develop and implement such written statements of policy and procedure, in addition to those specifically required by this rule, as are necessary and useful to enable the CDDP to accomplish its objectives and to meet the requirements of these rules and other applicable standards and rules.

Stat. Auth.: ORS 409.050, 410.070

Stats. Implemented: ORS 427.005, 427.007, & 430.610 - 430.670

Hist.: SPD 7-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; SPD 20-2009, f. 12-23-09, cert. ef. 12-28-09; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10

## 411-308-0090

### Managing and Accessing Long-Term Support Funds

(1) Funds contracted to a CDDP by SPD to serve a specifically-named child must only be used to support that specified child. Services must be provided according to each child's approved Annual Support Plan. The funds may only be used to purchase supports described in OAR 411-308-0120. Continuing need for services must be regularly reviewed according to SPD procedures described in these rules.

(2) No child receiving long-term support may concurrently receive services through:

(a) Children's Intensive Behavior Model Waiver;

(b) Direct assistance or immediate access funds under family support;

(c) Medically Fragile Children's Model Waiver;

(d) Medically Involved Children's Model Waiver; or

(e) Long-term support from another CDDP unless short-term concurrent services are necessary when a child moves from one CDDP to another and the concurrent supports are arranged in accordance with OAR 411-308-0060(2).

(3) Children receiving long-term support may receive short-term crisis diversion services provided through the CDDP or region. Children receiving long-term support may utilize family support information and referral services, other than direct assistance or immediate access funds, while receiving long-term support. The CDDP must clearly document the services and demonstrate that the services are arranged in a manner that does not allow duplication of funding.

Stat. Auth.: ORS 409.050, 410.070

Stats. Implemented: ORS 427.005, 427.007, & 430.610 - 430.670

Hist.: SPD 7-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; SPD 20-2009, f. 12-23-09, cert. ef. 12-28-09; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10

## 411-308-0100

### Conditions for Long-Term Support Purchases

(1) A CDDP must only use long-term support funds to assist families to purchase supports for the purpose defined in OAR 411-308-0010(1) and in accordance with the child's Annual Support Plan that meet requirements for development and content in OAR 411-308-0080.

(2) The CDDP must arrange for supports purchased with long-term support funds to be provided:

(a) In settings and under purchasing arrangements and conditions that allow the family to redirect long-term support funds to purchase supports and services from another qualified provider;

(b) In a manner consistent with positive behavioral theory and practice and where behavior intervention is not undertaken unless the behavior:

(A) Represents a risk to health and safety of the child or others;

(B) Is likely to continue and become more serious over time;

(C) Interferes with community participation;

(D) Results in damage to property; or

(E) Interferes with learning, socializing, or vocation.

(c) In accordance with applicable state and federal wage and hour regulations in the case of personal services, training, and supervision;

(d) In accordance with applicable state or local building codes in the case of environmental accessibility adaptations to the family home;

(e) In accordance with Oregon Board of Nursing rules in OAR chapter 851 when services involve performance of nursing services or delegation, teaching, and assignment of nursing tasks; and

(f) In accordance with OAR 411-308-0130 governing provider qualifications.

(3) When long-term support funds are used to purchase services, training, supervision, or other personal assistance for children, the CDDP must require and document that providers are informed of:

(a) Mandatory responsibility to report suspected abuse;

(b) The CDDP's and provider organization's responsibility to inquire of an independent provider if the independent provider has been found to have committed abuse;

(c) Responsibility to immediately notify the child's parent or guardian, or any other person specified by the child's parent or guardian, of any injury, illness, accident, or unusual circumstance involving the child that occurs when the provider is providing individual services, training, or supervision that may have a serious effect on the health, safety, physical or emotional well-being, or level of services required;

(d) Limits of payment:

(A) Long-term support fund payments for the agreed-upon services are considered full payment and the provider under no circumstances may demand or receive additional payment for these services from the family or any other source.

(B) The provider must bill all third party resources before using long-term support funds.

(e) The provisions of section (6) of this rule regarding sanctions that may be imposed on providers;

(f) The requirement to maintain a drug-free workplace; and

(g) The payment process, including payroll or contractor payment schedules or timelines.

(4) The method and schedule of payment must be specified in written agreements between the CDDP and the child's parent or guardian.

(a) Support expenses must be separately projected, tracked, and expensed, including separate contracts, employment agreements, and time-keeping for staff working with more than one eligible child.

(b) The CDDP is specifically prohibited from reimbursement of families for expenses or advancing funds to families to obtain services. The CDDP must issue payment, or arrange through fiscal intermediary services to issue payment, directly to the qualified provider on behalf of the family after approved services described in the child's Annual Support Plan have been satisfactorily delivered.

(5) The CDDP must inform families in writing of records and procedures required in OAR 411-308-0030(2)(c)(B) regarding expenditure of long-term support funds. During development of the child's Annual Support Plan, the services coordinator must determine the need or preference for the CDDP to provide support with documentation and procedural requirements and must delineate responsibility for maintenance of records in written service agreements.

(6) Sanctions for Independent Providers, Provider Organizations, and General Business Providers.

(a) A sanction may be imposed on a provider when the CDDP determines that, at some point after the provider's initial qualification and authorization to provide supports purchased with long-term support funds, the provider has:

(A) Been convicted of any crime that would have resulted in an unacceptable criminal records check upon hiring or authorization of service, including crimes as described in OAR 411-308-0130(1);

# ADMINISTRATIVE RULES

(B) Been convicted of unlawfully manufacturing, distributing, prescribing, or dispensing a controlled substance;

(C) Surrendered his or her professional license or certificate, or had his or her professional license or certificate suspended, revoked, or otherwise limited;

(D) Failed to safely and adequately provide the authorized long-term support services, or other similar services in a DHS program;

(E) Had a founded report of child abuse or a substantiated abuse allegation;

(F) Failed to cooperate with any DHS or CDDP investigation or grant access to or furnish, as requested, records or documentation;

(G) Billed excessive or fraudulent charges or been convicted of fraud;

(H) Made false statement concerning conviction of crime or substantiation of abuse;

(I) Falsified required documentation;

(J) Failed to comply with the provisions of section (4) of this rule and OAR 411-308-0130; or

(K) Been suspended or terminated as a provider by another division within DHS.

(b) The following sanctions may be imposed on a provider:

(A) The provider may no longer be paid with long-term support funds; or

(B) The provider may not be allowed to provide services for a specified length of time or until specified conditions for reinstatement are met and approved by the CDDP or SPD, as applicable.

(c) If the CDDP makes a decision to sanction a provider, the CDDP must notify the provider by mail of the intent to sanction.

(d) The provider may appeal a sanction within 30 days of the date the sanction notice was mailed to the provider. The provider must appeal a sanction separately from any appeal of audit findings and overpayments.

(A) A provider may appeal a sanction by requesting an administrative review by the SPD Assistant Director.

(B) For an appeal regarding provision of Medicaid services, written notice of the appeal must be received by SPD within 30 days of the date the sanction notice was mailed to the provider.

(c) A provider may be immediately suspended by the CDDP as a protective service action or in the case of alleged criminal activity that could pose a danger to the child. The suspension may continue until the issues are resolved.

(f) At the discretion of SPD, providers who have previously been terminated or suspended by any division within DHS may not be authorized as providers of Medicaid services.

Stat. Auth.: ORS 409.050, 410.070

Stats. Implemented: ORS 427.005, 427.007, & 430.610 - 430.670

Hist.: SPD 7-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; SPD 20-2009, f. 12-23-09, cert. ef. 12-28-09; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10

## 411-308-0110

### Using Long-Term Support Funds for Certain Purchases is Prohibited

(1) Long-term support funds may not be used to support, in whole or in part, the employment in any capacity of a person who has been hired on or after January 1, 2010, or is subject to criminal records checks after January 1, 2010 as required by administrative rule, and who has been convicted:

(a) Of a crime listed in Exhibit 308-1;

(b) In the last 10 years, of a crime involving the delivery or manufacture of a controlled substance;

(c) Of an attempt, conspiracy, or solicitation to commit a crime described in Exhibit 308-1; or

(d) Of a crime in another jurisdiction that is substantially equivalent to a crime described in Exhibit 308-1.

(2) Long-term support funds may not be used for:

(a) Services that:

(A) Duplicate benefits and services otherwise available to citizens regardless of disability;

(B) Replace normal parental responsibilities for the child's care, education, recreation, and general supervision;

(C) Provide financial assistance with food, clothing, shelter, and laundry needs common to children with or without disabilities;

(D) Replace other governmental or community services available to the child or the child's family; or

(E) Exceed the actual cost of supports that must be provided for the child to be supported in the family home.

(b) Services, supplies, or supports that are illegal, experimental, or determined unsafe for the general public by recognized child and consumer safety agencies;

(c) Services or activities that are carried out in a manner that constitutes abuse;

(d) Notwithstanding abuse as defined in OAR 411-308-0020, services from persons who engage in verbal mistreatment and subject a child to the use of derogatory names, phrases, profanity, ridicule, harassment, coercion, or intimidation by threatening injury or withholding of services or supports;

(e) Notwithstanding abuse as defined in OAR 411-308-0020, services that restrict a child's freedom of movement by seclusion in a locked room under any condition;

(f) Purchase of family vehicles;

(g) Purchase of service animals or costs associated with the care of service animals;

(h) Health and medical costs that the general public normally must pay, including but not limited to:

(A) Medical or therapeutic treatments;

(B) Health insurance co-payments and deductibles;

(C) Prescribed or over-the-counter medications;

(D) Mental health treatments and counseling;

(E) Dental treatments and appliances;

(F) Dietary supplements and vitamins; or

(G) Special diet or treatment supplies not related to incontinence or infection control.

(i) Ambulance services;

(j) Legal fees including but not limited to the costs of representation in educational negotiations, establishment of trusts, or creation of guardianship;

(k) Vacation costs or any costs associated with the vacation;

(l) Services, training, support, or supervision that has not been arranged according to applicable state and federal wage and hour regulations;

(m) Employee wages or contractor payments for time or services when the child is not present or available to receive services including but not limited to employee paid time off, hourly "no show" charge, and contractor travel and preparation hours;

(n) Services, activities, materials, or equipment that are not necessary, cost effective, or do not meet the definition of support;

(o) Education and services provided by schools as part of a free and appropriate education for children and young adults under the Individuals with Disabilities Education Act;

(p) Services, activities, materials, or equipment that the CDDP determines may be obtained by the family through other available means such as private or public insurance, philanthropic organizations, or other governmental or public services;

(q) Services or activities for which the legislative or executive branch of Oregon government has prohibited use of public funds; or

(r) Purchase of services when there is sufficient evidence to believe that the child's parent or guardian, or the service provider chosen by the child's family, has engaged in fraud or misrepresentation, failed to use resources as agreed upon in the child's Annual Support Plan, refused to cooperate with record keeping required to document use of long-term support funds, or otherwise knowingly misused public funds associated with long-term support.

Stat. Auth.: ORS 409.050, 410.070

Stats. Implemented: ORS 427.005, 427.007, & 430.610 - 430.670

Hist.: SPD 7-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; SPD 20-2009, f. 12-23-09, cert. ef. 12-28-09; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10

## 411-308-0130

### Standards for Providers Paid with Long-Term Support Funds

Independent providers, provider organizations, and general business providers paid with long-term support funds must be qualified. At the discretion of SPD, providers who have previously been terminated or suspended by any DHS division may not be authorized as providers of service. Providers must meet the following qualifications:

(1) Each independent provider paid as a contractor, a self-employed person, or an employee of a child's parent or guardian to provide the services listed in OAR 411-308-0120 must:

(a) Be at least 18 years of age;

(b) Have approval to work based on a criminal records check completed by DHS in accordance with OAR 407-007-0200 to 407-007-0370. A person may not be authorized as a provider or meet qualifications as described in this rule if the person has been hired on or after January 1, 2010, or is subject to criminal records checks after January 1, 2010 as required by administrative rule, and who has been convicted:

(A) Of a crime listed in Exhibit 308-1;

(B) In the last 10 years, of a crime involving the delivery or manufacture of a controlled substance;

(C) Of an attempt, conspiracy, or solicitation to commit a crime described in Exhibit 308-1; or

(D) Of a crime in another jurisdiction that is substantially equivalent to a crime described in Exhibit 308-1.

(c) Be legally eligible to work in the United States;

(d) Not be a parent, adoptive parent, stepparent, foster parent, or other person legally responsible for the child receiving supports;

(e) Demonstrate by background, education, references, skills, and abilities that he or she is capable of safely and adequately performing the tasks specified on the child's Annual Support Plan, with such demonstration confirmed in writing by the child's parent or guardian and including:

(A) Ability and sufficient education to follow oral and written instructions and keep any records required;

(B) Responsibility, maturity, and reputable character exercising sound judgment;

(C) Ability to communicate with the child; and

(D) Training of a nature and type sufficient to ensure that the provider has knowledge of emergency procedures specific to the child being cared for.

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(f) Hold current, valid, and unrestricted appropriate professional license or certification where services and supervision requires specific professional education, training, and skill;

(g) Understand requirements of maintaining confidentiality and safeguarding information about the child and family;

(h) Not be on the current Centers for Medicare and Medicaid Services list of excluded or debarred providers; and

(i) If transporting the child, have a valid driver's license and proof of insurance, as well as other license or certification that may be required under state and local law depending on the nature and scope of the transportation.

(2) Nursing consultants must have a current Oregon nursing license and submit a resume to the CDDP indicating the education, skills, and abilities necessary to provide nursing services in accordance with state law.

(3) Behavior consultants may include but are not limited to autism specialists, licensed psychologists, or other behavioral specialists who:

(a) Have education, skills, and abilities necessary to provide behavior consultation services, including knowledge and experience in developing plans based on positive behavioral theory and practice;

(b) Have received at least two days of training in OIS and have a current certificate; and

(c) Submit a resume to the CDDP indicating at least one of the following:

(A) A bachelor's degree in special education, psychology, speech and communication, occupational therapy, recreation, art or music therapy, or a behavioral science field and at least one year of experience with individuals who present difficult or dangerous behaviors; or

(B) Three years experience with individuals who present difficult or dangerous behaviors and at least one year of that experience must include providing the services of a behavior consultant.

(4) Provider organizations must hold any current license or certification required by Oregon law to provide services to children. In addition, all persons directed by the provider organization as employees, contractors, or volunteers to provide services paid for with long-term support funds must meet the standards for qualification of independent providers described in section (1) of this rule.

(5) General business providers must hold any current license appropriate to function required by Oregon or federal law or regulation. Services purchased with long-term support funds must be limited to those within the scope of the general business provider's license. Such licenses include but are not limited to:

(a) A license under ORS 443.015 for a home health agency;

(b) A license under ORS 443.315 for an in-home care agency;

(c) A current license and bond as a building contractor as required by either OAR chapter 812, Construction Contractor's Board, or OAR chapter 808, Landscape Contractors Board, as applicable for a provider of environmental accessibility adaptations involving home renovation or new construction;

(d) Environmental modification consultants must be licensed general contractors and have experience evaluating homes, assessing the needs of the individual, and developing cost effective plans to make homes safe and accessible;

(e) Current retail business license for vendors and medical supply companies providing specialized equipment and supplies, including enrollment as Medicaid providers through the Division of Medical Assistance Program if vending medical equipment; and

(f) A current business license for providers of personal emergency response systems.

Stat. Auth.: ORS 409.050, 410.070

Stats. Implemented: ORS 427.005, 427.007, & 430.610 - 430.670

Hist.: SPD 7-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; SPD 20-2009, f. 12-23-09, cert. ef. 12-28-09; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10

## 411-320-0020

### Definitions

(1) "24-Hour Residential Program" means a comprehensive residential program licensed by the Seniors and People with Disabilities Division under ORS 443.410 to provide residential care and training to individuals with developmental disabilities.

(2) "Abuse" means:

(a) Abuse of a child as defined in ORS 419B.005 and abuse as defined in OAR 407-045-0260 when a child resides in:

(A) Homes or facilities licensed to provide 24-hour residential services for children with developmental disabilities; or

(B) Agencies licensed or certified by the Seniors and People with Disabilities Division to provide proctor foster care for children with developmental disabilities.

(b) Abuse of an adult as defined in OAR 407-045-0260.

(3) "Abuse Investigation and Protective Services" means 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..

(4) "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.

(5) "Adaptive Behavior" means the degree to which an individual meets the standards of personal independence and social responsibility expected for age and culture group. Other terms used to describe adaptive behavior include but are not limited to adaptive impairment, ability to function, daily living skills, and adaptive functioning. Adaptive behaviors are everyday living skills including but not limited to walking (mobility), talking (communication), getting dressed or toileting (self-care), going to school or work (community use), and making choices (self-direction).

(a) Adaptive behavior is measured by a standardized test administered by a psychologist, social worker, or other professional with a graduate degree and specific training and experience in individual assessment, administration, and test interpretation of adaptive behavior scales for individuals with developmental disabilities.

(b) "Significant impairment" in adaptive behavior means a composite score of at least two standard deviations below the norm or two or more areas of functioning that are at least two standard deviations below the norm including but not limited to communication, mobility, self-care, socialization, self-direction, functional academics, or self-sufficiency as indicated on a standardized adaptive test.

(6) "Administrative Review" means the formal process that is used by the Seniors and People with Disabilities Division when an individual or an individual's representative is not satisfied with:

(a) A developmental disability services eligibility determination; or

(b) The decision made by the community developmental disability program or support services brokerage about a complaint involving the provision of services or a service provider.

(7) "Adult" means an individual 18 years or older with developmental disabilities.

(8) "Advocate" means a person other than paid staff who has been selected by the individual, or by the individual's legal representative, to help the individual understand and make choices in matters relating to identification of needs and choices of services, especially when rights are at risk or have been violated.

(9) "Annual Plan" means:

(a) A written summary the services coordinator completes for an individual 18 years or older who is not receiving support services or comprehensive services; or

(b) The written details of the supports, activities, costs, and resources required for a child receiving family support services.

(10) "Assistant Director" means the assistant director of the Department of Human Services, Seniors and People with Disabilities Division, or that person's designee.

(11) "Care" means supportive services including but not limited to provision of room and board, supervision, protection, and assistance in bathing, dressing, grooming, eating, management of money, transportation, or recreation. The term "care" is synonymous with "services".

(12) "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.

(13) "Child" means an individual under the age of 18 that has a provisional determination of developmental disability.

(14) "Choice" means the individual's expression of preference, opportunity for, and active role in decision-making related to the selection of assessments, services, service providers, goals and activities, and verification of satisfaction with these services. Choice may be communicated verbally, through sign language, or by other communication methods.

(15) "Community Developmental Disability Program (CDDP)" means an entity that is responsible for planning and delivery of services for individuals with developmental disabilities in a specific geographic service area of the state operated by or under a contract with the Seniors and People with Disabilities Division or a local mental health authority.

(16) "Community Mental Health and Developmental Disability Program (CMHDDP)" means an entity that operates or contracts for all services for individuals with mental or emotional disturbances, drug abuse problems, developmental disabilities, and alcoholism and alcohol abuse problems under the county financial assistance contract with the Department of Human Services.

(17) "Complaint" means a verbal or written expression of dissatisfaction with services or service providers.

(18) "Complaint Investigation" means an investigation of any complaint that has been made to a proper authority that is not covered by an abuse investigation.

(19) "Comprehensive Services" mean a package of developmental disability services and supports that include one of the following living arrangements regulated by the Seniors and People with Disabilities Division alone or in combination with any associated employment or community inclusion program regulated by the Seniors and People with Disabilities Division:

(a) Twenty-four hour residential services including but not limited to services provided in a group home, foster home, or through a supported living program; or

(b) In-home supports provided to an adult in the individual or family home costing more than the individual cost limit for support services.

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(c) Comprehensive services do not include support services for adults enrolled in support services brokerages or for children enrolled in long-term supports for children or children's intensive in-home services.

(20) "County of Origin" means the individual's county of residence, unless a minor, then county of origin means the county where the jurisdiction of the child's guardianship exists.

(21) "Crisis" means:

(a) A situation as determined by a qualified services coordinator that would result in civil court commitment under ORS 427.215 to 427.306 and for which no appropriate alternative resources are available; or

(b) Risk factors described in OAR 411-320-0160(2) are present for which no appropriate alternative resources are available.

(22) "Crisis Diversion Services" mean short-term services provided for up to 90 days, or on a one-time basis, directly related to resolving a crisis, and provided to, or on behalf of, an individual eligible to receive crisis services.

(23) "Crisis Plan" means the community developmental disability program or regional crisis diversion program generated document, serving as the justification for, and the authorization of crisis supports and expenditures pertaining to an individual receiving crisis services provided under these rules.

(24) "Current Documentation" means documentation relating to an individual's developmental disability in regards to the individual's functioning within the last three years. Current documentation may include but is not limited to annual plans, behavior support plans, educational records, medical assessments related to the developmental disability, psychological evaluations, and adaptive behavior assessments.

(25) "Developmental Disability (DD)" means a disability that originates in the developmental years, that is likely to continue, and significantly impacts adaptive behavior as diagnosed and measured by a qualified professional. Developmental disabilities include mental retardation, autism, cerebral palsy, epilepsy, or other neurological disabling conditions that require training or support similar to that required by individuals with mental retardation, and the disability:

(a) Originates before the individual reaches the age of 22 years, except that in the case of mental retardation, the condition must be manifested before the age of 18;

(b) Originates and directly affects the brain and has continued, or must be expected to continue, indefinitely;

(c) Constitutes a significant impairment in adaptive behavior; and

(d) Is not primarily attributed to a mental or emotional disorder, sensory impairment, substance abuse, personality disorder, learning disability, or Attention Deficit Hyperactivity Disorder (ADHD).

(26) "DHS" means the Department of Human Services.

(27) "DHS Quality Management Strategy" means the Department of Human Services' Quality Assurance Plan that includes the quality assurance strategies for SPD ([http://www.oregon.gov/DHS/spd/qa/app\\_h\\_qa.pdf](http://www.oregon.gov/DHS/spd/qa/app_h_qa.pdf)).

(28) "Eligibility Determination" means a decision by a community developmental disability program or by the Seniors and People with Disabilities Division regarding a person's eligibility for developmental disability services pursuant to OAR 411-320-0080 and is either a decision that a person is eligible or ineligible for developmental disability services.

(29) "Eligibility Specialist" means an employee of the community developmental disability program or other agency that contracts with the county or Seniors and People with Disabilities Division to determine developmental disability eligibility.

(30) "Entry" means admission to a Seniors and People with Disabilities Division-funded developmental disability service provider.

(31) "Exit" means either termination from a Seniors and People with Disabilities Division-funded developmental disability service provider or transfer from one Seniors and People with Disabilities Division-funded program to another. Exit does not mean transfer within a service provider's program within a county.

(32) "Family Member" means husband or wife, 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.

(33) "Guardian" means a parent for individuals under 18 years of age, or a person or agency appointed and authorized by the courts to make decisions about services for an individual.

(34) "Health Care Provider" means a 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.

(35) "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.

(36) "Hearing" means the formal process following an action that would terminate, suspend, reduce, or deny a service. This is a formal process required by federal law (42 CFR 431.200-250). A hearing is also known as a Medicaid Fair Hearing, Contested Case Hearing, and Administrative Hearing.

(37) "Home" means an individual's primary residence that is not under contract with the Department of Human Services to provide services to an

individual as a licensed or certified foster home, residential care facility, assisted living facility, nursing facility, or other residential support program site.

(38) "Imminent Risk" means:

(a) An adult who is in crisis and shall be civilly court-committed to the Department of Human Services under ORS 427.215 to 427.306 within 60 days without the use of crisis diversion services; or

(b) A child who is in crisis and shall require out-of-home placement within 60 days without the use of crisis diversion services.

(39) "Incident Report" means a written report of any unusual incident involving an individual.

(40) "Independence" means the extent to which individuals with developmental disabilities exert control and choice over their own lives.

(41) "Individual" means an adult or a child with developmental disabilities for whom services are planned and provided.

(42) "Individualized Education Plan (IEP)" means a written plan of instructional goals and objectives in conference with the teacher, parent or guardian, student, and a representative of the school district.

(43) "Individual Support Plan (ISP)" means the written details of the supports, activities, and resources required for an individual to achieve personal goals. The Individual Support Plan is developed at minimum annually to reflect decisions and agreements made during a person-centered process of planning and information gathering. The Individual Support Plan is the individual's plan of care for Medicaid purposes.

(44) "Individual Support Plan (ISP) Team" means a team composed of the individual served, agency representatives who provide service to the individual (if appropriate for in-home supports), the guardian (if any), the services coordinator, and may include family or other persons requested to develop the Individual Support Plan or requested by the individual.

(45) "Integration" means:

(a) The use by individuals with developmental disabilities of the same community resources that are used by and available to other persons in the community;

(b) Participation in the same community activities in which persons without a developmental disability participate, together with regular contact with persons without a developmental disability; and

(c) Individuals with developmental disabilities live in homes that are in proximity to community resources and foster contact with persons in their community.

(46) "Intellectual Functioning" means functioning as assessed by a qualified professional using one or more individually administered general intelligence tests.

(47) "Legal Representative" means the parent, if the individual is under age 18, unless the court appoints another person or agency to act as guardian. For those individuals over the age of 18, a legal representative means an attorney at law who has been retained by or for an individual, or a person or agency authorized by the court to make decisions about services for the individual.

(48) "Local Mental Health Authority (LMHA)" means:

(a) The county court or board of county commissioners of one or more counties that operate a community mental health and developmental disability program;

(b) The tribal council in the case of a Native American reservation;

(c) The board of directors of a public or private corporation if the county declines to operate or contract for all or part of a community mental health and developmental disability program; or

(d) The advisory committee for the community developmental disability program covering a geographic service area when managed by the Seniors and People with Disabilities Division.

(49) "Majority Agreement" means for the purpose of entry, exit, transfer, and annual Individual Support Plan team meetings, that no one member of the Individual Support Plan team has the authority to make decisions for the team unless so authorized by the team process. Service providers, families, community developmental disability programs, advocacy agencies, or individuals are considered as one member of the Individual's Support Plan team for the purpose of reaching majority agreement.

(50) "Management Entity" means the community developmental disability program or private corporation that operates the regional crisis diversion program, including acting as the fiscal agent for regional crisis diversion funds and resources.

(51) "Mandatory Abuse Reporter" means any public or private official who, while acting in an official capacity, comes in contact with and has reasonable cause to believe that an individual with developmental disabilities has suffered abuse, or that any person with whom the official comes in contact, while acting in an official capacity, has abused an individual with developmental disabilities. Pursuant to ORS 430.765(2), psychiatrists, psychologists, clergy, and attorneys are not mandatory reporters with regard to information received through communications that are privileged under ORS 40.225 to 40.295.

(52) "Mechanical Restraint" means any mechanical device, material, object, or equipment that is attached or adjacent to an individual's body that the individual cannot easily remove or easily negotiate around that restricts freedom of movement or access to the individual's body.

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(53) "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.

(54) "Mental Retardation" means significantly sub-average general intellectual functioning defined as intelligence quotient's (IQ's) under 70 as measured by a qualified professional and existing concurrently with significant impairment in adaptive behavior that are manifested during the developmental period, prior to 18 years of age. Individuals of borderline intelligence, IQ's 70-75, may be considered to have mental retardation if there is also significant impairment of adaptive behavior as diagnosed and measured by a qualified professional. The adaptive behavior must be directly related to the issues of mental retardation. Definitions and classifications must be consistent with the "Manual of Terminology and Classification in Mental Retardation" by the American Association on Mental Deficiency, 1977 Revision.

(a) Mild mental retardation is used to describe the degree of retardation when intelligence test scores are 50 to 69. Individuals with IQ's in the 70-75 range may be considered as having mental retardation if there is significant impairment in adaptive behavior.

(b) Moderate mental retardation is used to describe the degree of retardation when intelligence test scores are 35 to 49.

(c) Severe mental retardation is used to describe the degree of retardation when intelligence test scores are 20 to 34.

(d) Profound mental retardation is used to describe the degree of retardation when intelligence test scores are below 20.

(55) "Monitoring" means the periodic review of the implementation of services identified in the Individual Support Plan or annual summary, and the quality of services delivered by other organizations.

(56) "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.

(57) "OIT" means the Department of Human Services, Office of Investigations and Training.

(58) "Oregon Intervention System (OIS)" means a system of providing training to people who work with designated individuals to intervene physically or non-physically to keep individuals from harming self or others. The Oregon Intervention System is based on a proactive approach that includes methods of effective evasion, deflection, and escape from holding.

(59) "Physical Restraint" means any manual physical holding of, or contact with an individual that restricts the individual's freedom of movement.

(60) "Physician" means a person licensed under ORS chapter 677 to practice medicine and surgery.

(61) "Physician Assistant" means a person licensed under ORS 677.505 to 677.525.

(62) "Plan of Care" means a written document developed for each individual by the support team using a person-centered approach that describes the supports, services, and resources provided or accessed to address the needs of the individual.

(63) "Productivity" means:

(a) Engagement in income-producing work by an individual with developmental disabilities that is measured through improvements in income level, employment status, or job advancement; or

(b) Engagement by an individual with developmental disabilities in work contributing to a household or community.

(64) "Protection" and "Protective Services" means necessary actions taken as soon as possible to prevent subsequent abuse or exploitation of the individual, to prevent self-destructive acts, and to safeguard an individual's person, property, and funds.

(65) "Psychologist" means:

(a) A person possessing a doctorate degree in psychology from an accredited program with course work in human growth and development, tests, and measurement; or

(b) A state certified school psychologist.

(66) "Psychotropic Medication" means a medication whose intended effect is to affect or alter thought processes, mood, or behavior. Psychotropic medication includes but is not limited to anti-psychotic, antidepressant, anxiolytic (anti-anxiety), and behavior medications. Because a medication may have many different effects, the medication's classification depends upon its stated, intended effect when prescribed.

(67) "Qualified Professional" means a:

(a) Licensed clinical psychologist (Ph.D., Psy.D.) or school psychologist;

(b) Medical doctor (MD); or

(c) Doctor of osteopathy (DO).

(68) "Region" means a group of Oregon counties defined by the Seniors and People with Disabilities Division that have a designated management entity to coordinate regional crisis and backup services and be the recipient and administration of funds for those services.

(69) "Regional Crisis Diversion Program" means the regional coordination of the management of crisis diversion services for a group of designated counties that is responsible for the management of the following developmental disability services:

(a) Crisis intervention services;

(b) Evaluation of requests for new or enhanced services for certain groups of individuals eligible for developmental disability services; and

(c) Other developmental disability services that the counties comprising the region agree shall be delivered more effectively or automatically on a regional basis.

(70) "Respite" means short-term care and supervision provided to an individual on a periodic or intermittent basis because of the temporary absence of, or need for relief of, the primary care giver.

(71) "Restraint" means any physical hold, device, or chemical substance that restricts, or is meant to restrict, the movement or normal functioning of an individual.

(72) "Review" means a request for reconsideration of a decision made by a service provider, community developmental disability program, support services brokerage, or the Seniors and People with Disabilities Division.

(73) "Service Element" means a funding stream to fund program or services including but not limited to foster care, 24-hour residential, case management, supported living, support services, crisis diversion services, in-home comprehensive services, or family support.

(74) "Service Provider" means a public or private community agency or organization that provides recognized mental health or developmental disability services and is approved by the Seniors and People with Disabilities Division, or other appropriate agency, to provide these services. The term "provider" or "program" is synonymous with "service provider."

(75) "Services Coordinator" means an employee of the community developmental disability program or other agency that contracts with the county or Seniors and People with Disabilities Division, who is selected to plan, procure, coordinate, monitor Individual Support Plan services, and to act as a proponent for individuals with developmental disabilities. The term "case manager" is synonymous with "services coordinator".

(76) "SPD" means the Department of Human Services, Seniors and People with Disabilities Division.

(77) "State Training Center" means the Eastern Oregon Training Center.

(78) "Support" means assistance that individuals require, solely because of the affects of developmental disability, to maintain or increase independence, achieve community presence and participation, and improve productivity. Support is flexible and subject to change with time and circumstances.

(79) "Support Services 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 support services for individuals with developmental disabilities.

(80) "Support Team" means a group, composed of members as determined by an individual receiving services or the individual's legal guardian, that participates in the development of the individual's plan of care.

(81) "These Rules" mean the rules in OAR chapter 411, division 320.

(82) "Transfer" means movement of an individual from a service site to another service site within a county, administered by the same service provider that has not been addressed within the Individual Support Plan.

(83) "Transition Plan" means a written plan for the period of time between an individual's entry into a particular service and when the individual's Individual Support Plan is developed and approved by the Individual Support Plan team. The transition plan includes a summary of the services necessary to facilitate adjustment to the services offered, the supports necessary to ensure health and safety, and the assessments and consultations necessary for the Individual Support Plan development.

(84) "Unusual Incident" means incidents involving serious illness or accidents, death of an individual, injury or illness of an individual requiring inpatient or emergency hospitalization, suicide attempts, a fire requiring the services of a fire department, an act of physical aggression, or any incident requiring abuse investigation.

(85) "Variance" means a temporary exception from a regulation or provision of these rules that may be granted by the Seniors and People with Disabilities Division, upon written application by the community developmental disability program.

Stat. Auth.: ORS 409.050, 410.070, 430.640

Stats. Implemented: ORS 427.005, 427.007, 430.610 - 430.695

Hist.: SPD 24-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 28-2004, f. & cert. ef. 8-3-04; SPD 16-2005(Temp), f. & cert. ef. 11-23-05 thru 5-22-06; SPD 5-2006, f. 1-25-06, cert. ef. 2-1-06; SPD 9-2009, f. & cert. ef. 7-13-09; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10

## 411-320-0030

### Organization and Program Management

(1) ORGANIZATION AND INTERNAL MANAGEMENT. Each service provider of community developmental disability services funded by SPD must have written standards governing the operation and management of the program. Such standards must be up to date, available upon request, and include:

(a) An up-to-date organization chart showing lines of authority and responsibility from the LMHA to the CDDP manager and the components and staff within the agency;

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(b) Position descriptions for all staff providing community developmental disability services;

(c) Personnel policies and procedures concerning:

(A) Recruitment and termination of employees;

(B) Employee compensation and benefits;

(C) Employee performance appraisals, promotions, and merit pay;

(D) Staff development and training;

(E) Employee conduct (including the requirement that abuse of an individual by an employee, staff, or volunteer of the CDDP is prohibited and is not condoned or tolerated); and

(F) Reporting of abuse (including the requirement that any employee of the CDDP is to report incidents of abuse when the employee comes in contact with and has reasonable cause to believe that an individual has suffered abuse). Notification of mandatory reporting status must be made at least annually to all employees and documented on forms provided by SPD.

(2) **MANAGEMENT PLAN.** The CDDP must maintain a current plan assigning responsibility for the developmental disabilities program management functions and duties described in this rule. The management plan must assure that the functions and duties are assigned to people who have the knowledge and experience necessary to perform them, as well as ensuring that these functions shall be implemented.

(3) **PROGRAM MANAGEMENT.** Staff delivering developmental disability services must be organized under the leadership of a designated CDDP manager and receive clerical support services sufficient to perform their required duties.

(a) The LMHA, public entity, or the public or private corporation operating the CDDP must designate a full-time employee who must, on at least a part-time basis, be responsible for management of developmental disability services within a specific geographic service area.

(b) In addition to other duties as may be assigned in the area of developmental disability services, the CDDP must at a minimum develop and assure:

(A) Implementation of plans as may be needed to provide a coordinated and efficient use of resources available to serve individuals;

(B) Maintenance of positive and cooperative working relationships with families, advocates, service providers, support service brokerages, SPD, local government, and other state and local agencies with an interest in developmental disability services;

(C) Implementation of programs funded by SPD to encourage pursuit of defined program outcomes and monitor the programs to assure service delivery that is in compliance with related contracts and applicable local, state, and federal requirements;

(D) Collection and timely reporting of information as may be needed to conduct business with SPD including but not limited to information needed to license foster homes, collect federal funds supporting services, and investigate complaints related to services or suspected abuse; and

(E) Use of procedures that attempt to resolve complaints involving individuals or organizations that are associated with developmental disability services.

(4) **QUALIFIED STAFF.** Only qualified staff shall provide developmental disability services.

(a) Each CDDP must provide a qualified CDDP manager, services coordinator, eligibility specialist, quality assurance coordinator, and abuse investigator specialist for adults with developmental disabilities, or have an agreement with another CDDP to provide a qualified eligibility specialist, quality assurance coordinator, and abuse investigator specialist for adults with developmental disabilities.

(A) CDDP manager.

(i) The CDDP manager must have knowledge of the public service system for developmental disability services in Oregon and at least:

(II) A bachelor's degree in behavioral, social, health science, special education, public administration, or human service administration AND a minimum of four years experience, with at least two of those years of experience in developmental disability services that provided recent experience in program management, fiscal management, and staff supervision; or

(II) Six years of experience in supervision or six years of experience in staff technical or professional level work related to developmental disability services.

(ii) On an exceptional basis, the CDDP may hire a person who does not meet the qualifications in section (4)(a)(A) of this rule if the county and SPD have mutually agreed on a training and technical assistance plan that assures that the person shall quickly acquire all needed skills and experience.

(iii) When the position of CDDP manager becomes vacant, an interim CDDP manager must be appointed to serve until a permanent CDDP manager is appointed. The CDDP must request a variance as described in section (5) of this rule if the person appointed as interim CDDP manager does not meet the qualifications in section (4)(a)(A) of this rule and the term of the appointment totals more than 180 days.

(B) The CDDP supervisor (when available) must have knowledge of the public service system for developmental disability services in Oregon and at least:

(i) A bachelor's degree or equivalent course work in a field related to management such as business or public administration, or a field related to

developmental disability services, may be substituted for up to three years required experience; or

(ii) Five years of experience in supervision or five years of experience in staff technical or professional level work related to developmental disability services.

(C) The services coordinator must have knowledge of the public service system for developmental disability services in Oregon and at least:

(i) A bachelor's degree in behavioral science, social science, or a closely related field; or

(ii) A bachelor's degree in any field AND one year of human services related experience; or

(iii) An associate's degree in a behavioral science, social science, or a closely related field AND two years human services related experience; or

(iv) Three years of human services related experience.

(D) The eligibility specialist must have knowledge of the public service system for developmental disability services in Oregon and at least:

(i) A bachelor's degree in behavioral science, social science, or a closely related field; or

(ii) A bachelor's degree in any field AND one year of human services related experience; or

(iii) An associate's degree in a behavioral science, social science, or a closely related field AND two years human services related experience; or

(iv) Three years of human services related experience.

(E) The quality assurance coordinator must have knowledge of the public service system for developmental disability services in Oregon and at least:

(i) A bachelor's degree in business or public administration, behavioral or social sciences, finance, political science, or any degree demonstrating the capacity for the knowledge and skills AND two years professional level evaluative, analytical, and planning work; or

(ii) Any combination of experience and education equivalent to five years of experience that typically supports the knowledge and skills for the classification.

(F) The abuse investigator specialist must have at least:

(i) A bachelor's degree in human, social, behavioral, or criminal science AND two years human services, law enforcement, or investigative experience; or

(ii) An associate's degree in the human, social, behavioral, or criminal science AND four years human services, law enforcement, or investigative experience.

(b) An application for employment at the CDDP must inquire whether the applicant has been found to have committed abuse.

(c) Any employee, volunteer, advisor of the CDDP, or any subject individual as required under OAR 407-007-0200 to 407-007-0370, including staff who are not identified in this rule but use public funds intended for the operation of the CDDP, who has or will have contact with an eligible individual of the program, must have an approved criminal records check in accordance with OAR 407-007-0200 to 407-007-0370 and under ORS 181.534.

(A) The CDDP may not use public funds to support, in whole or in part, the employment in any capacity of a person who has been hired on or after January 1, 2010, or is subject to criminal records checks after January 1, 2010 as required by administrative rule, and who has been convicted:

(i) Of a crime listed in Exhibit 320-1;

(ii) In the last 10 years, of a crime involving the delivery or manufacture of a controlled substance;

(iii) Of an attempt, conspiracy, or solicitation to commit a crime described in Exhibit 320-1; or

(iv) Of a crime in another jurisdiction that is substantially equivalent to a crime described in Exhibit 320-1.

(B) A person does not meet the qualifications as described in this rule if the person has been hired on or after January 1, 2010, or is subject to criminal records checks after January 1, 2010 as required by administrative rule, and has been convicted:

(i) Of a crime listed in Exhibit 320-1;

(ii) In the last 10 years, of a crime involving the delivery or manufacture of a controlled substance;

(iii) Of an attempt, conspiracy, or solicitation to commit a crime described in Exhibit 320-1; or

(iv) Of a crime in another jurisdiction that is substantially equivalent to a crime described in Exhibit 320-1.

(5) **VARIANCE.** The CDDP must submit a written variance request to SPD prior to employment of a person not meeting the minimum qualifications in section (4) of this rule. The written variance request must include:

(a) An acceptable rationale for the need to employ a person who does not meet the minimum qualifications in section (4) of this rule; and

(b) A proposed alternative plan for education and training to correct the deficiencies.

(A) The proposal must specify activities, timelines, and responsibility for costs incurred in completing the alternative plan.

(B) A person who fails to complete the alternative plan for education and training to correct the deficiencies may not fulfill the requirements for the qualifications.



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### (6) STAFF DUTIES.

(a) The duties of the services coordinator must be specified in the employee's job description and at a minimum include:

(A) The delivery of case management services to individuals as listed in OAR 411-320-0090(4);

(B) Assisting the CDDP manager in monitoring the quality of services delivered within the county; and

(C) Assisting the CDDP manager in the identification of existing and insufficient service delivery resources or options.

(b) The duties of the eligibility specialist must be specified in the employee's job description and at a minimum include:

(A) Completing intake and eligibility determination for persons applying for developmental disability services;

(B) Completing eligibility redetermination for individuals requesting continuing developmental disability services; and

(C) Assisting the CDDP manager in the identification of existing and insufficient service delivery resources or options.

(c) The duties of the quality assurance coordinator must be specified in the employee's job description and at a minimum include:

(A) Assisting the CDDP manager in the coordination of the CDDP's quality assurance system;

(B) Developing and coordinating the CDDP's annual quality assurance plan;

(C) Assisting the CDDP manager in monitoring the performance of the CDDP;

(D) Performing quality assurance coordinator responsibilities as described in OAR 411-320-0045;

(E) Assisting the CDDP manager in monitoring the quality of services delivered within the county; and

(F) Assisting the CDDP manager in the identification of existing and insufficient service delivery resources or options.

(d) The duties of the abuse investigator specialist must be specified in the employee's job description and at a minimum include:

(A) Conducting abuse investigation and protective services for adult individuals with developmental disabilities enrolled in, or previously eligible and voluntarily terminated, developmental disability services;

(B) Assisting the CDDP manager in monitoring the quality of services delivered within the county; and

(C) Assisting the CDDP manager in the identification of existing and insufficient service delivery resources or options.

(7) STAFF TRAINING. Qualified staff of the CDDP must maintain and enhance their knowledge and skills through participation in education and training. DHS provides training materials and the provision of training may be conducted by SPD or CDDP staff, depending on available resources.

(a) The CDDP manager must participate in a basic training sequence and be knowledgeable of the duties of the staff they supervise and the developmental disability services they manage. The basic training sequence is not a substitute for the normal procedural orientation that must be provided by the CDDP to the new CDDP manager.

(A) The orientation provided by the CDDP to a new CDDP manager must include:

(i) An overview of developmental disability services and related human services within the county;

(ii) An overview of SPD's rules governing the CDDP;

(iii) An overview of SPD's licensing and certification rules for service providers;

(iv) An overview of the enrollment process and required documents needed for enrollment into SPD payment and reporting systems;

(v) A review and orientation of Medicaid, Supplemental Security Income (SSI), Social Security Administration (SS), home and community-based waiver services, the Oregon Health Plan (OHP), and the individual support planning processes; and

(vi) A review (prior to having contact with individuals) of the CDDP manager's responsibility as a mandatory reporter of abuse, including abuse of individuals with developmental disabilities, mental illness, seniors, and children.

(B) The CDDP manager must attend the following trainings endorsed or sponsored by SPD within the first year of entering into the position:

(i) Case management basics; and

(ii) ISP training.

(C) The CDDP manager must continue to enhance his or her knowledge, as well as maintain a basic understanding of developmental disability services and the skills, knowledge, and responsibilities of the staff they supervise.

(i) Each CDDP manager must participate in a minimum of 20 hours per year of additional SPD-sponsored or other training in the area of developmental disabilities.

(ii) Each CDDP manager must attend trainings to maintain a working knowledge of system changes in the area the CDDP manager is managing or supervising.

(b) The CDDP supervisor (when designated) must participate in a basic training sequence and be knowledgeable of the duties of the staff they supervise and of the developmental disability services they manage. The basic

training sequence is not a substitute for the normal procedural orientation that must be provided by the CDDP to the new CDDP supervisor.

(A) The orientation provided by the CDDP to a new CDDP supervisor must include:

(i) An overview of developmental disability services and related human services within the county;

(ii) An overview of SPD's rules governing the CDDP;

(iii) An overview of SPD's licensing and certification rules for service providers;

(iv) An overview of the enrollment process and required documents needed for enrollment into SPD payment and reporting systems;

(v) A review and orientation of Medicaid, SSI, SS, home and community-based waiver services, OHP, and the individual support planning processes; and

(vi) A review (prior to having contact with individuals) of the CDDP supervisor's responsibility as a mandatory reporter of abuse, including abuse of individuals with developmental disabilities, mental illness, seniors, and children.

(B) The CDDP supervisor must attend the following trainings endorsed or sponsored by SPD within the first year of entering into the position:

(i) Case management basics; and

(ii) ISP training.

(C) The CDDP supervisor must continue to enhance his or her knowledge, as well as maintain a basic understanding of developmental disability services and the skills, knowledge, and responsibilities of the staff they supervise.

(i) Each CDDP supervisor must participate in a minimum of 20 hours per year of additional SPD-sponsored or other training in the area of developmental disabilities.

(ii) Each CDDP supervisor must attend trainings to maintain a working knowledge of system changes in the area the CDDP supervisor is managing or supervising.

(c) The services coordinator must participate in a basic training sequence. The basic training sequence is not a substitute for the normal procedural orientation that must be provided by the CDDP to the new services coordinator.

(A) The orientation provided by the CDDP to a new services coordinator must include:

(i) An overview of the role and responsibilities of a services coordinator;

(ii) An overview of developmental disability services and related human services within the county;

(iii) An overview of SPD's rules governing the CDDP;

(iv) An overview of SPD's licensing and certification rules for service providers;

(v) An overview of the enrollment process and required documents needed for enrollment into SPD payment and reporting systems;

(vi) A review and orientation of Medicaid, SSI, SS, home and community-based waiver services, OHP, and the individual support planning processes for the services they coordinate; and

(vii) A review (prior to having contact with individuals) of the services coordinator's responsibility as a mandatory reporter of abuse, including abuse of individuals with developmental disabilities, mental illness, seniors, and children.

(B) The services coordinator must attend the following trainings endorsed or sponsored by SPD within the first year of entering into the position:

(i) Case management basics; and

(ii) ISP training (for services coordinators providing services to individuals in comprehensive services).

(C) The services coordinator must continue to enhance his or her knowledge, as well as maintain a basic understanding of developmental disability services and the skills, knowledge, and responsibilities necessary to perform the position. Each services coordinator must participate in a minimum of 20 hours per year of SPD-sponsored or other training in the area of developmental disabilities.

(d) The eligibility specialist must participate in a basic training sequence. The basic training sequence is not a substitute for the normal procedural orientation that must be provided by the CDDP to the new eligibility specialist.

(A) The orientation provided by the CDDP to a new eligibility specialist must include:

(i) An overview of eligibility criteria and the intake process;

(ii) An overview of developmental disability services and related human services within the county;

(iii) An overview of SPD's rules governing the CDDP;

(iv) An overview of SPD's licensing and certification rules for service providers;

(v) An overview of the enrollment process and required documents needed for enrollment into SPD payment and reporting systems;

(vi) A review and orientation of Medicaid, SSI, SS, home and community-based waiver services, and OHP; and

# ADMINISTRATIVE RULES

(vii) A review (prior to having contact with individuals) of the eligibility specialist's responsibility as a mandatory reporter of abuse, including abuse of individuals with developmental disabilities, mental illness, seniors, and children.

(B) The eligibility specialist must attend and complete eligibility core competency training within the first year of entering into the position and demonstrate competency after completion of core competency training. Until completion of eligibility core competency training, or if competency is not demonstrated, the eligibility specialist must consult with another trained eligibility specialist or consult with a SPD diagnosis and evaluation coordinator when making eligibility determinations.

(C) The eligibility specialist must continue to enhance his or her knowledge, as well as maintain a basic understanding of the skills, knowledge, and responsibilities necessary to perform the position.

(i) Each eligibility specialist must participate in SPD-sponsored trainings for eligibility on an annual basis.

(ii) Each eligibility specialist must participate in a minimum of 20 hours per year of SPD-sponsored or other training in the area of developmental disabilities.

(e) The quality assurance coordinator must participate in a basic training sequence. The basic training sequence is not a substitute for the normal procedural orientation that must be provided by the CDDP to the new quality assurance coordinator.

(A) The orientation provided by the CDDP to a new quality assurance coordinator must include:

(i) An overview of the Centers for Medicare and Medicaid Services six quality assurances and the DHS Quality Assurance Plan;

(ii) An overview of developmental disability services and related human services within the county;

(iii) An overview of SPD's rules governing the CDDP;

(iv) An overview of SPD's licensing and certification rules for service providers;

(v) An overview of the enrollment process and required documents needed for enrollment into SPD payment and reporting systems;

(vi) A review and orientation of Medicaid, SSI, SS, home and community-based waiver services, OHP, and the individual support planning process; and

(vii) A review (prior to having contact with individuals) of the quality assurance coordinator's responsibility as a mandatory reporter of abuse, including abuse of individuals with developmental disabilities, mental illness, seniors, and children.

(B) The quality assurance coordinator must attend the following trainings endorsed or sponsored by SPD within the first year of entering into the position:

(i) Case management basics; and

(ii) ISP training.

(C) The quality assurance coordinator must continue to enhance his or her knowledge, as well as maintain a basic understanding of the skills, knowledge, and responsibilities necessary to perform the position.

(i) Each quality assurance coordinator must participate in a minimum of 20 hours per year of SPD-sponsored or other training in the area of developmental disabilities.

(ii) Each quality assurance coordinator must participate in regularly scheduled SPD-sponsored meetings relevant to specific job responsibilities.

(f) The abuse investigator specialist must participate in core competency training. Training materials shall be provided by the DHS Office of Investigations and Training. The core competency training is not a substitute for the normal procedural orientation that must be provided by the CDDP to the new abuse investigator specialist.

(A) The orientation provided by the CDDP to a new abuse investigator specialist must include:

(i) An overview of developmental disability services and related human services within the county;

(ii) An overview of SPD's rules governing the CDDP;

(iii) An overview of SPD's licensing and certification rules for service providers;

(iv) A review and orientation of Medicaid, SSI, SS, home and community-based waiver services, OHP, and the individual support planning processes; and

(v) A review (prior to having contact with individuals) of the abuse investigator specialist's responsibility as a mandatory reporter of abuse, including abuse of individuals with developmental disabilities, mental illness, seniors, and children.

(B) The abuse investigator specialist must attend and pass core competency training within the first year of entering into the position and demonstrate competency after completion of core competency training. Until completion of core competency training, or if competency is not demonstrated, the abuse investigator specialist must consult with the DHS Office of Investigations and Training prior to completing the abuse investigation and protective services report.

(C) The abuse investigator specialist must continue to enhance his or her knowledge, as well as maintain a basic understanding of the skills, knowledge, and responsibilities necessary to perform the position. Each abuse

investigator specialist must participate in quarterly meetings held by the DHS Office of Investigations and Training. At a minimum, one meeting per year must be attended in person.

(g) The CDDP manager must assure the attendance of the CDDP supervisor, services coordinator, eligibility specialist, abuse investigator specialist, or quality assurance coordinator at SPD-mandated training.

(h) The CDDP must keep documentation of required training in the personnel files of the individual employees including the CDDP manager, CDDP supervisor, services coordinator, eligibility specialist, abuse investigator specialist, quality assurance coordinator, and other employees providing services to individuals.

(8) ADVISORY COMMITTEE. Each CDDP must have an advisory committee.

(a) The advisory committee must meet at least quarterly.

(b) The membership of the advisory committee must be broadly representative of the community, with a balance of age, sex, ethnic, socioeconomic, geographic, professional, and consumer interests represented. Membership must include advocates for individuals as well as individuals and their families.

(c) The advisory committee must advise the LMHA, the CMHDDP director, and the CDDP manager on community needs and priorities for services, and must assist in planning and in review and evaluation of services.

(d) When SPD or a private corporation is operating the CDDP, the advisory committee must advise the CDDP director and the CDDP manager on community needs and priorities for services, and must assist in planning and in review and evaluation of services.

(e) The advisory committee may function as the disability issues advisory committee as described in ORS 430.625 if so designated by the LMHA.

(f) The advisory committee may function as the CDDP's quality assurance committee.

(9) NEEDS ASSESSMENT, PLANNING, AND COORDINATION. Upon SPD's request, the CDDP must assess local needs for services to individuals and must submit planning and assessment information to SPD.

(10) CONTRACTS.

(a) If the CDDP, or any of the CDDPs services as described in the DHS contract with the LMHA, is not operated by the LMHA, there must be a contract between the LMHA and the organization operating the CDDP or the services, or a contract between SPD and the operating CDDP. The contract must specify the authorities and responsibilities of each party and conform to the requirements of DHS rules pertaining to contracts or any contract requirement with regard to operation and delivery of services.

(b) The CDDP may purchase certain services for an individual from a qualified service provider without first providing an opportunity for competition among other service providers if the service provider is selected by the individual, the individual's family, or the individual's guardian or legal representative.

(A) The service provider selected must also meet SPD certification or licensing requirements to provide the type of service to be contracted.

(B) There must be a contract between the service provider and the CDDP that specifies the authorities and responsibilities of each party and conforms to the requirements of DHS rules pertaining to contracts or any contract requirement with regard to operation and delivery of services.

(c) When a CDDP contracts with a public agency or private corporation for delivery of developmental disability services, the CDDP must include in the contract only terms that are substantially similar to model contract terms established by DHS. The CDDP may not add contractual requirements, including qualifications for contractor selection that are nonessential to the services being provided under the contract. The CDDP must specify in contracts with service providers that disputes arising from these limitations must be resolved according to the complaint procedures contained in OAR 411-320-0170. For purposes of this rule, the following definitions apply:

(A) "Model contract terms established by DHS" means all applicable material terms and conditions of the omnibus contract, as modified to appropriately reflect a contractual relationship between the service provider and CDDP and any other requirements approved by SPD as local options under procedures established in these rules.

(B) "Substantially similar to model contract terms" means that the terms developed by the CDDP and the model contract terms require the service provider to engage in approximately the same type activity and expend approximately the same resources to achieve compliance.

(C) "Nonessential to the services being provided" means requirements that are not substantially similar to model contract terms developed by DHS.

(d) The CDDP may, as a local option, impose on a public agency or private corporation delivering developmental disability services under a contract with the CDDP, a requirement that is in addition to or different from requirements specified in the omnibus contract if all of the following conditions are met:

(A) The CDDP has provided the affected contractors with the text of the proposed local option as it would appear in the contract. The proposed local option must include:

(i) The date upon which the local option would become effective and a complete written description of how the local option would improve individual independence, productivity, or integration; or

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(ii) How the local option would improve the protection of individual health, safety, or rights;

(B) The CDDP has sought input from the affected contractors concerning ways the proposed local option impacts individual services;

(C) The CDDP, with assistance from the affected contractors, has assessed the impact on the operations and financial status of the contractors if the local option is imposed;

(D) The CDDP has sent a written request for approval of the proposed local option to the SPD Assistant Director that includes:

(i) A copy of the information provided to the affected contractors;

(ii) A copy of any written comments and a complete summary of oral comments received from the affected contractors concerning the impact of the proposed local option; and

(iii) The text of the proposed local option as it would appear in contracts with service providers, including the proposed date upon which the requirement would become effective.

(E) SPD has notified the CDDP that the new requirement is approved as a local option for that program; and

(F) The CDDP has advised the affected contractors of their right and afforded them an opportunity to request mediation as provided in these rules before the local option is imposed.

(e) The CDDP may add contract requirements that the CDDP considers necessary to ensure the siting and maintenance of residential facilities in which individual services are provided. These requirements must be consistent with all applicable state and federal laws and regulations related to housing.

(f) The CDDP must adopt a dispute resolution policy that pertains to disputes arising from contracts with service providers funded by SPD and contracted through the CDDP. Procedures implementing the dispute resolution policy must be included in the contract with any such service provider.

## (11) FINANCIAL MANAGEMENT.

(a) There must be up-to-date accounting records for each developmental disability service accurately reflecting all revenue by source, all expenses by object of expense, and all assets, liabilities, and equities. The accounting records must be consistent with generally accepted accounting principles and conform to the requirements of OAR 309-013-0120 to 309-013-0220.

(b) There must be written statements of policy and procedure as are necessary and useful to assure compliance with any DHS administrative rules pertaining to fraud and embezzlement and financial abuse or exploitation of individuals.

(c) Billing for Title XIX funds must in no case exceed customary charges to private pay individuals for any like item or service.

(12) POLICIES AND PROCEDURES. There must be such other written and implemented statements of policy and procedure as necessary and useful to enable the CDDP to accomplish its service objectives and to meet the requirements of the contract with DHS, these rules, and other applicable standards and rules.

Stat. Auth.: ORS 409.050, 410.070, 430.640

Stats. Implemented: ORS 427.005, 427.007, 430.610 - 430.695

Hist.: SPD 24-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 28-2004, f. & cert. ef. 8-3-04; SPD 16-2005(Temp), f. & cert. ef. 11-23-05 thru 5-22-06; SPD 5-2006, f. 1-25-06, cert. ef. 2-1-06; SPD 9-2009, f. & cert. ef. 7-13-09; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10

## 411-320-0140

### Abuse Investigations and Protective Services

(1) GENERAL DUTIES OF THE CDDP. For the purpose of conducting abuse investigations and provision of protective services for adults, the CDDP is the designee of DHS. Each CDDP must conduct abuse investigations and provide protective services or arrange for the conduct of abuse investigations and the provision of protective services through cooperation and coordination with other CDDPs and when applicable, support services brokerages. Investigations must be done in accordance with OAR 407-045-0290. If determined necessary or appropriate, DHS may conduct an investigation itself rather than allow the CDDP to investigate the alleged abuse or DHS may conduct an investigation in addition to the investigation by the CDDP. Under such circumstances, the CDDP must receive authorization from DHS before conducting any separate investigation.

(2) ELIGIBILITY FOR PROTECTIVE SERVICES. Unless otherwise directed by DHS, the CDDP must investigate allegations of abuse of individuals who are developmentally disabled and are:

(a) Eighteen years of age or older; and

(b) Receiving case management services; or

(c) Receiving any SPD-funded services for individuals; or

(d) Adults previously determined eligible for developmental disability services and voluntarily terminated from services in accordance with OAR 411-320-0100(3) and (4).

(3) ABUSE INVESTIGATIONS. The CDDP must have and implement written protocols that describe the conduct of an investigation, a risk assessment, implementation of any actions, and the report writing process. Investigations must be conducted in accordance with OAR 407-045-0250 to 407-045-0360.

(4) COORDINATION WITH OTHER AGENCIES. The CDDP must cooperate and coordinate investigations and protective services with other

agencies that have authority to investigate allegations of abuse for adults or children.

(5) INITIAL COMPLAINTS. Initial complaints must immediately be submitted electronically, using SPD's system for reporting serious events.

(6) CONFLICT OF INTEREST. The CDDP shall not investigate allegations of abuse made against employees of the CDDP. Investigations of CDDP staff shall be conducted by DHS or other CDDP not subject to an actual or potential conflict of interest.

(7) NOTIFICATION. Upon the initiation and completion of an investigation of an alleged abuse, the CDDP must comply with the notification requirements as described in OAR 407-045-0290 and OAR 407-045-0320.

(8) REPORTS. The CDDP must complete an abuse investigation and protective service report according to OAR 407-045-0320. A copy of the final abuse investigation and protective services report shall be provided to DHS within five working days of the report's completion and approval by OIT. Abuse investigations and protective service reports must be maintained by the CDDP in accordance with OAR 407-045-0320.

(9) DISCLOSURE. The CDDP shall disclose an abuse investigation and protective services report and related documents as described in OAR 407-045-0330.

Stat. Auth.: ORS 409.050, 410.070, 430.640

Stats. Implemented: ORS 427.005, 427.007, 430.610 - 430.695

Hist.: SPD 24-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 28-2004, f. & cert. ef. 8-3-04; SPD 16-2005(Temp), f. & cert. ef. 11-23-05 thru 5-22-06; SPD 5-2006, f. 1-25-06, cert. ef. 2-1-06; SPD 9-2009, f. & cert. ef. 7-13-09; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10

## 411-325-0020

### Definitions

(1) "24-Hour Program" means a comprehensive residential program licensed by the Department of Human Services under ORS 443.400(7) and (8), to provide residential care and training to individuals with developmental disabilities.

(2) "Abuse" means:

(a) Abuse of a child as defined in ORS 419B.005, and for the purposes of this rule, abuse of a child also means abuse as defined in OAR 407-045-0260;

(b) Abuse of an adult as defined in OAR 407-045-0260.

(3) "Abuse Investigation and Protective Services" means reporting and investigation activities as required by OAR 407-045-0300 and any subsequent services or supports necessary to prevent further abuse as required in OAR 407-045-0310.

(4) "Administration of Medication" means the act of placing a medication in or on an individual's body by a staff member who is responsible for the individual's care.

(5) "Administrator" means the Assistant, Department of Human Services and Administrator of Seniors and People with Disabilities or that person's designee.

(6) "Adult" means an individual 18 years or older with developmental disabilities.

(7) "Advocate" means a person other than paid staff who has been selected by the individual or by the individual's legal representative to help the individual understand and make choices in matters relating to identification of needs and choices of services, especially when rights are at risk or have been violated.

(8) "Aid to Physical Functioning" means any special equipment prescribed for an individual by a physician, therapist, or dietician which maintains or enhances the individual's physical functioning.

(9) "Appeal" is the process by which a licensed provider may petition the suspension, denial or revocation of their license or application under Chapter 183, Oregon Revised Statutes, by making a written request to the Department.

(10) "Applicant(s)" means a person, agency, corporation or governmental unit, who applies for a license to operate a residential home or facility providing 24-hour comprehensive services to individuals with developmental disabilities.

(11) "Assessment" means an evaluation of an individual's needs. The evaluation is performed by a Services Coordinator or other designated Individual Support Plan team members who must use the evaluation to develop the individual's Individual Support Plan (ISP). At a minimum this includes the completion of the Personal Focus Worksheet and Risk Tracking Record.

(12) "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. This baseline measure serves as the reference point by which the ongoing efficacy of the support plan is to be assessed. A baseline level of behavior shall be reviewed and reestablished at minimum yearly, at the time of the individual's support plan meeting.

(13) "Behavior Data Collection System" is the methodology specified within the individual's behavior support plan that directs the process for recording observation, intervention and other support provision information critical to the analysis of the efficacy of the behavior support plan.

(14) "Behavior Data Summary" is a document composed by the provider agency to summarize episodes of physical intervention. This docu-

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ment serves as a substitution for the requirement of individual incident reports for each episode of physical intervention.

(15) "Board of Directors" means a group of individuals formed to set policy and give directions to a program designed to provide residential services to individuals with developmental disabilities. This includes local advisory boards used by multi-state organizations.

(16) "Care" means supportive services, including but not limited to, provision of room and board, supervision, protection, and assistance in bathing, dressing, grooming, eating, management of money, transportation or recreation. Care also includes being aware of the individual's general whereabouts at all times, and monitoring the activities of the individuals while on the premises of the residence to ensure their health, safety and welfare.

(17) "Chemical Restraint" means the use of a psychotropic drug or other drugs for punishment, or to modify behavior in place of a meaningful behavior/treatment plan.

(18) "Child" means an individual under the age of 18 that has a provisional determination of developmental disability.

(19) "Choice" means the individual's expression of preference, opportunity for, and active role in decision-making related to: the selection of assessments, services, service providers, goals and activities, and verification of satisfaction with these services. Choice may be communicated verbally, through sign language, or other communication method.

(20) "Community Developmental Disability Program" or "CDDP" means an entity that is responsible for planning and delivery of services for persons with mental retardation or other developmental disabilities in a specific geographic area of the state under a contract with the Department or a local mental health authority.

(21) "Community Developmental Disability Program Director" means the director of a community mental health and developmental disability program which operates or contracts for all services for persons with mental or emotional disturbances, drug abuse problems, mental retardation or other developmental disabilities, and alcoholism and alcohol abuse problems under the County Financial Assistance Contract with the Department of Human Services.

(22) "Competency Based Training Plan" means a written description of a provider's process for providing training to newly hired program staff. At a minimum the plan must address health, safety, rights, values and personal regard, and the provider's mission. The plan must describe competencies, training methods, timelines, how competencies of staff are determined and documented, including steps for remediation, and when a competency(ies) may be waived by a provider to accommodate a staff person's specific circumstances.

(23) "Complaint Investigation" means an investigation of any allegation which has been made to a proper authority that the program has taken an action which is alleged to be contrary to law, rule or policy that is not covered by an abuse investigation or a grievance procedure.

(24) "Condition" means a provision attached to a new or existing license, which limits or restricts the scope of the license or imposes additional requirements on the licensee.

(25) "Crisis" means a situation, as determined by a qualified Services Coordinator, that could result in civil court commitment under ORS 427.215 through 427.300, an imminent risk of loss of the community support system for an adult or the imminent risk of loss of home for a child with no alternative resources available.

(26) "Denial" is the refusal of the Department of Human Services to issue a license to operate a 24-hour residential home/facility for children or adults because the Department has determined that the home/facility is not in compliance with one or more of these administrative rules.

(27) "Department" means Department of Human Services, Seniors and People with Disabilities, an organizational unit within the Department that focuses on the planning of services, policy development and regulation of programs for persons that have developmental disabilities.

(28) "Developmental Disability for Adults" means a disability attributable to mental retardation, autism, cerebral palsy, epilepsy, or other neurological handicapping condition that requires training or support similar to that required by individuals with mental retardation, and the disability:

(a) Originates before the individual attains the age of 22 years, except that in the case of mental retardation the condition must be manifested before the age of 18; and

(b) Has continued, or may be expected to continue, indefinitely; and

(c) Constitutes a substantial handicap to the ability of the individual to function in society; and

(d) The condition or impairment must not be otherwise primarily attributed to mental illness, substance abuse, an emotional disorder, Attention Deficit and Hyperactivity Disorder (ADHD), a learning disability, or sensory impairment; or

(e) Results in significant subaverage general intellectual functioning with concurrent deficits in adaptive behavior that are manifested during the developmental period. Individuals of borderline intelligence may be considered to have mental retardation if there is also serious impairment of adaptive behavior. Definitions and classifications must be consistent with the "Manual of Terminology and Classification in Mental Retardation" by the American

Association on Mental Deficiency, 1977 Revision. Mental retardation is synonymous with mental deficiency.

(29) "Developmental Disability for Children Five Years and Younger" means the condition or impairment must not be otherwise primarily attributed to mental illness, substance abuse, an emotional disorder, Attention Deficit and Hyperactivity Disorder (ADHD), a learning disability, or sensory impairment; and be expected to last indefinitely, and is always provisional; AND

(a) There is a standardized test demonstrating significant adaptive impairment (more than two standard deviations below the norm) in at least two of the following areas of functioning: self care; receptive and expressive language; learning; mobility and self-direction; OR

(b) There is a statement by a licensed medical practitioner that the child has a condition or syndrome that shall likely cause significant adaptive impairment in at least two of the areas listed in (28).

(30) "Developmental Disability for Children Six Years and Older" is always provisional and means:

(a) There is a diagnosis of mental retardation; OR

(b) There is a diagnosis of developmental disability; AND

(A) There is a significant adaptive impairment (more than two standard deviations below the norm) in at least two of the following areas: self-care; receptive and expressive language; learning; mobility; self-direction; AND

(B) The condition or impairment must be expected to last indefinitely and must not be otherwise primarily attributed to mental illness, substance abuse, an emotional disorder, Attention Deficit and Hyperactivity Disorder (ADHD), a learning disability, or sensory impairment; AND

(C) The individual is expected to need multiple, specialized supports indefinitely.

(31) "Direct Nursing Services" means the provision of individual-specific advice, plans or interventions, based on nursing process as outlined by the Oregon State Board of Nursing, by a nurse at the home/facility. Direct nursing service differs from administrative nursing services. Administrative nursing services include non-individual-specific services, such as quality assurance reviews, authoring health related agency policies and procedures, or providing general training for staff.

(32) "Domestic Animals" are any of various animals domesticated so as to live and breed in a tame condition. Examples of domestic animals are dogs, cats, and domesticated farm stock.

(33) "Educational Surrogate" means an individual who acts in place of a parent in safeguarding a child's rights in the special education decision-making process when the parent cannot be identified or located after reasonable efforts, when there is reasonable cause to believe that the child has a disability and is a ward of the state, or at the request of a parent or adult student.

(34) "Entry" means admission to a Department funded developmental disability service provider. For purposes of this rule "entry" means admission to a 24-hour licensed home/facility.

(35) "Executive Director" means the individual designated by a board of directors or corporate owner responsible for the administration of the program's services for individuals.

(36) "Exit" means termination from a Department funded developmental disability service provider. Exit does not mean transfer within a service provider's program within a county.

(37) "Founded Reports" means the Department of Human Services, Children, Adults, and Families Division or Law Enforcement Authority (LEA) determination, 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.

(38) "Grievance" means a formal complaint by the individual or a person acting on his/her behalf about any aspect of the program or an employee of the program.

(39) "Guardian" means a parent for individuals under 18 years of age or a person or agency appointed by the courts who is authorized by the court to make decisions about services for the individual.

(40) "Health Care Provider" means a person licensed, certified or otherwise authorized or permitted by law of this state to administer health care in the ordinary course of business or practice of a profession, and includes a health care facility.

(41) "Health Care Representative" means:

(a) A health care representative as defined in ORS 127.505(12); or

(b) A person who has authority to make health care decisions for an individual under the provisions of OAR 411-365-0100 through 411-365-0320.

(42) "Incident Report" means a written report of any injury, accident, acts of physical aggression or unusual incident involving an individual.

(43) "Independence" means the extent to which persons with mental retardation or developmental disabilities exert control and choice over their own lives.

(44) "Individual" means an adult or a child with developmental disabilities for whom services are planned, provided and authorized by a qualified Services Coordinator.

(45) "Individual Support Plan" or "ISP" means the written details of the supports, activities and resources required for an individual to achieve personal goals. The Individual Support Plan is developed to articulate decisions

## ADMINISTRATIVE RULES

and agreements made during a person-centered process of planning and information gathering. The ISP is the individual's Plan of Care for Medicaid purposes.

(46) "Individualized Education Plan" (IEP) means a written plan of instructional goals and objectives in conference with the teacher, parent/guardian, student, and a representative of the school district.

(47) "Individual Support Plan Team" or "ISP team" in comprehensive services means a team composed of the individual served, agency representatives who provide service to the individual if appropriate for in-home supports, the guardian, if any, relatives of the individual, and the Services Coordinator and other persons who are well liked by the individual.

(48) "Integration" means the use by persons with mental retardation or other developmental disabilities of the same community resources that are used by and available to other persons in the community and participation in the same community activities in which persons without a disability participate, together with regular contact with persons without a disability. It further means that persons with developmental disabilities live in homes, that are in proximity to community resources and foster contact with persons in their community. (See ORS 427.005.)

(49) "Legal Representative" means the parent if the individual is under age 18, unless the court appoints another individual or agency to act as guardian. For those individuals over the age of 18, a legal representative means an attorney at law who has been retained by or for the adult, or a person, or agency who is authorized by the court to make decisions about services for the individual.

(50) "Licensee" means a person or organization to whom a license is granted.

(51) "Majority Agreement" means for purposes of entry, exit, transfer and annual ISP team meetings that no one member of the ISP team shall have the authority to make decisions for the team. Representatives from service provider(s), families, the CDDP, or advocacy agencies shall be considered as one member of the ISP team for the purpose of reaching majority agreement.

(52) "Mandatory Reporter" means any public or private official who, while acting in an official capacity, comes in contact with and has reasonable cause to believe that an individual with disabilities has suffered abuse, or that any person with whom the official comes in contact while acting in an official capacity, has abused the individual with disabilities. Pursuant to ORS 430.765(2) psychiatrists, psychologists, clergy and attorneys are not mandatory reporters with regard to information received through communications that are privileged under ORS 40.225 to 40.295.

(53) "Mechanical Restraint" means any mechanical device, material, object or equipment that is attached or adjacent to an individual's body that the individual cannot easily remove or easily negotiate around, and that restricts freedom of movement or access to the individual's body.

(54) "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.

(55) "Modified Diet" means the texture or consistency of food or drink is altered or limited. Examples include, but are not limited to, no nuts or raw vegetables, thickened fluids, mechanical soft, finely chopped, pureed, bread only soaked in milk.

(56) "Nurse" means a person who holds a valid, current license as a Registered Nurse (RN) or Licensed Practical Nurse (LPN) from the Oregon Board of Nursing.

(57) "Nursing Care Plan" means a plan of care developed by a Registered Nurse (RN) that describes the medical, nursing, psychosocial, and other needs of the individual and how those needs shall be met. It includes which tasks shall be taught or delegated to the provider and staff.

(58) "Oregon Core Competencies" is:

(a) A list of skills and knowledge for newly hired staff in the areas of health, safety, rights, values and personal regard, and the service provider's mission; and

(b) The associated timelines in which newly hired staff must demonstrate competencies.

(59) "Oregon Intervention System" or "OIS" means a system of providing training to people who work with designated individuals with developmental disabilities, to provide elements of positive behavior support and nonaversive behavior intervention. The system uses principles of pro-active support and describes approved physical intervention techniques that are used to maintain health and safety.

(60) "Physical Intervention" means the use of any physical action or any response to maintain the health and safety of an individual or others during a potentially dangerous situation or event.

(61) "Physical Restraint" means any manual physical holding of or contact with an individual that restricts the individual's freedom of movement.

(62) "Prescription Medication" means any medication that requires a physician prescription before it may be obtained from a pharmacist.

(63) "Productivity" means engagement in income-producing work by a person with mental retardation or other developmental disabilities which is measured through improvements in income level, employment status or job advancement or engagement by a person with mental retardation or other developmental disabilities in work contributing to a household or community.

(64) "Protection" means necessary actions taken to prevent subsequent abuse or exploitation of the individual, to prevent self-destructive acts, and to safeguard an individual's person, property and funds.

(65) "Protective Services" means necessary actions taken to prevent subsequent abuse or exploitation of the individual, to prevent self-destructive acts, and safeguard an individual's person, property, and funds as soon as possible.

(66) "Psychotropic Medication" means a medication whose prescribed intent is to affect or alter thought processes, mood, or behavior. This includes, but is not limited to, anti-psychotic, antidepressant, anxiolytic (anti-anxiety), and behavior medications. Because a medication may have many different effects, its classification depends upon its stated, intended effect when prescribed.

(67) "Respite Care" means short-term services for a period of up to 14 days. Respite care may include both day and overnight care.

(68) "Revocation" is the action taken to rescind a 24-hour home/facility license after the Department has determined that the program is not in compliance with one or more of these administrative rules.

(69) "Self-administration of Medication" means without supervision, the individual manages and takes his/her own medication. It includes identifying his/her medication and the times and methods of administration, placing the medication internally in or externally on his or her own body without staff assistance, and safely maintaining the medication(s).

(70) "Services Coordinator" means an employee of the community developmental disability program or other agency which contracts with the County or Department, who is selected to plan, procure, coordinate, monitor individual support plan services and to act as a proponent for persons with developmental disabilities.

(71) "Service Provider" means a public or private community agency or organization that provides recognized mental health or developmental disability services and is approved by the Department or other appropriate agency to provide these services. For the purpose of this rule "provider", "program", "applicant" or "licensee" is synonymous with "service provider."

(72) "Significant Other" means a person selected by the individual to be his/her friend.

(73) "Specialized Diet" means that the amount, type of ingredients or selection of food or drink items is limited, restricted, or otherwise specified by a physician's order. Examples include, but are not limited to, low calorie, high fiber, diabetic, low salt, lactose free, low fat diets. This does not include diets where extra or additional food is offered, without physician's orders but may not be eaten, for example, offer prunes each morning at breakfast or include fresh fruit with each meal.

(74) "Staff" means a paid employee responsible for providing services to individuals and whose wages are paid in part or in full with funds sub-contracted with the CDDP or contracted directly through the Department.

(75) "Substantiated" means an abuse investigation has been completed by the Department of Human Services or its designee and the preponderance of the evidence establishes the abuse occurred.

(76) "Support" means those services that assist an individual maintaining or increasing his or her functional independence, achieving community presence and participation, enhancing productivity, and enjoying a satisfying lifestyle. Support services may include training, the systematic, planned maintenance, development or enhancement of self-care, social or independent living skills, or the planned sequence of systematic interactions, activities, structured learning situations, or educational experiences designed to meet each individual's specified needs in the areas of integration and independence.

(77) "Suspension of License" is a temporary withdrawal of the approval to operate a 24-hour home or facility after the Department determines that the 24-hour home or facility is not in compliance with one or more of these administrative rules.

(78) "Transfer" means movement of an individual from one home/facility to another within the same county, administered by the same service provider.

(79) "Transition Plan" means a written plan for the period of time between an individual's entry into a particular service and when the individual's ISP is developed and approved by the ISP team. The plan must include a summary of the services necessary to facilitate adjustment to the services offered, the supports necessary to ensure health and safety, and the assessments and consultations necessary for the ISP development.

(80) "Unusual Incident" means those incidents involving serious illness or accidents, death of an individual, injury or illness of an individual requiring inpatient or emergency hospitalization, suicide attempts, a fire requiring the services of a fire department, or any incident requiring abuse investigation.

(81) "Variance" means an exception from a regulation or provision of these rules, which may be granted by the Department, upon written application by the provider.

(82) "Volunteer" is any individual assisting in a 24-hour home or facility without pay to support the care provided to individuals residing in the home or facility.

Stat. Auth.: ORS 410.070 & 409.050  
Stats. Implemented: ORS 443.400 - 443.455

# ADMINISTRATIVE RULES

Hist.: SPD 25-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 25-2004, f. 7-30-04, cert. ef. 8-1-04; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10

## 411-325-0100

### Inspections and Investigations

(1) Inspections and investigations required. All services covered by this rule must allow the following types of investigations and inspections:

- (a) Quality assurance, license renewal and onsite inspections;
- (b) Complaint investigations; and
- (c) Abuse investigations.

(2) Inspections and investigations by the Department, its designee or proper authority. All inspections and investigations must be performed by the Department, its designee, or proper authority.

(3) Unannounced. Any inspection or investigation may be unannounced.

(4) Required documentation. All documentation and written reports required by this rule must be:

- (a) Open to inspection and investigation by the Department, its designee or proper authority; and
- (b) Submitted to or be made available for review by the Department within the time allotted.

(5) Priority of investigation under (1)(c). When abuse is alleged or death of an individual has occurred and a law enforcement agency, or the Department or its designee has determined to initiate an investigation, the provider must not conduct an internal investigation. For the purposes of this section, an internal investigation is defined as conducting interviews of the alleged victim, witness, the accused person or any other person who may have knowledge of the facts of the abuse allegation or related circumstances; reviewing evidence relevant to the abuse allegation, other than the initial report; or any other actions beyond the initial actions of determining:

- (a) If there is reasonable cause to believe that abuse has occurred; or
- (b) If the alleged victim is in danger or in need of immediate protective services; or
- (c) If there is reason to believe that a crime has been committed; or
- (d) What, if any, immediate personnel actions must be taken to assure individual safety.

(6) When an abuse investigation has been initiated, the CDDP must provide notice to the program according to OAR 407-045-0290.

(7) The Department or its designee must conduct investigations prescribed in OAR 407-045-0250 through OAR 407-045-0360 and must complete an Abuse Investigation and Protective Services Report according to OAR 407-045-0320. The report must include the findings based upon the abuse investigation.

(8) When an abuse investigation has been completed, the CDDP must provide notice of the outcome of the investigation according to OAR 407-045-0320.

(9) Upon completion of the abuse investigation. Upon completion of the abuse investigation by the Department, its designee, or a law enforcement agency, a provider may conduct an investigation to determine if any personnel actions are necessary.

(10) Abuse Investigation and Protective Services Report. Upon completion of the investigation report according to OAR 407-045-0330, the sections of the report that are public records and not exempt from disclosure under the public records law shall be provided to the appropriate provider. The provider must implement the actions necessary within the deadlines listed, to prevent further abuse as stated in the report.

(11) Plan of correction. A plan of correction must be submitted to the CDDP and the Department for any noncompliance found during an inspection under this rule.

Stat. Auth.: ORS 410.070 & 409.050

Stats. Implemented: ORS 443.400 - 443.455

Hist.: SPD 25-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 25-2004, f. 7-30-04, cert. ef. 8-1-04; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10

## 411-325-0160

### Program Management and Personnel Practices

(1) Non-discrimination. The program must comply with all applicable state and federal statutes, rules and regulations in regard to non-discrimination in employment practices.

(2) Basic personnel policies and procedures. The program must have in place and implement personnel policies and procedures that address suspension, increased supervision, or other appropriate disciplinary employment procedures when a staff member has been identified as an accused person in an abuse investigation or when the allegation of abuse has been substantiated.

(3) Prohibition against retaliation. A community program or service provider must not retaliate against any staff who reports in good faith suspected abuse or retaliate against the child or adult with respect to any report. An accused person cannot self-report solely for the purpose of claiming retaliation.

(a) Subject to penalty. Any community facility, community program, or person that retaliates against any person because of a report of suspected abuse or neglect shall be liable according to ORS 430.755, in a private action

to that person for actual damages and, in addition, shall be subject to a penalty up to \$1000, notwithstanding any other remedy provided by law.

(b) Adverse action defined. Any adverse action is evidence of retaliation if taken within 90 days of a report of abuse. For purposes of this subsection, "adverse action" means any action taken by a community facility, community program or person involved in a report against the person making the report or against the child or adult because of the report and includes, but is not limited to:

- (A) Discharge or transfer from the program, except for clinical reasons;
- (B) Discharge from or termination of employment;
- (C) Demotion or reduction in remuneration for services; or
- (D) Restriction or prohibition of access to the program or the individuals served by the program.

(4) Competency-based staff training plan. The program must have and implement a competency-based staff-training plan, which meets, at a minimum, the competencies and timelines set forth in the Department's Oregon Core Competencies.

(5) Mandatory abuse reporting personnel policies and procedures. Any employee of a public or private community agency is required to report incidents of abuse when the employee comes in contact with and has reasonable cause to believe that an individual has suffered abuse or that any person with whom the employee comes in contact, while acting in an official capacity, has abused the individual. Notification of mandatory reporting status must be made at least annually to all employees on forms provided by the Department. All employees shall be provided with a Department produced card regarding abuse reporting status and abuse reporting. For reporting purposes the following shall apply:

(a) Agencies providing services to adults must report to the CDDP where the adult resides and if there is reason to believe a crime has been committed a report must also be made to law enforcement.

(b) Agencies providing services to children must report to DHS Child Welfare or law enforcement in the county where the child resides.

(6) Application for employment. An application for employment at the program must inquire whether an applicant has been found to have committed abuse.

(7) Criminal records checks. Any employee, volunteer, respite provider, advisor, skill trainer, or any subject individual as required under OAR 407-007-0200 to 407-007-0370 who has or will have contact with a resident of the program, must have an approved criminal records check in accordance with OAR 407-007-0200 to 407-007-0370 and under ORS 181.534

(a) The program may not use public funds to support, in whole or in part, the employment in any capacity of a person who has been hired on or after January 1, 2010, or is subject to criminal records checks after January 1, 2010 as required by administrative rule, and who has been convicted:

- (A) Of a crime listed in Exhibit 325-1;
- (B) In the last 10 years, of a crime involving the delivery or manufacture of a controlled substance;
- (C) Of an attempt, conspiracy, or solicitation to commit a crime described in Exhibit 325-1; or
- (D) Of a crime in another jurisdiction that is substantially equivalent to a crime described in Exhibit 325-1.

(b) A person does not meet the qualifications as described in this rule if the person has been hired on or after January 1, 2010, or is subject to criminal records checks after January 1, 2010 as required by administrative rule, and has been convicted:

- (A) Of a crime listed in Exhibit 325-1;
- (B) In the last 10 years, of a crime involving the delivery or manufacture of a controlled substance;
- (C) Of an attempt, conspiracy, or solicitation to commit a crime described in Exhibit 325-1; or
- (D) Of a crime in another jurisdiction that is substantially equivalent to a crime described in Exhibit 325-1.

(8) Director qualifications. The program must be operated under the supervision of a Director who has a minimum of a bachelor's degree and two years of experience, including supervision, in developmental disabilities, mental health, rehabilitation, social services or a related field. Six years of experience in the identified fields may be substituted for a degree.

(9) General staff qualifications. Any employee providing direct assistance to individuals must meet the following criteria:

- (a) Be at least 18 years of age;
- (b) Have approval to work based on current Oregon Department of Human Services policy and procedures for review of criminal records in OAR 407-007-0200 to 407-007-0370 and section (7) of this rule;
- (c) Be literate and capable of understanding written and oral orders; be able to communicate with individuals, physicians, Services Coordinators and appropriate others; and be able to respond to emergency situations at all times;
- (d) Have clear job responsibilities as described in a current signed and dated job description;
- (e) Have knowledge of individuals' ISP's and all medical, behavioral and additional supports required for the individual; and
- (f) Have met the basic qualifications in the program's competency based training plan.

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(10) Personnel files and qualifications records. The program must maintain up-to-date written job descriptions for all employees as well as a file available to the Department or CDDP for inspection that includes written documentation of the following for each employee:

(a) Written documentation of references and qualifications being checked;

(b) Written documentation of an approved criminal record check by the Department of Human Services;

(c) Written documentation of employee notification of mandatory abuse training and reporter status prior to supervising individuals and annually thereafter;

(d) Written documentation of any founded report of child abuse or a substantiated abuse allegation;

(e) Written documentation kept current that the staff person has demonstrated competency in areas identified by the provider's competency based training plan as required by OAR 411-325-0160(4), and which is appropriate to their job description;

(f) Written documentation of 12 hours job-related inservice training annually; including documentation of training in CPR and first aid certification.

(11) Program documentation requirements. All entries required by this rule OAR 411-325-0010 to 411-325-0480 must:

(a) Be prepared at the time, or immediately following the event being recorded;

(b) Be accurate and contain no willful falsifications;

(c) Be legible, dated and signed by the person(s) making the entry; and

(d) Be maintained for no less than three years.

(12) Dissolution of program. Prior to the dissolution of a program, a representative of the governing body or owner must notify the Department 30 days in advance in writing and make appropriate arrangements for the transfer of individual's records.

Stat. Auth.: ORS 410.070 & 409.050

Stats. Implemented: ORS 443.400 - 443.455

Hist.: SPD 25-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 25-2004, f. 7-30-04, cert. ef. 8-1-04; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10

## 411-325-0190

### Safety: Incident Reports and Emergency Notifications

(1) Incident reports. A written report that describes any incident as defined in OAR 411-325-0020(41) involving an individual must be placed in the individual's record. Such description must include:

(a) Conditions prior to or leading to the incident;

(b) A description of the incident;

(c) Staff response at the time; and

(d) Administrative review to include the follow-up to be taken to prevent a recurrence of the incident.

(2) Sent to guardian and Services Coordinator. Copies of all unusual incident reports must be sent to the individual's Services Coordinator within five working days of the incident. Upon request of the guardian, copies of unusual incident reports shall be sent to the guardian within five working days of the incident. Such copies must have any confidential information about other individuals removed or redacted as required by federal and state privacy laws. Copies of unusual incident reports may not be provided to a guardian when the report is part of an abuse or neglect investigation.

(3) Notification of allegations of abuse and abuse investigations. The program must notify the CDDP immediately of an incident or allegation of abuse falling within the scope of OAR 407-045-0260..

(a) When an abuse investigation has been initiated, the CDDP must provide notice to the program according to OAR 407-045-0290.

(b) When an abuse investigation has been completed, the CDDP must provide notice of the outcome of the investigation according to OAR 407-045-0320.

(c) When the program receives notification of a substantiated allegation of abuse, the program must provide written notification:

(A) Immediately to the individual found to have committed abuse;

(B) At minimum annually to the:

(i) Residents of the program;

(ii) Residents' services coordinators; and

(iii) Residents' guardians.

(d) The program's written notification must include:

(A) The type of abuse as defined in OAR 407-045-0260;

(B) When the allegation was substantiated;

(C) How to request a copy of the abuse investigation and protective services report.

(4) Immediate notification for serious illness, injury or death. In the case of a serious illness, injury or death of an individual, the program must immediately notify:

(a) The individual's guardian or conservator, parent, next of kin or other significant person;

(b) The Community Developmental Disability Program; and

(c) Any agency responsible for or providing services to the individual.

(5) Emergency notification. In the case of an individual who is away from the residence, without support beyond the time frames established by the ISP team, the program must immediately notify:

(a) The individual's guardian, if any, or nearest responsible relative;

(b) The individual's designated contact person;

(c) The local police department; and

(d) The Community Developmental Disability Program.

Stat. Auth.: ORS 410.070 & 409.050

Stats. Implemented: ORS 443.400 - 443.455

Hist.: SPD 25-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 25-2004, f. 7-30-04, cert. ef. 8-1-04; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10

## 411-328-0560

### Definitions

As used in these rules, the following definitions apply:

(1) "Abuse" means abuse of an adult as defined in OAR 407-045-0260.

(2) "Abuse Investigation and Protective Services" means an investigation as required by OAR 407-045-0300 and any subsequent services or supports necessary to prevent further abuse as required in OAR 407-045-0310.

(3) "Administration of Medication" means the act of a staff member, who is responsible for the individual's care, of placing a medication in, or on, an individual's body.

(4) "Adult" means a person 18 years or older with developmental disabilities for whom services are planned and provided.

(5) "Advocate" means a person other than staff who has been selected by the individual or by the individual's legal representative to help the individual understand and make choices in matters relating to identification of needs and choices of services, especially when rights are at risk or have been violated.

(6) "Aid to Physical Functioning" means any special equipment prescribed for an individual by a physician, therapist, or dietician which maintains or enhances the individual's physical functioning.

(7) "Annual ISP Meeting" means an annual meeting, coordinated by a case manager of the community mental health program, which is attended by the individual served, agency representatives who provide service to the individual, the guardian, if any, relatives of the individual and/or other persons, such as an advocate, as appropriate. The purpose of the meeting is to determine needs, coordinate services and training, and develop an Individual Support Plan.

(8) "Board of Directors" means a group of individuals formed to set policy and give directions to a program designed to provide residential services for individuals with developmental disabilities. This includes local advisory boards used by multi-state organizations.

(9) "Case Manager" means an employee of the community mental health program or other agency which contracts with the County or Division, who is selected to plan, procure, coordinate, monitor individual support plan services and to act as a proponent for persons with developmental disabilities.

(10) "Certificate" means a document issued by the Division to a provider of supported living services which certifies that the provider is eligible to receive State funds for these services.

(11) "Choice" means the individual's expression of preferences of activities and services through verbal, sign language or other communication method.

(12) "Community Mental Health Program" or "CMHP" means the organization of all services for individuals with mental or emotional disturbances, developmental disabilities or chemical dependency, operated by, or contractually affiliated with, a local mental health authority, operated in a specific geographic area of the state under an intergovernmental agreement or direct contract with the Division.

(13) "Complaint Investigation" means an investigation of any allegation which has been made to a proper authority that the service provider has taken an action which is alleged to be contrary to law, rule or policy that is not covered by an abuse investigation or a grievance procedure.

(14) "Controlled Substance" means any drug classified as Schedules 1 through 5 under the Federal Controlled Substance Act.

(15) "Developmental Disability" means a disability attributable to mental retardation, autism, cerebral palsy, epilepsy and/or other neurological handicapping condition which requires training or support similar to that required by individuals with mental retardation, and the disability:

(a) Originates before the individual attains the age of 22 years, except that in the case of mental retardation the condition must be manifested before the age of 18; and

(b) Has continued, or may be expected to continue, indefinitely; and

(c) Constitutes a substantial handicap to the ability of the person to function in society; or

(d) Results in significant subaverage general intellectual functioning with concurrent deficits in adaptive behavior which are manifested during the developmental period. Individuals of borderline intelligence may be considered to have mental retardation if there is also serious impairment of adaptive behavior. Definitions and classification shall be consistent with the "Manual of Terminology and Classification in Mental Retardation" by the American Association on Mental Deficiencies, 1983 Revision. Mental retardation is synonymous with mental deficiency.

(16) "Director" means the individual responsible for administration of the supported living program and provision of support services for individuals.

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(17) "Division" means the Department of Human Services, Seniors and People with Disabilities Division.

(18) "Entry" means the admission to a Division funded service.

(19) "Exit" means either termination or transfer from one Division funded program to another. Exit from a program does not include transfer within a program.

(20) "Founded Reports" means the Department of Human Services, Children, Adults, and Families Division or Law Enforcement Authority (LEA) determination, 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.

(21) "Grievance" means a formal complaint by the individual or a person acting on his/her behalf about any aspect of the program or an employee of the program.

(22) "Health Care Provider" means a person licensed, certified or otherwise authorized or permitted by law of this state to administer health care in the ordinary course of business or practice of a profession, and includes a health care facility.

(23) "Incident Report" means a written report of any injury, accident, acts of physical aggression or unusual incident involving an individual.

(24) "Independence" is defined as the extent to which persons with mental retardation or developmental disabilities, with or without staff assistance, exert control and choice over their own lives.

(25) "Individual" means a person with developmental disabilities for whom services are planned and provided.

(26) "Individual Profile" means a written profile that describes the individual entering into supported living. The profile may consist of materials and/or assessments generated by the service provider or other related agencies, consultants, family members, and/or advocates.

(27) "Individual Support Plan" or "ISP" means a written plan of support and training services for an individual covering a 12-month period which addresses the individual's support needs and the service provider's program plan. This written plan of training and support services was formally referred to as Individual Habilitation Plan (IHP).

(28) "Individual Support Plan Team" or "ISP Team" means a team composed of the individual, the case manager, the individual's legal guardian, representatives of all current service providers, and advocate or others determined appropriate by the individual receiving services. If the individual is unable to or does not express a preference, other appropriate team membership shall be determined by the ISP team members.

(29) "Integration" (defined in ORS 427.005) means that persons with mental retardation or other developmental disabilities live in the community and use the same community resources that are used by and available to other members of the community; and participate in the same community activities other community members participate in, and have contact with other community members.

(30) "Legal Representative" means the parent if the individual is under age 18, unless the court appoints another individual or agency to act as guardian. For those individuals over the age of 18, a legal representative means an attorney at law who has been retained by or for the adult, or a person who is authorized by a court to make decisions about services for the individual.

(31) "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 individual.

(32) "Needs Meeting" means a process in which the ISP team defines the supports an individual shall need to live in his/her own home, and makes a determination as to the feasibility of creating such services. The information generated in this meeting(s) or discussion(s) shall be used by the supported living provider to develop the individual's transition plan.

(33) "Office of Developmental Disability Services" or "DD Office" means the Office of Developmental Disability Services of the Mental Health and Developmental Disability Services Division.

(34) "Personal Futures Planning" means an optional planning process for describing a desirable future for a person with developmental disabilities. The planning process generally occurs around major life transitions (e.g. moving into a new home, graduation from high school, marriage, etc.). This process helps determine activities, supports, and resources which shall best create a desirable future for the individual.

(35) "Physical Restraint" means restricting the movement of an individual or restricting the movement or normal function of a portion of the individual's body.

(36) "Prescription Medication" means any medication that requires a physician prescription before it may be obtained from a pharmacist.

(37) "Protection" means the necessary actions taken to prevent subsequent abuse or exploitation of the individual, to prevent self-destructive acts, and/or to safeguard an individual's person, property and funds as possible.

(38) "Psychotropic Medication" is defined as a medication whose prescribed intent is to affect or alter thought processes, mood, or behavior. This includes, but is not limited to, anti-psychotic, antidepressant, anxiolytic (anti-anxiety), and behavior medications. Because a medication may have many

different effects, its classification depends upon its stated, intended effect when prescribed.

(39) "Self-administration of Medication" means the individual manages and takes his/her own medication. It includes identifying his/her medication and the times and methods of administration, placing the medication internally in or externally on his/her own body without staff assistance, upon written order of a physician, and safely maintaining the medication(s) without supervision.

(40) "Service Provider" means a public or private community agency or organization that provides recognized mental health or developmental disability service(s) and is approved by the Division or other appropriate agency to provide these service(s). For the purpose of this rule "provider" or "Program" is synonymous with "service provider."

(41) "Significant Other" means a person selected by the individual to be his/her friend.

(42) "Staff" means a paid employee responsible for providing support services to individuals and whose wages are paid in part or in full with funds contracted through the Developmental Disability Services Office.

(43) "Substantiated" means an abuse investigation has been completed by the Department of Human Services or its designee and the preponderance of the evidence establishes the abuse occurred.

(44) "Support" means those services that assist an individual maintaining or increasing his or her functional independence, achieving community presence and participation, enhancing productivity, and enjoying a satisfying lifestyle. Support services may include training, the systematic, planned maintenance, development or enhancement of self-care, social or independent living skills, or the planned sequence of systematic interactions, activities, structured learning situations, or educational experiences designed to meet each individual's specified needs in the areas of integration and independence.

(45) "Supported Living" refers to a service which provides the opportunity for persons with developmental disabilities to live in a residence of their own choice within the community. Supported living is not grounded in the concept of "readiness" or in a "continuum of services model" but rather provides the opportunity for individuals to live where they want, with whom they want for as long as they desire, with a recognition that needs and desires may change over time.

(46) "Transfer" means movement of an individual from one type of service to another administered by the same service provider.

(47) "Transition Plan" means a written plan for the period of time between an individual's entry into a particular service and the time when the individual's ISP is developed and approved by the ISP team. The plan shall include a summary of the services necessary to facilitate adjustment to supported living, ensure health and safety, and the assessments and/or consultations necessary for the ISP development.

(48) "Unusual Incident" means those incidents involving serious illness or accidents, death of an individual, injury or illness of an individual requiring inpatient or emergency hospitalization, suicide attempts, a fire requiring the services of a fire department, or any incident requiring an abuse investigation.

Stat. Auth.: ORS 409.050 & 410.070

Stats. Implemented: ORS 430.610, 430.630 & 430.670

Hist.: MHD 5-1992, f. 8-21-92, cert. ef. 8-24-92; MHD 3-1997, f. & cert. ef. 2-7-97; Renumbered from 309-041-0560 by SPD 17-2009, f. & cert. ef. 12-9-09; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10

## 411-328-0610

### Inspections and Investigations

(1) Inspections and investigations required. All services covered by this rule shall allow the following types of investigations and inspections:

- Quality assurance, certificate renewal and onsite inspections;
- Complaint investigations; and
- Abuse investigations.

(2) Inspections and investigations by the Division, its designee or proper authority. All inspections and investigations shall be performed by the Division, its designee, or proper authority.

(3) Unannounced. Any inspection or investigation may be unannounced.

(4) Required documentation. All documentation and written reports required by this rule shall be:

- Open to inspection and investigation by the Division, its designee or proper authority; and
- Submitted to the Division within the time allotted.

(5) Priority of investigation under (1)(c). When abuse is alleged or death of an individual has occurred and a law enforcement agency, or the Division and/or its designee has determined to initiate an investigation, the service provider shall not conduct an internal investigation without prior authorization from the Division. For the purposes of this section, an internal investigation is defined as conducting interviews of the alleged victim, witness, the accused person or any other person who may have knowledge of the facts of the abuse allegation or related circumstances; reviewing evidence relevant to the abuse allegation, other than the initial report; or any other actions beyond the initial actions of determining:

- If there is reasonable cause to believe that abuse has occurred; or



# ADMINISTRATIVE RULES

(b) If the alleged victim is in danger or in need of immediate protective services; or

(c) If there is reason to believe that a crime has been committed; or

(d) What, if any, immediate personnel actions shall be taken.

(6) When an abuse investigation has been initiated, the CDDP must provide notice to the program according to OAR 407-045-0290.

(7) The Division or its designee shall complete an Abuse Investigation and Protective Services Report according to OAR 407-045-0320.

(8) When an abuse investigation has been completed, the CDDP must provide notice of the outcome of the investigation according to OAR 407-045-0320.

(9) Upon completion of the abuse investigation by the Division, its designee, or a law enforcement agency, a service provider may conduct an investigation without further Division approval to determine if any other personnel actions are necessary.

(10) Abuse Investigation and Protective Services Report. Upon completion of the investigation report according to OAR 407-045-0320, the sections of the report which are public records and not exempt from disclosure under the public records law and in accordance with OAR 407-045-0330 shall be provided to the appropriate service provider. The service provider shall implement the actions necessary within the deadlines listed, to prevent further abuse as stated in the report.

(11) Plan of improvement. A plan of improvement shall be submitted to the CMHP and the Division for any noncompliance found during an inspection under this rule.

Stat. Auth.: ORS 409.050 & 410.070

Stats. Implemented: ORS 430.610, 430.630 & 430.670

Hist.: MHD 5-1992, f. 8-21-92, cert. ef. 8-24-92; MHD 3-1997, f. & cert. ef. 2-7-97; Renumbered from 309-041-0610 by SPD 17-2009, f. & cert. ef. 12-9-09; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10

## 411-328-0670

### Safety: Personnel

(1) Basic personnel policies and procedures. The program shall have in place personnel policies and procedures which address suspension, increased supervision or other appropriate disciplinary employment procedures when a staff member has been identified as an accused person in an abuse investigation. The program shall also have in place personnel policies and procedures which address disciplinary and/or termination of employment when the allegation of abuse has been substantiated.

(2) Mandatory abuse reporting personnel policies and procedures. Any employee of a private agency which contracts with a CMHP is required to report incidents of abuse when the employee comes in contact with and has reasonable cause to believe that an individual has suffered abuse or that any person with whom the employee comes in contact, while acting in an official capacity, has abused the individual. Notification of mandatory reporting status shall be made at least annually to all employees on forms provided by the Division. All employees shall be provided with a Division-produced card regarding abuse reporting status and abuse reporting.

(3) Application for employment. An application for employment at the program must inquire whether an applicant has been found to have committed abuse.

(4) Criminal records checks. Any employee, volunteer, respite provider, advisor, skill trainer, or any subject individual as required under OAR 407-007-0200 to 407-007-0370, who has or will have contact with an individual of the program, must have an approved criminal records check in accordance with OAR 407-007-0200 to 407-007-0370 and under ORS 181.534

(a) The program may not use public funds to support, in whole or in part, the employment in any capacity of a person who has been hired on or after January 1, 2010, or is subject to criminal records checks after January 1, 2010 as required by administrative rule, and who has been convicted:

(A) Of a crime listed in Exhibit 328-1;

(B) In the last 10 years, of a crime involving the delivery or manufacture of a controlled substance;

(C) Of an attempt, conspiracy, or solicitation to commit a crime described in Exhibit 328-1; or

(D) Of a crime in another jurisdiction that is substantially equivalent to a crime described in Exhibit 328-1.

(b) A person does not meet the qualifications as described in this rule if the person has been hired on or after January 1, 2010, or is subject to criminal records checks after January 1, 2010 as required by administrative rule, and has been convicted:

(A) Of a crime listed in Exhibit 328-1;

(B) In the last 10 years, of a crime involving the delivery or manufacture of a controlled substance;

(C) Of an attempt, conspiracy, or solicitation to commit a crime described in Exhibit 328-1; or

(D) Of a crime in another jurisdiction that is substantially equivalent to a crime described in Exhibit 328-1.

(5) Director qualifications. The program shall be operated under the supervision of a Director who has minimum of a bachelor's degree and two years experience, including supervision, in developmental disabilities, social services, mental health or a related field; or six years of experience, includ-

ing supervision, in the field of developmental disabilities or a social service/mental health field.

(6) Staff qualifications. Any staff who supervise individuals shall be at least 18 years of age and capable of performing the duties of the job as described in a current job description which he/she signed and dated.

(7) Personnel files and qualifications records. The program shall maintain a personnel file for each staff person. In addition, the program shall maintain the following for each staff person in a file available to the Division or its designee for inspection:

(a) Written documentation that references and qualifications were checked;

(b) Written documentation of six hours of pre-service training prior to supervising individuals including mandatory abuse reporting training, training on individual profiles and transition plan or ISP;

(c) Documentation that CPR and first aid certification were obtained from a recognized training agency within three months of employment and are kept current;

(d) Written documentation of 12 hours of job-related in-service training annually;

(e) Written documentation of a criminal record check by the Division;

(f) Written documentation of a TB test within two weeks of hire;

(g) Written documentation of employee notification of mandatory abuse reporter status;

(h) Written documentation of any substantiated abuse allegations; and

(i) Written documentation of any grievances filed against the staff person and the results of the grievance process, including, if any, disciplinary action.

Stat. Auth.: ORS 409.050 & 410.070

Stats. Implemented: ORS 430.610, 430.630 & 430.670

Hist.: MHD 5-1992, f. 8-21-92, cert. ef. 8-24-92; MHD 3-1997, f. & cert. ef. 2-7-97; Renumbered from 309-041-0670 by SPD 17-2009, f. & cert. ef. 12-9-09; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10

## 411-330-0010

### Statement of Purpose and Statutory Authority

(1) Purpose. These rules prescribe standards, responsibilities, and procedures for Community Developmental Disability Programs providing comprehensive services to adults with developmental disabilities required for those adults to remain at home or in their family homes.

(2) Statutory authority. These rules are authorized by ORS 410.070 and 409.050 and carry out the provisions of 430.610 through 430.670, 427.005 through 427.007.

Stat. Auth.: ORS 410.070 & 409.050

Stats. Implemented: ORS 427.005, 427.007 & 430.610 - 430.670

Hist.: SPD 21-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10

## 411-330-0020

### Definitions

(1) "Abuse" means abuse of an adult as defined in OAR 407-045-0260.

(2) "Abuse Investigation and Protective Services" means 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.

(3) "Adult" means an individual 18 years or older with developmental disabilities.

(4) "Advocate" means a person other than paid staff who has been selected by the individual with developmental disabilities or by the individual's legal representative to help the individual understand and make choices in matters relating to identification of needs and choices of services especially when rights are at risk or have been violated.

(5) "Assistant Director" means the Assistant Director of the Department of Human Services, Seniors and People with Disabilities Division, or that person's designee.

(6) "Case Management" means an organized service to assist individuals to select, obtain and utilize resources and services.

(7) "Choice" means the individual's expression of preference, opportunity for, and active role in decision-making related to the selection of assessments, services, service providers, goals and activities, and verification of satisfaction with these services. Choice may be communicated verbally, through sign language or other communication methods.

(8) "Client Process Monitoring System" or "CPMS" means the Department's computerized system for enrolling and terminating services for individuals with developmental disabilities.

(9) "Community Developmental Disability Program" or "CDDP" means an entity that is responsible for planning and delivery of services for persons with mental retardation or other developmental disabilities in a specific geographic area of the state under a contract with the Department or a local mental health authority.

(10) "Community Mental Health and Developmental Disability Program" or "CMHDDP" means an entity that operates or contracts for all services for persons with mental or emotional disturbances, drug abuse problems, mental retardation or other developmental disabilities, and alcoholism and alcohol abuse problems under the County Financial Assistance Contract with the Department of Human Services.

# ADMINISTRATIVE RULES

(11) "Comprehensive Services" means a package of developmental disability services and supports that includes one of the following living arrangements regulated by the Seniors and People with Disabilities Division:

(a) A 24-hour program, a foster home or a supported living program; or

(b) In-Home Supports costing more than \$21,119 per year plus application of any subsequent legislatively-approved cost-of-living increments provided to an individual in the individual's family home in combination with any associated employment or community inclusion program. Such services do not include Support Services for adults enrolled in Support Services Brokerages or for children enrolled in Child and Family Support Services or Children's Intensive In-Home Services.

(12) "Department" or "DHS" means the Department of Human Services.

(13) "Developmental Disability for Adults" means a disability attributable to mental retardation, autism, cerebral palsy, epilepsy, or other neurological handicapping condition that requires training or support similar to that required by individuals with mental retardation, and the disability:

(a) Originates before the individual attains the age of 22 years, except that in the case of mental retardation the condition must be manifested before the age of 18; and

(b) Has continued, or may be expected to continue, indefinitely; and

(c) Constitutes a substantial handicap to the ability of the individual to function in society; or

(d) Results in significant sub-average general intellectual functioning with concurrent deficits in adaptive behavior that are manifested during the developmental period. Individuals of borderline intelligence may be considered to have mental retardation if there is also serious impairment of adaptive behavior. Definitions and classifications must be consistent with the "Manual of Terminology and Classification in Mental Retardation" by the American Association on Mental Deficiency, 1977 Revision. Mental retardation is synonymous with mental deficiency.

(14) "Employer-Related Supports" means activities that assist individuals and, when applicable, their legal representatives or family members, with directing and supervising provision of services described in the In-Home Support Plan. Supports to the employer include, but are not limited to:

(a) Education about employer responsibilities;

(b) Orientation to basic wage and hour issues;

(c) Use of common employer-related tools such as job descriptions; and

(d) Fiscal intermediary services.

(15) "Entry" means admission to a Department-funded developmental disability service provider.

(16) "Exit" means termination from a Department-funded developmental disability service provider. Exit does not mean transfer within a service provider's program within a county.

(17) "Family" for determining individual eligibility for In-Home Support Services as a resident in the family home, for identifying persons who may apply, plan, and arrange for individual supports, and for determining who may receive family training, means a unit of two or more persons that includes at least one person with developmental disabilities where the primary caregiver(s) is(are):

(a) Related to the individual with developmental disabilities by blood, marriage or legal adoption; or

(b) In a domestic relationship where partners share:

(A) A permanent residence;

(B) Joint responsibility for the household in general (e.g. child-rearing, maintenance of the residence, basic living expenses); and

(C) Joint responsibility for supporting a member of the household with disabilities related to one of the partners by blood, marriage, or legal adoption.

(18) "Fiscal Intermediary" means a person or agency that receives and distributes In-Home Support funds on behalf of an individual according to an In-Home Support Plan. The fiscal intermediary responsibilities may include activities and records related to payroll and payment of employer-related taxes and fees as an agent of individuals, or their legal guardians, who employ persons to provide care, supervision, or training in the home or community. In this capacity, the fiscal intermediary does not recruit, hire, supervise, evaluate, dismiss or otherwise discipline employees.

(19) "Founded Reports" means the Department of Human Services, Children, Adults, and Families Division or Law Enforcement Authority (LEA) determination, 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.

(20) "General Business Provider" means an organization or entity selected by an individual or the individual's legal representative, and paid with In-Home Support Services funds that:

(a) Is primarily in business to provide the service to the general public and is chosen by the individual; and

(b) Provides services for the individual through employees, contractors or volunteers.

(21) "Grievance" means a formal complaint by an individual or individual's legal representative about services or employees of a Community Developmental Disability Program.

(22) "Immediate Family," for the purposes of determining whether In-Home Support Services funds may be used to pay a family member to provide services, means the spouse of an adult.

(23) "Incident Report" means a written report of any injury, accident, act of physical aggression or unusual incident involving an individual.

(24) "Independence" means the extent to which persons with mental retardation or developmental disabilities with or without staff assistance exert control and choice over their own lives.

(25) "Independent Provider" means a person selected by an individual or the individual's legal representative and paid with In-Home Support Service funds who personally provides services to the individual.

(26) "Individual" means an adult with developmental disabilities for whom services are planned, provided and authorized by a qualified services coordinator.

(27) "In-Home Support" or "IHS" means support that is:

(a) Required for an individual to live in the individual's home or the family home;

(b) Designed, selected, and managed by the individual or the individual's legal representative; and

(c) Provided in accordance with an In-Home Support Plan.

(28) "In-Home Support Plan" or "IHS Plan" means the written details of the supports, activities, costs and resources required for an individual to achieve personal goals, or for a family to achieve outcomes related to supporting an individual in the home. The In-Home Support Plan is developed by the Community Developmental Disability Program and individual, the individual's legal representative, (if applicable) or family to articulate decisions and agreements made during a person-centered process of planning and information gathering. If meetings are required for other parties to review or agree to the plan, these meetings are conducted in a manner, setting, and time consistent with individual and family needs and preferences. The In-Home Support Plan is the individual's Plan of Care for Medicaid purposes.

(29) "Integration" means the use by persons with mental retardation or other developmental disabilities of the same community resources that are used by and available to other persons in the community and participation in the same community activities in which persons without a disability participate, together with regular contact with persons without a disability. It further means that persons with developmental disabilities live in homes, which are in proximity to community resources and foster contact with persons in their community.

(30) "Legal Representative" means an attorney at law who has been retained by or for the adult, or a person, or agency that is authorized by the court to make decisions about services for the individual.

(31) "Local Mental Health Authority" or "LMHA" means the County Court or Board of County Commissioners of one or more counties that operate a Community Mental Health and Developmental Disability Program, or in the case of a Native American Reservation, the Tribal Council, or if the county declines to operate or contract for all or part of a Community Mental Health and Developmental Disability Program, the Board of Directors of a public or private corporation.

(32) "Mandatory Reporter" means any public or private official who, while acting in an official capacity, comes in contact with and has reasonable cause to believe that an individual with disabilities has suffered abuse, or that any person with whom the official comes in contact while acting in an official capacity, has abused the individual with disabilities. Pursuant to ORS 430.765(2) psychiatrists, psychologists, clergy and attorneys are not mandatory reporters with regard to information received through communications that are privileged under ORS 40.225 to 40.295.

(33) "Nurse" means a person who holds a valid, current license as a Registered Nurse (RN) or Licensed Practical Nurse (LPN) from the Oregon Board of Nursing.

(34) "Nursing Care Plan" means a plan of care developed by a Registered Nurse that describes the medical, nursing, psychosocial, and other needs of the individual and how those needs shall be met. It includes which tasks shall be taught, assigned, and/or delegated to the qualified provider or family.

(35) "Oregon Intervention System" or "OIS" means an approach, which emphasizes a philosophy of individualized, non-aversive behavior support while constantly emphasizing dignity and respect for each individual.

(36) "Person-Centered Planning" means a process of gathering and organizing information that helps an individual:

(a) Determine and describe choices about personal goals and lifestyle preferences; and

(b) Design strategies and networks of support to achieve goals and a preferred lifestyle at home and in the community using individual strengths, relationships and resources. Person-centered planning is designed to build on and strengthen naturally occurring opportunities and relationships. A Community Developmental Disability Program representative shall gather information consistent with individual needs and preferences through conducting interviews with the individual, observation of the individual in various settings, and/or communication through a simple interview or formal group network process with persons selected by, or clearly significant to, the individual.

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(37) "Positive Behavioral Theory and Practice" means a proactive approach to individual behavior and behavior interventions that:

(a) Emphasizes the development of functional alternative behavior and positive behavior intervention;

(b) Uses the least intervention possible;

(c) Ensures that abusive or demeaning interventions are never used; and

(d) Evaluates the effectiveness of behavior interventions based on objective data. Behavior intervention is not undertaken unless the behavior:

(A) Represents a risk to health and safety of the individual or others;

(B) Is likely to continue to become more serious over time;

(C) Interferes with community participation;

(D) Results in damage to property; or

(E) Interferes with learning, socializing, or vocation.

(38) "Productivity" means engagement in income-producing work by a person with mental retardation or other developmental disabilities which is measured through improvements in income level, employment status or job advancement, or engagement by a person with mental retardation or other developmental disabilities in work contributing to a household or community.

(39) "Provider" means a person, organization or business that is selected by an individual or the individual's legal representative and paid with In-Home Support funds to provide support according to the individual's In-Home Support Plan.

(40) "Provider Organization" means an entity selected by an individual, the individual with the assistance of the individual's designee, or the individual's legal representative, and paid with In-Home Support Service funds that:

(a) Is primarily in business to provide supports for individuals with developmental disabilities;

(b) Provides supports for the individual through employees, contractors or volunteers; and

(c) Receives compensation to recruit, supervise and pay the persons who actually provide support for the individual.

(41) "Seniors and People with Disabilities Division" or "SPD" means the Division within the Department of Human Services that focuses on the planning of services, policy development and regulation of programs for persons that have developmental disabilities.

(42) "Services Coordinator" means an employee of the Community Developmental Disability Program or other agency that contracts with the County or Department, who is selected to plan, procure, coordinate, monitor Individual Support Plan Services and to act as a proponent for persons with developmental disabilities. For purposes of these rules the term Case Manager is synonymous with Services Coordinator.

(43) "Social Benefit" or "Social Service" means a service solely intended to assist an individual with disabilities to function in society on a level comparable to that of an individual of similar age and income who does not have such disability. Such a benefit or service is pre-authorized by and provided according to the description and financial limits written in an individual's current In-Home Support Plan and does not:

(a) Duplicate benefits and services otherwise available to citizens regardless of disability (e.g. public or parochial education for school-aged individuals, training for a specific job skill or trade that is not part of a vocational rehabilitation plan);

(b) Provide financial assistance with food, clothing, shelter and laundry needs common to individuals with or without disabilities;

(c) Replace other governmental or community services available to an individual or family; or

(d) Exceed the actual costs of supports that must be provided for the individual to be supported at home or in the family home.

(44) "Substantiated" means an abuse investigation has been completed by the Department of Human Services or its designee and the preponderance of the evidence establishes the abuse occurred.

(45) "Support" means assistance individuals require--solely because of the effects of disability--to maintain or increase independence, achieve community presence and participation, and improve productivity. Support includes assistance families require to care for individuals residing in the family home or in the process of returning from out-of-home placement.

(46) "Unusual Incident" means those incidents involving serious illness or accidents, death of an individual, injury or illness of an individual requiring inpatient or emergency hospitalization, suicide attempts, a fire requiring the services of a fire department, or any incident requiring abuse investigation.

(47) "Variance" means a temporary exception from a regulation or provision of these rules, which may be granted by the Seniors and People with Disabilities Division, upon written application by the Community Developmental Disability Program.

Stat. Auth.: ORS 409.050 & 410.070

Stats. Implemented: ORS 427.005, 427.007 & 430.610 - 430.670

Hist.: SPD 21-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 8-2007(Temp), f. 6-27-07, cert. ef.

7-1-07 thru 12-28-07; SPD 20-2007, f. 12-27-07, cert. ef. 12-28-07; SPD 25-2009(Temp), f.

12-31-09, cert. ef. 1-1-10 thru 6-30-10

## 411-330-0060

### In-Home Support Fund Assistance with Purchasing Supports

(1) Plan required. A CDDP must only use In-Home Support funds to assist individuals and their legal representatives to purchase supports when the individual's Services Coordinator has developed a written and approved IHS Plan which meets requirements for development and content in OAR 411-330-0050 and:

(a) Identifies supports that are necessary for an individual to live in his or her own home or in the family home;

(b) Specifies cost-effective arrangements for obtaining the required supports, applying public, private, formal, and informal resources available to the eligible individual;

(c) Identifies the resources needed to purchase the remainder of necessary supports; and

(d) Is the most cost-effective plan that may safely meet the goals of the plan.

(2) Assistance is a social benefit. Goods, and services purchased with In-Home Support funds must be provided only as social benefits as defined in OAR 411-330-0020(41).

(3) Amount, method and schedule of payment. IHS funds may be disbursed on behalf of individuals. The method, amount, and schedule of payment must be specified in written agreements between the CDDP and the individual and individual's legal representative, if any. The CDDP is specifically prohibited from reimbursement of individuals, individuals' legal representatives or families for expenses related to services and from advancing funds to individuals, individuals' legal representatives or families to obtain services.

(4) Supports purchased. Supports purchased for an individual with In-Home Support funds are limited to those described in OAR 411-330-0110. The CDDP must arrange for these supports to be provided:

(a) In settings and under contractual conditions that allow the individual or the individual's legal representative to freely redirect resources to purchase supports and services from another provider;

(b) In a manner consistent with positive behavioral theory and practice as defined in OAR 411-330-0020(36);

(c) In accordance with applicable state and federal wage and hour regulations in the case of personal care, training, and supervision;

(d) In accordance with applicable state or local building codes, in the case of environmental accessibility adaptations to the home; and

(e) According to Oregon Board of Nursing Administrative Rules 851 when services involve performance of nursing care or delegation, teaching, and assignment of nursing tasks.

(5) Provider responsibilities and agreements. When IHS funds are used to purchase supports for individuals, the CDDP must require and document that providers are informed of:

(a) Mandatory responsibility to report suspected abuse of an adult;

(b) Responsibility to immediately notify the individual's legal representative and family (if services are provided to an individual in the family home) and the CDDP of injury, illness, accidents, or any unusual circumstances which may have a serious effect on the health, safety, physical, emotional well being or level of services required by the individual for whom services are being provided; and

(c) Limits of payment:

(A) IHS fund payments for the agreed-upon services must be considered full payment and the provider under no circumstances may demand or receive additional payment for these services from the individual, the individual's legal representative, or the individual's family, or any other source.

(B) The provider must bill all third party resources before using IHS funds unless another arrangement is agreed upon by the CDDP in the IHS Plan.

(6) Use of IHS funds prohibited.

(a) IHS funds may not be used to support, in whole or in part, the employment in any capacity of a person who has been hired on or after January 1, 2010, or is subject to criminal records checks after January 1, 2010 as required by administrative rule, and who has been convicted:

(A) Of a crime listed in Exhibit 330-1;

(B) In the last 10 years, of a crime involving the delivery or manufacture of a controlled substance;

(C) Of an attempt, conspiracy, or solicitation to commit a crime described in Exhibit 330-1; or

(D) Of a crime in another jurisdiction that is substantially equivalent to a crime described in Exhibit 330-1.

(b) IHS funds may not pay for:

(A) Services, materials, or activities that are illegal;

(B) Services or activities that are carried out in a manner that constitutes abuse of an adult as defined in OAR 411-330-0020(1);

(C) Notwithstanding abuse as defined in OAR 411-330-0020, services from persons who engage in verbal mistreatment and subject an individual to the use of derogatory names, phrases, profanity, ridicule, harassment, coercion or intimidation by threatening injury or withholding of services or supports;

# ADMINISTRATIVE RULES

(D) Notwithstanding abuse as defined in OAR 411-330-0020, services that restrict an individual's freedom of movement by seclusion in a locked room under any condition;

(E) Materials or equipment that have been determined unsafe for the general public by recognized consumer safety agencies;

(F) Individual or family vehicles;

(G) Health and medical costs that the general public normally must pay, including but not limited to: medications; health insurance co-payments; mental health evaluation and treatment; dental treatments and appliances; medical treatments; dietary supplements; treatment supplies not related to nutrition, incontinence, or infection control;

(H) Basic or specialized food or nutrition essential to sustain the individual including but not limited to, high caloric supplements, gluten-free supplements; diabetic, ketogenic or other metabolic supplements.

(I) Ambulance services;

(J) Legal fees, including but not limited to costs of representation in educational negotiations, establishing trusts, and creating guardianships;

(K) Vacation costs for transportation, food, shelter, and entertainment that would normally be incurred by anyone on vacation, regardless of disability, and are not strictly required by the individual's need for personal assistance in all home and community settings;

(L) Individual support that has not been arranged according to applicable state and federal wage and hour regulations;

(M) Rate enhancements to an individual's existing Employment and Alternative to Employment Services for Individuals with Developmental Disabilities under OAR 411-345-0010 through 411-345-0310;

(N) Employee wages or contractor payments for services when the individual is not present or available to receive services, e.g. employee paid time off, hourly "no-show" charges, and contractor preparation hours;

(O) Services, activities, materials, or equipment that are not necessary or cost-effective, do not meet the definition of In-Home Supports as defined in OAR 411-330-0020(26), the definition of supports as defined in 411-330-0020(42), and the definition of social benefits as defined in 411-330-0020(41);

(P) Educational services for school-age adults, including professional instruction, formal training and tutoring in communication, socialization, and academic skills;

(Q) Services, activities, materials, or equipment that may be obtained by the individual or the individual's legal representative through other available means such as private or public insurance, philanthropic organizations, or other governmental or public services;

(R) Services or activities for which the Legislative or Executive Branch of Oregon government has prohibited use of public funds; or

(S) Service in circumstances where the CDDP determines there is sufficient evidence to believe that the individual, the individual's legal representative, family, or service provider have engaged in fraud or misrepresentation, failed to use resources as agreed upon in the In-Home Support plan, refused to cooperate with record keeping required to document use of In-Home Support funds, or otherwise knowingly misused public funds associated with In-Home Support services.

(7) Documentation required. The CDDP must inform individuals and individuals' legal representatives in writing of records and procedures required in OAR 411-330-0140(3)(c) regarding expenditure of In-Home Support funds for direct assistance. During development of the IHS Plan, the individual's Services Coordinator must determine the need or preference for the CDDP to provide support with documentation and procedural requirements and must include delineations of responsibility for maintenance of records in the IHS Plan and any other written service agreements.

Stat. Auth.: ORS 410.070 & 409.050

Stats. Implemented: ORS 427.005, 427.007 & 430.610 - 430.670

Hist.: SPD 21-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10

## 411-330-0070

### Standards for Independent Providers Paid with In-Home Support Services Funds

(1) General independent provider qualifications. Each independent provider who is paid as a contractor, a self-employed person, or an employee of the individual or individual's legal representative must:

(a) Be at least 18 years of age;

(b) Have approval to work based on a criminal records check completed by DHS in accordance with OAR 407-007-0200 to 407-007-0370. A person may not be authorized as a provider or meet qualifications as described in this rule if the person has been hired on or after January 1, 2010, or is subject to criminal records checks after January 1, 2010 as required by administrative rule, and who has been convicted:

(A) Of a crime listed in Exhibit 330-1;

(B) In the last 10 years, of a crime involving the delivery or manufacture of a controlled substance;

(C) Of an attempt, conspiracy, or solicitation to commit a crime described in Exhibit 330-1; or

(D) Of a crime in another jurisdiction that is substantially equivalent to a crime described in Exhibit 330-1.

(c) Be legally eligible to work in the United States;

(d) Not be a spouse of the individual receiving services;

(e) Demonstrate by background, education, references, skills, and abilities that he or she is capable of safely and adequately performing the tasks specified on the In-Home Support Plan, with such demonstration confirmed in writing by the employing individual, individual's legal representative, family or designated advocate including:

(A) Ability and sufficient education to follow oral and written instructions and keep any records required;

(B) Responsibility, maturity, and reputable character exercising sound judgment;

(C) Ability to communicate with the individual;

(D) Training of a nature and type sufficient to ensure that the provider has knowledge of emergency procedures specific to the individual being cared for;

(f) Hold current, valid, and unrestricted appropriate professional license or certification where care and supervision requires specific professional education, training and skill;

(g) Understand requirements of maintaining confidentiality and safeguarding individual information;

(h) Not be on the current Centers for Medicare and Medicaid Services list of excluded or debarred providers;

(i) In the case of an agency, holds any license or certificate required by the State of Oregon or federal law or regulation to provide the services purchased by or for the individual; and

(j) If providing transportation, has a valid driver's license and proof of insurance, as well as other license or certificate that may be required under state and local law, depending on the nature and scope of the transportation service.

(2) Behavior consultants providing specialized supports must:

(a) Have education, skills, and abilities necessary to provide behavior consultation services, including knowledge and experience in developing plans based on positive behavioral theory and practice;

(b) Have received at least two days of training in the Oregon Intervention Systems (OIS), behavior intervention system, and have a current certificate; and

(c) Submit a resume to the CDDP indicating at least one of the following:

(A) A bachelor's degree in Special Education, Psychology, Speech and Communication, Occupational Therapy, Recreation, Art or Music Therapy, or a behavioral science field and at least one year of experience with people with developmental disabilities who present difficult or dangerous behaviors; or

(B) Three years experience with people with developmental disabilities who present difficult or dangerous behaviors and at least one year of that experience must include providing the services of a behavior consultant.

(3) Social/sexual consultants providing specialized supports must:

(a) Have the education, skills, and abilities necessary to provide social/sexual consultation services; and Submit a resume to the CDDP indicating at least one of the following:

(A) A bachelor's degree in Special Education, Psychology, Social Work, Counseling or other behavioral science field and at least one year of experience with people with developmental disabilities; or

(B) Three years experience with people with developmental disabilities who present social or sexual issues and at least one year of that experience must include providing the services of a social/sexual consultant.

(4) Nursing consultants providing specialized supports must:

(a) Have a current Oregon nursing license; and

(b) Submit a resume to the CDDP indicating the education, skills, and abilities necessary to provide nursing services in accordance with State Law, including at least one year of experience with people with developmental disabilities.

(5) Environmental modification consultants must be licensed general contractors and have experience evaluating homes, assessing the needs of the individual and developing cost-effective plans that shall make the home safe and accessible for the individual.

(6) Environmental accessibility adaptation providers must be building contractors licensed under OAR 812-001-0000 through 812-010-0500 and 808-001-0000 through 808-005-0030.

(7) Providers of family training must be:

(a) Psychologists licensed under ORS 675.030;

(b) Social workers licensed under ORS 675.530;

(c) Counselors licensed under ORS 675.715; or

(d) Medical professionals licensed under ORS 677.100.

Stat. Auth.: ORS 410.070 & 409.050

Stats. Implemented: ORS 427.005, 427.007 & 430.610 - 430.670

Hist.: SPD 21-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10

## 411-330-0100

### Sanctions for Independent Providers, Provider Organizations, and General Business Providers

(1) Circumstances under which sanctions may be imposed. Sanction(s) may be imposed on a provider when the CDDP determines that, at some point after the provider's initial qualification and authorization to provide supports purchased with In-Home Support funds, the provider has:

# ADMINISTRATIVE RULES

(a) Been convicted of any crime that would have resulted in an unacceptable criminal records check upon hiring or authorization of service, including crimes listed in OAR 411-330-0070(1);

(b) Been convicted of unlawfully manufacturing, distributing, prescribing, or dispensing a controlled substance;

(c) Had his/her professional license suspended, revoked, or otherwise limited, or surrendered his/her license;

(d) Notwithstanding abuse as defined in OAR 407-045-0260, failed to safely and adequately provide the services authorized;

(e) Had a founded report of child abuse or a substantiated abuse allegation;

(f) Failed to cooperate with the Department or CDDP investigation and/or grant access to or furnish, as requested, records or documentation;

(g) Billed excessive or fraudulent charges or been convicted of fraud;

(h) Made false statement concerning conviction of crime or substantiation of abuse;

(i) Falsified required documentation;

(j) Not adhered to the provisions of OAR 411-330-0060(6) and 411-330-0070; or

(k) Been suspended or terminated as a provider by another office or program within the Department.

(2) Types of sanctions that may be imposed. The following sanctions may be imposed on a provider:

(a) The provider may no longer be paid with In-Home Support funds;

(b) The provider may not be allowed to provide services for a specified length of time and/or until specified conditions for reinstatement are met and approved by the CDDP or Department, as applicable;

(c) The CDDP may withhold payments to the provider.

(3) CDDP decision to sanction. If the CDDP makes a decision to sanction a provider, the CDDP must notify the provider by mail of the intent to sanction. The provider may appeal this action within 30 calendar days of the notice. The provider must appeal separately from any appeal of audit findings and overpayments.

(4) Appeal rights of a provider of Medicaid services. A provider of Medicaid services may appeal a sanction by requesting an administrative review by the Administrator or designee.

(5) Written notice of appeal required. For an appeal regarding provision of Medicaid services to be valid, written notice of the appeal must be received by the Department within 30 calendar days of the date the sanction notice was mailed to the provider.

(6) Discretion of the Department. At the discretion of the Department, providers who have previously been terminated or suspended by the Department agency may not be authorized as providers of Medicaid services.

Stat. Auth.: ORS 410.070 & 409.050

Stats. Implemented: ORS 427.005, 427.007 & 430.610 - 430.670

Hist.: SPD 21-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10

## 411-330-0120

### Abuse and Unusual Incidents

(1) Abuse prohibited. No adult or individual as defined by OAR 411-330-0020 shall be abused nor shall abuse be tolerated by any employee, staff, or volunteer of the individual, provider organization, or CDDP.

(a) Basic personnel policies and procedures. The CDDP must have in place personnel policies and procedures addressing suspension, increased supervision or other appropriate disciplinary employment procedures when a staff member has been identified as an accused person in an abuse investigation. The CDDP must also have in place personnel policies and procedures addressing disciplinary action, including conditions for termination of employment when the allegation of abuse has been substantiated.

(b) Mandatory abuse reporting personnel policies and procedures. Any employee of a CDDP is required to report incidents of abuse when the employee comes in contact with and has reasonable cause to believe that an individual has suffered abuse or that any person with whom the employee comes in contact, while acting in an official capacity, has abused the individual. Notification of mandatory reporting status must be made at least annually to all employees on forms provided by the Department. All employees must be provided with a Department-produced card regarding abuse reporting status and abuse reporting.

(2) Unusual Incidents.

(a) Written report. A written report that describes any injury, accident, act of physical aggression or unusual incident involving an individual and a CDDP employee must be prepared at the time of the incident and placed in the individual's record. Such description must include:

(A) Conditions prior to or leading to the incident;

(B) A description of the incident;

(C) Staff response at the time; and

(D) Administrative review and follow-up to be taken to prevent recurrence of the injury, accident, physical aggression or unusual incident.

(b) Immediate notification of allegations of abuse and abuse investigations. The CDDP must notify the Department immediately of an incident or allegation of abuse falling within the scope of OAR 407-045-0260. When an abuse investigation has been initiated and completed, the CDDP must provide notification in accordance with OAR 407-045-0290 and 407-045-0320.

(c) Immediate notification. In the case of a serious illness, injury or death of an individual, the CDDP must immediately notify the individual's legal representative or conservator, parent, next of kin, designated contact person.

Stat. Auth.: ORS 410.070 & 409.050

Stats. Implemented: ORS 427.005, 427.007 & 430.610 - 430.670

Hist.: SPD 21-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10

## 411-330-0140

### In-Home Support Service Operation

(1) Personnel Policies and Practices.

(a) Personnel files and qualifications records. The CDDP must maintain up-to-date written position descriptions for all Services Coordinators coordinating In-Home support services that includes written documentation of the following for each staff person:

(A) Reference checks and confirmation of qualifications prior to hire;

(B) Satisfactory completion of basic orientation, including mandatory abuse reporting training;

(C) Satisfactory completion of job-related inservice training;

(D) Department of Human Services approval to work based on a criminal records check;

(E) Notification and acknowledgement of mandatory abuse reporter status;

(F) Any founded reports of child abuse or substantiated abuse allegations;

(G) Any grievances filed against the staff person and the results of the grievance process, including, if any, disciplinary action; and

(H) Legal U.S. worker status.

(2) Services Coordinator training. The CDDP must provide or arrange for Services Coordinators to receive training needed to provide or arrange for the IHS services.

(3) Record requirements. The CDDP must maintain records in compliance with this rule, applicable state and federal law, other state rules regarding audits and clinical records, and the most current edition of the Mental Health and Developmental Disability Services Division Handbook on Confidentiality.

(a) Disclosure and confidentiality. For the purpose of disclosure from individual medical records under these rules, the CDDPs are considered "providers" as defined in ORS 179.505(1), and 179.505 is applicable. Access to records by the Department does not require authorization by the individual or individual's legal representative. For the purposes of disclosure from non-medical individual records, all or portions of the information contained in these records may be exempt from public inspection under the personal privacy information exemption to the public records law set forth in ORS 192.502(2).

(b) Abuse. CDDP and provider organizations must maintain documentation in a separate provider file of inquiry into, and subsequent answer of, whether an independent provider or an employee of a provider organization has been found to have committed abuse. Records must also include any founded reports of child abuse or substantiated allegations of abuse against the independent provider or employee of a provider organization.

(c) Individual records. The CDDP must maintain and make available on request for Department review up to date records for each individual receiving In-Home services. These records must include:

(A) An easily-accessed summary of basic information, including individual name, family name (if applicable), individual's legal representative, or conservator (if applicable), address, telephone number, date of entry into the program, date of birth, sex, marital status, and individual financial resource information.

(B) Records related to receipt and disbursement of public and private support funds, including expenditure authorizations, expenditure verification, copies of CPMS expenditure reports, verification that providers meet requirements of OAR 411-330-0070 and documentation that individual and individual's legal representative understand and accept or delegate record keeping responsibilities outlined in this rule;

(C) Incident reports involving CDDP staff;

(D) Assessments used to determine supports required, preferences, and resources;

(E) IHS Plan and reviews;

(F) Services Coordinator correspondence and notes related to resource development and plan outcomes; and

(G) Customer satisfaction information.

(d) Special requirements for IHS direct assistance expenditures. The CDDP must develop and implement written policies and procedures concerning use of IHS funds to purchase goods and services that are described in the IHS Plan as required to meet the support needs of individuals. These policies and procedures must include, but are not limited to:

(A) Minimum acceptable records of expenditures and under what conditions these records may be maintained by the individual or family;

(i) Itemized invoices and receipts to record purchase of any single item;

(ii) A trip log indicating purpose, date, and total miles to verify vehicle mileage reimbursement;

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(iii) Signed contracts and itemized invoices for any services purchased from independent contractors and professionals; and

(iv) Pay records, including timesheets signed by both employee and employer, to record employee services.

(B) Procedures for confirming the receipt, and securing the use of specialized equipment and environmental accessibility adaptations:

(i) When specialized equipment is obtained for the exclusive use of an individual, the CDDP must record the purpose, final cost, and date of receipt;

(ii) The CDDP must secure use of equipment costing more than \$500 through a written agreement between the CDDP and the individual or individual's legal representative which specifies the time period the item is to be available to the individual and the responsibilities of all parties should the item be lost, damaged, or sold within that time period;

(iii) The CDDP must obtain prior authorization from the Department for environmental accessibility adaptations to the home costing more than \$1500;

(iv) The CDDP must ensure that projects for environmental accessibility adaptations to the home costing \$5000 or more are:

(I) Reviewed and approved by the Department before work begins and before final payment is made;

(II) Completed or supervised by a contractor licensed and bonded in the State of Oregon; and

(III) That steps are taken as prescribed by the Department for protection of State's interest through liens or other legally available means; and

(v) The CDDP must obtain written authorization from the owner of a rental structure before any minor physical environmental accessibility adaptations are made to that structure.

(C) Return of purchased goods.

(i) Any goods purchased with IHS funds that are not used according to IHS plan or according to an agreement securing the State's use may be immediately recovered.

(ii) Failure to furnish written documentation upon written request from the Department, the Oregon Department of Justice Medicaid Fraud Unit or Centers for Medicare and Medicaid Services or their authorized representatives immediately or within timeframes specified in the written request may be deemed reason to recover payments or deny further assistance.

(e) General financial policies and practices. The CDDP must:

(A) Maintain up-to-date accounting records accurately reflecting all revenue by source, all expenses by object of expense, and all assets, liabilities, and equities, consistent with generally accepted accounting principles.

(B) Develop and implement written statements of policy and procedure as are necessary and useful to assure compliance with any Department administrative rule pertaining to fraud and embezzlement.

(f) Records retention. Records must be retained in accordance with OAR Chapter 166, Secretary of State, Archives Division. Financial records, supporting documents, statistical records, and all other records (except client records) must be retained for a minimum of three years after the close of the contract period, or until audited. Client records must be kept for a minimum of seven years.

(4) Other operating policies and practices. The CDDP must develop and implement such written statements of policy and procedure in addition to those specifically required by this rule as are necessary and useful to enable the agency to accomplish its objectives and to meet the requirements of these rules and other applicable standards and rules.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 410.070 & 409.050

Stats. Implemented: ORS 427.005, 427.007 & 430.610 - 430.6708

Hist.: SPD 21-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 25-2009(Temp), f. 12-31-09, cert.

ef. 1-1-10 thru 6-30-10

## 411-330-0160

### Inspections and Investigations

(1) Inspections and investigations required. The CDDP must allow the following types of investigations and inspections to be performed by the Department, or other proper authority:

- (a) Quality assurance and on-site inspections;
- (b) Complaint investigations; and
- (c) Abuse investigations.

(2) Unannounced. Any inspection or investigation may be unannounced.

(3) Required documentation. All documentation and written reports required by this rule must be:

(a) Open to inspection and investigation by the Department, or other proper authority; and

(b) Submitted to the Department, or other proper authority within the time allotted.

(4) Priority of investigation under Section (1)(c) of this rule. When abuse is alleged or death of an individual has occurred and a law enforcement agency or the Department has determined to initiate an investigation, the CDDP must not conduct an internal investigation without prior authorization from the Department. For the purposes of this section, an internal investigation is defined as conducting interviews of the alleged victim, witness, the accused person or any other person who may have knowledge of the facts of the abuse allegation or related circumstances; reviewing evidence relevant to

the abuse allegation, other than the initial report; or any other actions beyond the initial actions of determining:

(a) If there is reasonable cause to believe that abuse has occurred; or  
(b) If the alleged victim is in danger or in need of immediate protective services; or

(c) If there is reason to believe that a crime has been committed; or

(d) What, if any, immediate personnel actions shall be taken.

(5) Investigations must be completed as prescribed by OAR 407-045-0250 through 407-045-0360, Abuse Reporting and Protective Services in Community Programs and Community Facilities, and must include an Abuse Investigation and Protective Services Report according to OAR 407-045-0320. The report must include the findings based upon the abuse investigation.

(6) Upon completion of the abuse investigation by the Department or a law enforcement agency, the CDDP may conduct an investigation without further Department approval to determine if any other personnel actions are necessary.

(7) Abuse Investigation and Protective Services Report. Upon completion of the investigation report according to OAR 407-045-0320, the sections of the report that are public records and not exempt from disclosure under the public records law and in accordance with OAR 407-045-0330 must be provided to the appropriate service provider. The service provider must implement the actions necessary within the deadlines listed, to prevent further abuse as stated in the report.

(8) Plan of improvement. A plan of improvement must be submitted to the Department for any noncompliance found during an inspection under this rule.

Stat. Auth.: ORS 410.070 & 409.050

Stats. Implemented: ORS 427.005, 427.007 & 430.610 - 430.6708

Hist.: SPD 21-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10

## 411-335-0020

### Definitions

(1) "Abuse" means abuse of a child as defined in ORS 419B.005, and for the purposes of this rule, abuse of a child is also abuse as defined in OAR 407-045-0260.

(2) "Abuse Investigation and Protective Services" means reporting and investigation activities as required by OAR 407-045-0260 through 407-045-0360 and any subsequent services or supports necessary to prevent further abuse as required in OAR 407-045-0290.

(3) "Administration of Medication" means the act of placing a medication in or on an individual's body by a person who is responsible for the individual's care.

(4) "Administrator" means the Assistant Director, Department of Human Services and Administrator of Seniors and People with Disabilities Division or that person's designee.

(5) "Adult" means an individual 18 years or older with developmental disabilities.

(6) "Advocate" means a person other than paid staff who has been selected by the individual or by the individual's guardian to help the individual understand and make choices in matters relating to identification of needs and choices of services, especially when rights are at risk or have been violated.

(7) "Agency Staff" means a person responsible for providing services directly or indirectly to children in proctor care, and whose wages or fees are paid in part or in full with funds sub-contracted with the CDDP or contracted directly through the Department.

(8) "Aid to Physical Functioning" means any special equipment prescribed for an individual by a physician, therapist, or dietician which maintains or enhances the individual's physical functioning.

(9) "Appeal" is the process by which a licensed or certified provider may petition the suspension, denial or revocation of their license or certificate or application under Chapter 183, Oregon Revised Statutes, by making a written request to the Department.

(10) "Applicant(s)" means a person, agency, corporation or governmental unit, who applies for a certificate to operate a proctor agency providing 24-hour intensive individually focused contracted services to children or adults with developmental disabilities experiencing emotional, medical, or behavioral difficulties.

(11) "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. This baseline measure serves as the reference point by which the ongoing efficacy of the support plan is to be assessed. A baseline level of behavior shall be reviewed and reestablished at minimum yearly, at the time of the individual's support plan team meeting.

(12) "Behavior Data Collection System" is the methodology specified within the individual's behavior support plan that directs the process for recording observation, intervention and other support provision information critical to the analysis of the efficacy of the Behavior Support Plan.

(13) "Behavior Data Summary" is a document composed by the provider agency to summarize episodes of physical intervention. This document serves as a substitution for the requirement of individual incident

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reports for each episode of physical intervention, only in circumstances when the physical intervention implemented is:

(a) The Oregon Intervention System (OIS) defined technique of evasion; or

(b) For episodes of physical positioning, as defined in 411-325-0020(50).

(14) "Behavior Support Plan (BSP)" means a written strategy based on person-centered planning and a functional assessment that outlines specific instructions for service providers to follow, to cause an individual's challenging behaviors to become unnecessary, and to change the provider's own behavior, adjust environment and teach new skills.

(15) "Board of Directors" means a group of persons formed to set policy and give directions to a program designed to provide residential services to individuals with developmental disabilities. This includes local advisory boards used by multi-state organizations.

(16) "Care" means supportive services, including but not limited to, provision of room and board; supervision; protection; and assistance in bathing, dressing, grooming, eating, management of money, transportation or recreation. Care also includes being aware of the individual's general whereabouts at all times, and monitoring the activities of the individual while at the proctor home to assure their health, safety and welfare.

(17) "Chemical Restraint" means the use of a psychotropic drug or other drugs for punishment, or to modify behavior in place of a meaningful behavior/treatment plan.

(18) "Child" means an individual under the age of 18 and who has a provisional eligibility determination of developmental disability.

(19) "Choice" means the individual's and guardian's expression of preference, opportunity for, and active role in decision-making related to the selection of assessments, services, service providers, goals and activities, and verification of satisfaction with these services. Choice may be communicated verbally, through sign language, or other communication method.

(20) "Community Developmental Disability Program" or "CDDP" means an entity that is responsible for planning and delivery of services for persons with mental retardation or other developmental disabilities in a specific geographic area of the state under a contract with the Department or a local mental health authority.

(21) "Community Developmental Disability Program Director" means the director of a community mental health and developmental disability program which operates or contracts for all services for persons with mental or emotional disturbances, drug abuse problems, mental retardation or other developmental disabilities, and alcoholism and alcohol abuse problems under the County Financial Assistance Contract with the Department of Human Services.

(22) "Competency Based Training Plan" means a written description of the agency's process for providing training to newly hired agency staff and proctor providers. At a minimum the plan must address health, safety, rights, values and personal regard, and the provider's mission. The plan shall describe competencies; training methods; timelines; how competencies of staff are determined and documented, including steps for remediation; and when a competency(ies) may be waived by the agency to accommodate a staff person's or proctor provider's specific circumstances.

(23) "Complaint Investigation" means an investigation of any allegation which has been made to a proper authority that the program has taken an action which is alleged to be contrary to law, rule or policy that is not covered by an abuse investigation or a grievance procedure.

(24) "Condition" means a provision attached to a new or existing certificate, which limits or restricts the scope of the certificate or imposes additional requirements on the agency or proctor provider.

(25) "Contracting Entity" means the CDDP or agency contracting with the Department.

(26) "Crisis" means a situation, as determined by a qualified Services Coordinator that could result in civil court commitment under ORS 427 and an imminent risk of loss of the community support system for an adult or the imminent risk of loss of home for a child with no appropriate alternative resources available.

(27) "Denial" is the refusal of the Department of Human Services to issue a certificate to operate a Proctor Agency because the Department has determined that the agency is not in compliance with one or more of these administrative rules.

(28) "Department" means Department of Human Services (DHS), Seniors and People with Disabilities (SPD), an organizational unit within the Department that focuses on the planning of services, policy development and regulation of programs for persons that have developmental disabilities.

(29) "Developmental Disability" for adults means a disability attributable to mental retardation, autism, cerebral palsy, epilepsy, or other neurological handicapping condition that requires training or support similar to that required by individuals with mental retardation, and the disability:

(a) Originates before the individual attains the age of 22 years, except that in the case of mental retardation the condition must be manifested before the age of 18; and

(b) Has continued, or may be expected to continued, or may be expected to continue, indefinitely; and

(c) Constitutes a substantial impairment in adaptive behavior; and

(d) The condition or impairment must not otherwise primarily be attributed to mental illness, substance abuse, an emotional disorder, Attention Deficit and Hyperactivity Disorder (ADHD), a learning disability, or sensory impairment; or

(e) Results in significant sub average general intellectual functioning with concurrent deficits in adaptive behavior that are manifested during the developmental period. Individuals of borderline intelligence may be considered to have mental retardation if there is also serious impairment of adaptive behavior. Definitions and classifications must be consistent with the "Manual of Terminology and Classification in Mental Retardation" by the American Association on Mental Deficiency, 1977 Revision. Mental retardation is synonymous with mental deficiency.

(30) "Developmental Disability" for children five years and younger means the condition or impairment must not be otherwise primarily attributed to mental illness, substance abuse, an emotional disorder, Attention Deficit and Hyperactivity Disorder (ADHD), a learning disability, or sensory impairment; and be expected to last indefinitely, and is always provisional; AND

(a) There is a standardized test demonstrating significant adaptive impairment (more than two standard deviations below the norm) in at least two of the following areas of functioning: Self care, receptive and expressive language, learning, mobility, and self-direction; OR

(b) There is a statement by a licensed medical practitioner that the child has a condition or syndrome that shall likely cause significant adaptive impairment in at least two of the areas listed in OAR 411-320-0020(5).

(31) "Developmental Disability" for children six years and older is always provisional and means:

(a) There is a diagnosis of mental retardation; OR

(b) There is a diagnosis of developmental disability; AND

(A) There is a significant adaptive impairment (more than two standard deviations below the norm) in at least two of the following areas: Self-care, receptive and expressive language, learning, mobility, self-direction; AND

(B) The condition or impairment must be expected to last indefinitely and must not be otherwise primarily attributed to mental illness, substance abuse, an emotional disorder, Attention Deficit and Hyperactivity Disorder (ADHD), a learning disability, or sensory impairment; AND

(C) The individual is expected to need multiple, specialized supports indefinitely.

(32) "Direct Nursing Services" means the provision of child-specific advice, plans or interventions, based on nursing process as outlined by the Oregon State Board of Nursing, by a nurse at the home/facility. Direct nursing service differs from administrative nursing services. Administrative nursing services include non-individual-specific services, such as quality assurance reviews, authoring health related agency policies and procedures, or providing general training for staff.

(33) "Educational Surrogate" means a person who acts in place of a parent in safeguarding a child's rights in the special education decision-making process when the parent cannot be identified or located after reasonable efforts; when there is reasonable cause to believe that the child has a disability and is a ward of the state; or at the request of a parent or adult student.

(34) "Entry" means admission to a Department funded developmental disability service provider. For purposes of this rule entry means admission to a certified proctor provider home.

(35) "Executive Director" means the person designated by a board of directors or corporate owner responsible for the administration of the program's services for individuals.

(36) "Exit" means termination from a Department funded developmental disability service provider. Exit does not mean transfer within the agency.

(37) "Foster Care" for the purpose of this rule means 24-hour substitute care for children in a certified foster home that is maintained and lived in by the person named on the foster home certificate, and contracted with the Proctor Agency.

(38) "Founded Reports" means the Department of Human Services, Children, Adults, and Families Division or Law Enforcement Authority (LEA) determination, 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.

(39) "Grievance" means a formal complaint by the individual or a person acting on his/her behalf about any aspect of the program's services or an employee of the program.

(40) "Guardian" means a parent of a child under the age of 18 years or a person or agency appointed by the courts that is authorized by the court to make decisions about services for either a child or an adult.

(41) "Health Care Provider" means a person licensed, certified or otherwise authorized or permitted by law of this state to administer health care in the ordinary course of business or practice of a profession, and includes a health care facility.

(42) "Incident Report" means a written report of any injury, accident, acts of physical aggression or unusual incident involving an individual, written by the proctor provider or agency representative involved in or witnessing the incident.

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(43) "Independence" means the extent to which persons with mental retardation or developmental disabilities exert control and choice over their own lives.

(44) "Individual" means an adult or a child with developmental disabilities for whom services are planned, provided and authorized by a qualified Services Coordinator.

(45) "Individualized Education Plan" (IEP) means a written plan of instructional goals and objectives in conference with the teacher, parent/guardian, student, and a representative of the school district.

(46) "Individual Support Plan" or "ISP" means the written details of the supports, activities and resources required for the individual to achieve personal goals. The Individual Support Plan is developed to articulate decisions and agreements made during a person-centered process of planning and information gathering. The ISP is the individual's Plan of Care for Medicaid purposes.

(47) "Individual Support Plan Team" or "ISP team" in comprehensive services means a team composed of the individual served, the foster provider, agency representatives who provide service to the individual (if appropriate for in-home supports), the guardian, if any, relatives of the individual, and the Services Coordinator and other persons who are well liked by the individual.

(48) "Integration" means the use by persons with mental retardation or other developmental disabilities of the same community resources that are used by and available to other persons in the community and participation in the same community activities in which persons without a disability participate, together having regular contact with persons without a disability. It further means that persons with developmental disabilities live in homes, which are in proximity to community resources and foster contact with persons in their community. (See ORS 427.005.)

(49) "Legal Representative" means the parent if the individual is under age 18, unless the court appoints another individual or agency to act as guardian.

(50) "Majority Agreement" means for purposes of entry, exit, transfer and annual ISP team meetings that no one member of the ISP team shall have the authority to make decisions for the team. Representatives from service provider(s), families, the Services Coordinator, or advocacy agencies shall be considered as one member of the ISP team for the purpose of reaching majority agreement.

(51) "Mandatory Reporter" means any public or private official who, while acting in an official capacity, comes in contact with and has reasonable cause to believe that an individual with disabilities has suffered abuse, or that any person with whom the official comes in contact while acting in an official capacity, has abused the individual with disabilities. Pursuant to ORS 430.765(2) psychiatrists, psychologists, clergy and attorneys are not mandatory reporters with regard to information received through communications that are privileged.

(52) "Mechanical Restraint" means any mechanical device, material, object or equipment that is attached or adjacent to an individual's body, that the individual cannot easily remove or easily negotiate around, and restricts freedom of movement, or access to the individual's body.

(53) "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.

(54) "Modified Diet" means the texture or consistency of food or drink is altered or limited. Examples include, but are not limited to, no nuts or raw vegetables, thickened fluids, mechanical soft, finely chopped, pureed, bread only soaked in milk.

(55) "Nurse" means a person who holds a valid, current license as a Registered Nurse (RN), or Licensed Practical Nurse (LPN) from the Oregon Board of Nursing.

(56) "Nursing Care Plan" means a plan of care developed by a Registered Nurse (RN) that describes the medical, nursing, psychosocial, and other needs of the individual and how these needs shall be met. It includes which tasks shall be taught or delegated to the provider and staff.

(57) "Oregon Core Competencies" is:

(a) A list of skills and knowledge for newly hired staff in the areas of health, safety, rights, values and personal regard, and the service provider's mission; and

(b) The associated timelines in which newly hired staff must demonstrate competencies.

(58) "Oregon Intervention System" or "OIS" means a system of providing training to people who work with designated individuals with developmental disabilities, to provide elements of positive behavior support and non-aversive behavior intervention. The system uses principles of pro-active support and describes approved physical intervention techniques that are used to maintain health and safety.

(59) "Physical Intervention" means the use of any physical action or any response to maintain the health and safety of an individual or others during a potentially dangerous situation or event.

(60) "Physical Restraint" means a physical intervention that includes manual physical holding of or contact with an individual that restricts the individual's freedom of movement.

(61) "Prescription Medication" means any medication that requires a physician prescription before it may be obtained from a pharmacist.

(62) "Proctor Agency" means an entity or program certified by the Department of Human Services to provide contracted and supervised services in foster homes.

(63) "Proctor Care Services" means a comprehensive residential program certified by the Department of Human Services to provide intensive individually focused contracted foster care, training, and support to individuals with developmental disabilities, experiencing emotional, medical, or behavioral difficulties.

(64) "Proctor Provider" means the provider of the home who is either licensed as an adult foster home or certified as a child foster home individuals with developmental disabilities.

(65) "Productivity" means engagement in income-producing work by a person with mental retardation or other developmental disabilities that is measured through improvements in income level, employment status or job advancement or engagement by a person with mental retardation or other developmental disabilities in work contributing to a household or community.

(66) "Protection" means necessary actions taken to prevent subsequent abuse or exploitation of the individual, to prevent self-destructive acts, and to safeguard an individual's person, property and funds.

(67) "Protective Services" means necessary actions taken to prevent subsequent abuse or exploitation of the individual, to prevent self-destructive acts, and safeguard an individual's person, property, and funds as soon as possible.

(68) "Psychotropic Medication" means a medication whose prescribed intent is to affect or alter thought processes, mood, or behavior. This includes, but is not limited to, anti-psychotic, antidepressant, anxiolytic (anti-anxiety), and behavior medications. Because a medication may have many different effects, its classification depends upon its stated, intended effect when prescribed.

(69) "Respite Care" means short-term services for a period of up to 14 days. Respite care may include both day and overnight care.

(70) "Revocation" is the action taken to rescind a proctor provider home or agency certificate after the Department has determined that the program is not in compliance with one or more of these administrative rules.

(71) "Self-Administration of Medication" means without supervision, the individual manages and takes his/her own medication. It includes identifying his/her medication and the times and methods of administration, placing the medication internally in or externally on his or her own body without staff assistance, upon the written order of a physician, and safely maintaining the medication(s).

(72) "Services Coordinator" means an employee of the CDDP or other agency which contracts with the County or Department, who is selected to plan, produce, coordinate, monitor individual support plan services and to act as a proponent for persons with developmental disabilities as long as the Department holds the direct contract with the Proctor Agency.

(73) "Service Provider" means a public or private community agency or organization that provides recognized mental health or developmental disability services and is approved by the Department or other appropriate agency to provide these services. For the purpose of this rule "provider", "proctor agency", "proctor agency staff", "applicant", "foster provider", "proctor provider", "alternative care-giver", "baby sitter", "respite provider", "crisis provider", "skill trainer" or "sub contractor" are synonymous with "service provider".

(74) "Significant Other" means a person selected by the individual and guardian to be his/her friend.

(75) "Specialized Diet" means that the amount, type of ingredients or selection of food or drink items is limited, restricted, or otherwise regulated under a physician's order. Examples include, but are not limited to, low calorie, high fiber, diabetic, low salt, lactose free, low fat diets. This does not include diets where extra or additional food is offered, but may not be eaten, for example, offer prunes each morning at breakfast, and include fresh fruit with each meal.

(76) "Substantiated" means an abuse investigation has been completed by the Department of Human Services or its designee and the preponderance of the evidence establishes the abuse occurred.

(77) "Support" means those services that assist the individual in maintaining or increasing his or her functional independence, achieving community presence and participation, enhancing productivity, and enjoying a satisfying lifestyle. Support services may include training, the systematic, planned maintenance, development or enhancement of self-care, social or independent living skills, or the planned sequence of systematic interactions, activities, structured learning situations, or educational experiences designed to meet each individual's specified needs in the areas of integration and independence. Support also includes services the Proctor Agency provides to its contracted proctor providers. Provider support may include respite, individualized training, and consultation.

(78) "Suspension of Certificate" is an immediate withdrawal of the approval to operate a proctor provider home or agency when the Department determines that there is imminent danger to the health or safety of the individuals served.

(79) "Transfer" means movement of an individual from one proctor home to another within the same agency within the same county.



# ADMINISTRATIVE RULES

(80) "Transition Plan" means a written plan for the period of time between an individual's entry into a particular service and when the individual's ISP is developed and approved by the ISP team. The plan must include a summary of the services necessary to facilitate adjustment to the services offered, the supports necessary to assure health and safety, and the assessments and consultations necessary for the ISP development.

(81) "Unusual Incident" means those incidents involving serious illness or accidents, death of an individual, injury or illness of an individual requiring inpatient or emergency hospitalization, suicide attempts, a fire requiring the services of a fire department, or any incident requiring abuse investigation.

(82) "Variance" means an exception from a regulation or provision of these rules, which may be granted by the Department, upon written application by the proctor provider or agency.

(83) "Volunteer" is any person assisting in a proctor home or the agency without pay to support the care provided to individuals residing in the home or facility.

Stat. Auth.: ORS 409.050, 410.070, 427.007, & 430.215  
Stats. Implemented: ORS 430.021(4) & 430.610 - 430.670  
Hist.: SPD 33-2004, f. 11-30-04, cert. ef. 1-1-05; SPD 32-2006, f. 12-27-06, cert. ef. 1-1-07; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10

## 411-335-0030

### Program Management and Personnel Practices

(1) Non-discrimination. The agency must comply with all applicable state and federal statutes, rules and regulations in regard to non-discrimination in employment practices.

(2) Basic personnel policies and procedures. The agency must have and implement personnel policies and procedures, which address suspension, increased supervision, or other appropriate disciplinary employment procedures when an agency staff member, or subcontractor, including respite providers and volunteers, has been identified as an accused person in an abuse investigation or when the allegation of abuse has been substantiated. Policy shall reflect that any incurred crime as described under the criminal records check rules in OAR 407-007-0200 to 407-007-0370 shall be reported to the agency.

(3) Application for employment. An application for employment at the program must inquire whether an applicant has been found to have committed abuse.

(4) Criminal records checks. Any employee, volunteer, proctor provider, respite provider, advisor, skill trainer, or any subject individual as required under OAR 407-007-0200 to 407-007-0370, who has or will have contact with a resident of the program, must have an approved criminal records check in accordance with OAR 407-007-0200 to 407-007-0370 and under ORS 181.534.

(a) The program may not use public funds to support, in whole or in part, the employment in any capacity of a person who has been hired on or after January 1, 2010, or is subject to criminal records checks after January 1, 2010 as required by administrative rule, and who has been convicted:

(A) Of a crime listed in Exhibit 335-1;

(B) In the last 10 years, of a crime involving the delivery or manufacture of a controlled substance;

(C) Of an attempt, conspiracy, or solicitation to commit a crime described in Exhibit 335-1; or

(D) Of a crime in another jurisdiction that is substantially equivalent to a crime described in Exhibit 335-1.

(b) A person may not be authorized as a provider or meet qualifications as described in this rule if the person has been hired on or after January 1, 2010, or is subject to criminal records checks after January 1, 2010 as required by administrative rule, and who has been convicted:

(A) Of a crime listed in Exhibit 335-1;

(B) In the last 10 years, of a crime involving the delivery or manufacture of a controlled substance;

(C) Of an attempt, conspiracy, or solicitation to commit a crime described in Exhibit 335-1; or

(D) Of a crime in another jurisdiction that is substantially equivalent to a crime described in Exhibit 335-1.

(5) For investigations conducted by the Department or its designee in homes certified for children, the definitions of abuse described in ORS 419B.005 and OAR 407-045-0260 shall apply.

(6) Prohibition against retaliation. The agency must not retaliate against any agency staff member, subcontractor including respite providers and volunteers, or proctors providers who report in good faith suspected abuse, or retaliate against the individual in care, with respect to any report. An accused person cannot self-report solely for the purpose of claiming retaliation.

(a) Subject to penalty. Any community facility, community program or person that retaliates against any person because of a report of suspected abuse or neglect shall be liable according to ORS 430.755, in a private action to that person for actual damages and, in addition, shall be subject to a penalty up to \$1000, notwithstanding any other remedy provided by law.

(b) Adverse action defined. Any adverse action is evidence of retaliation if taken within 90 days of a report of abuse. For purposes of this subsection, "adverse action" means any action taken by a community facility, community program or person involved in a report against the person making the report

or against the individual or adult because of the report and includes, but is not limited to:

(A) Discharge or transfer from the program, except for clinical reasons;

(B) Discharge from or termination of employment;

(C) Demotion or reduction in remuneration for services; or

(D) Restriction or prohibition of access to the program or the individuals served by the program.

(7) Responsibilities of Proctor Agency. The proctor agency must:

(a) Implement policies and procedures to assure support, health, safety, and crisis response for individuals served, including policies and procedures to assure necessary training of agency staff and proctor providers.

(b) Implement policies and procedures to assure that provider payment and agency support is commensurate to the support needs of individuals enrolled in the proctor care services. Policies and procedures must include frequency of review.

(c) Implement policies and procedures to assure support, health, safety, and crisis response for individuals placed in all types of respite care, including policies and procedures to assure training of respite care providers. The types of respite care include but are not limited to: respite care in the proctor provider's home during day hours only, respite care in the home of someone other than the proctor provider for day time only, overnight care in the proctor provider's home, and overnight care at someone other than the proctor provider's home.

(d) Implement policies and procedures to assure confidentiality of individuals in service and of family information.

(e) Implement policies and procedures to review and document that each child enrolled in proctor care services continues to require such services. Policies and procedures must include frequency of review and the criteria as listed below.

(A) The child's need for a formal Behavior Support Plan based on the Risk Tracking Record (RTR) and functional assessment of the behavior.

(B) The child has been stable and generally free of serious behavioral or delinquency incidents for the past 12 months.

(C) The child has been free of psychiatric hospitalization (hospital psychiatric unit, Oregon State Hospital, and sub acute) for the last 12 months, except for assessment and evaluation.

(D) The child poses no significant risk to self or community.

(E) The proctor provider has not needed or utilized the agency crisis services in response to the child's medical, mental health, or behavioral needs more than one time in the past 12 months.

(F) The proctor provider is successfully supporting the child over time, with a minimum of agency case management contact other than periodic monitoring and check in.

(G) The proctor provider does not require professional support for the child, and there has been or could be a reduction in ongoing weekly professional support for the child including consultation, skill training and staffing.

(H) The proctor agency is not actively working with the child's family to return the child to the family home.

(f) Adults in proctor services. The agency must develop and implement policies and procedures that the ISP Team evaluates annually the individual's support needs and need for proctor services.

(g) Assure that preliminary certification or licensing (whichever is appropriate) activities are completed per the relevant foster care statutes and OAR chapter 411, divisions 346 or 360. Such work is submitted to Department of Human Services Seniors and People with Disabilities Division for final review and approval.

(h) Complete an initial home study for all proctor provider applicants that are updated annually for all licensed or certified proctor providers.

(i) Provide and document training and support to agency staff, proctor provider, subcontractors, volunteers, and respite providers to maintain the health and safety of the individuals served.

(j) Provide and document training and support to the agency staff, proctor provider, subcontractors, volunteers, and respite providers to implement the ISP process, including completion of a Risk Tracking Record development of protocols and BSP for each individual served and the development of the ISP.

(k) Have a plan for emergency back-up for home provider including but not limited to, use of crisis respite, other proctor homes, additional staffing, and behavior support consultations.

(l) Coordinate and document entries, exits, and transfers.

(m) Report to the Department, and the CDDP, any placement changes due to a crisis plan made outside of normal working hours. Notification must be made by 9:00 a.m. of the first working day after the change has happened.

(n) Assure that each proctor provider has a current emergency disaster plan on file in the proctor provider home, in the agency office and provided to the CDDP and any case manager of an individual who is not an employee of the local CDDP.

(o) Assure that emergency backup in the event the proctor provider is unavailable.

(8) General Requirements for Safety and Training. All volunteers having contact with the individual, proctor providers, substitute caregivers, respite providers, child care providers and agency staff, except for those providing services in a crisis situation must:

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(a) Receive training specific to the individual. This training must at a minimum consist of basic information on environment, health, safety, ADLs, positive behavioral supports, and behavioral needs for the individual, including the ISP, BSP, required protocols, and any emergency procedures. Training must include required documentation for health, safety, and behavioral needs of the individual.

(b) Receive OIS training. OIS Certification is required if physical intervention is likely to occur as part of the BSP. Knowledge of OIS principles, not certification is required if it is unlikely that physical intervention shall be required.

(c) Receive mandatory reporter training.

(d) Receive confidentiality training.

(e) Be at least 18 years of age, and have a valid social security card.

(f) Be cleared by the DHS criminal records check requirements.

(g) Have a valid Oregon Driver's License, and proof of insurance.

(h) Receive training in applicable agency policies and procedures.

(9) In addition to the above general requirements, the following requirements must be met for each specific provider classification as listed below.

(a) Proctor Providers:

(A) Must receive and maintain current First Aid and CPR training.

(B) Must have knowledge of OAR chapter 411, divisions 335 and 346, or division 360 as appropriate to their license or certificate.

(b) Skills Trainers, Advisors, or other Agency Staff:

(A) Must receive and maintain current First Aid and CPR training.

(B) Must have knowledge of OAR chapter 411, divisions 335 and 346 or division 360.

(C) Anyone age 18 or older, living in an agency staff persons uncertified home must have an approved DHS criminal records check per OAR 407-007-0200 to 407-007-0370 and section (4) of this rule prior to any visit of an individual to the staff person's home.

(D) Must assure health and safety guidelines for alternative caregivers, including but not limited to the following:

(i) The home and premises are free from objects, materials, pets, and conditions that constitute a danger to the occupants; and the home and premises must be clean and in good repair.

(ii) Any sleeping room used for an individual in respite must be finished, attached to the house, and not a common living area, closet, storage area, or garage. If a child is staying overnight, the sleeping arrangements must be safe and appropriate to the individual's age, behavior, and support needs.

(iii) The home must have tubs or showers, toilets and sinks that are operable and in good repair with hot and cold water.

(iv) The alternative caregivers must have access to a working telephone in the home, and must have a list of emergency telephone numbers and know where the numbers are located.

(v) All medications, poisonous chemicals and cleaning materials must be stored in a way that prevents the individuals from accessing them, unless otherwise addressed in an individual's ISP.

(vi) Firearms must be stored unloaded. Firearms and ammunition must be stored in separate locked locations. Loaded firearms must never be carried in any vehicle while it is being used to transport an individual.

(vii) First aid supplies must be available in the home and in the vehicles that shall be used to transport an individual.

(c) Respite Providers

(A) In Proctor Provider Home — Day or Night

(i) Must be trained on basic health needs of the individuals in service.

(ii) Must be trained on basic safety in the home including, but not limited to first aid supplies, the emergency plan, and the fire evacuation plan.

(B) In other than Proctor Provider Home — Day or Night. Must assure health and safety guidelines for alternative caregivers, including, but not limited to:

(i) The home and premises are free from objects, materials, pets, and conditions that constitute a danger to the occupants; and the home and premises must be clean and in good repair.

(ii) Any sleeping room used for an individual in respite must be finished, have an openable window, be attached to the house, and not a common living area, storage area, closet, or garage. If the individual is staying overnight, the sleeping arrangements must be safe and appropriate to the individual's age, behavior, and support needs.

(iii) The home must have tubs or showers, toilets and sinks that are operable and in good repair with hot and cold water.

(iv) The alternative caregivers must have access to a working telephone in the home, and must have a list of emergency telephone numbers and know where the numbers are located.

(v) All medications, poisonous chemicals and cleaning materials must be stored in a way that prevents an individual from accessing them.

(vi) Firearms must be stored unloaded. Firearms and ammunition must be stored in separate locked locations. Loaded firearms must never be carried in any vehicle while it is being used to transport an individual.

(vii) First aid supplies must be available in the home and in the vehicles that shall be used to transport individuals.

(d) Alternate Care Givers

(A) Day Care, Camp.

(i) When a child is cared for by a childcare provider, camp, or child care center, the Proctor agency must assure that the camp, provider home or center is certified, licensed, or registered as required by the State Individual Care Division (ORS 657A.280). The agency must also assure that the ISP team is in agreement with the plan for the child to attend the camp, childcare center, or childcare provider home.

(ii) Adults participating in employment or alternatives to employment must have such services addressed in their ISP. Any camping or alternative day service experience must be addressed in the ISP and approved by the ISP Team.

(B) Social Activities for less than 24 hours, including overnight arrangements.

(i) Proctor Agency must assure the person providing care is capable of assuming all care responsibilities, and must be present at all times.

(ii) Proctor Agency must assure that the ISP team is in agreement with the planned social activity.

(iii) Proctor agency must assure that the proctor provider maintains back-up responsibilities for the person in service.

(10) General Crisis Requirements for Individuals already in Proctor Agency Homes.

(a) Crisis Service Providers must:

(A) Be at least 18 years of age.

(B) Have an initial and annual approval to work based on current Department policies and procedures for review of criminal records check per OAR 407-007-0200 to 407-007-0370 and section (4) of this rule prior to supervising any individual. Providers serving children must also have a Child Welfare check completed on an annual basis.

(C) Upon placement of the individual, have knowledge of the individual's needs. This knowledge must consist of basic information on health, safety, ADLs, and behavioral needs for the individual, including the ISP, BSP, and required protocols. Training for the provider must include information on required documentation for health, safety, and behavioral needs of the individual.

(b) The Agency must:

(A) Make follow-up contact with the crisis providers within 24 hours of the placement to assess and assure the individual's and provider's support needs are met.

(B) Initiate transition planning with the ISP team and document the plan within 72 hours.

(11) Mandatory abuse reporting personnel policies and procedures. Proctor agency staff and caregivers are mandatory abuse and neglect reporters under Oregon State law (ORS 419B.005 and 430). Upon reasonable cause to believe that abuse or neglect has occurred, all members of the household and any proctor provider, substitute care givers, agency employees, independent contractors or volunteers must report pertinent information to DHS-CW, the CDDP, or law enforcement. For reporting purposes the following shall apply:

(a) Notification of mandatory reporting status must be made at least annually to all proctor providers, agency employees, substitute caregivers, subcontractors, and volunteers, on forms provided by the Department.

(b) All agency employees and proctor providers must be provided with a Department produced card regarding abuse reporting status and abuse reporting requirements.

(12) Director qualifications. The program must be operated under the supervision of a Director who has a minimum of a bachelor's degree and two years of experience, including supervision, in developmental disabilities, mental health, rehabilitation, social services or a related field. Six years of additional experience in the identified fields may be substituted for a degree.

(13) Proctor agency staff and proctor providers, including subcontractors and volunteers qualifications. Any agency staff including skill trainers, respite providers, substitute caregivers, subcontractors, and volunteers must meet the following criteria:

(a) Be at least 18 years of age, and have a valid social security card.

(b) Have approval to work based on current Department policies and a criminal records check completed by the Department as described in section (4) of this rule.

(c) Disclosed any founded reports of child abuse or substantiated abuse allegations.

(d) Be literate and capable of understanding written and oral orders, be able to communicate with individual's physicians, Services Coordinators and appropriate others, and be able to respond to emergency situations at all times.

(e) Have met the basic qualification in the agency's training plan.

(f) Meet any additional qualifications specified for substitute caregivers in OAR 411-360-0110(3)(a-k) and 411-360-0120(3) if working in a home licensed as an AFH-DD.

(14) Personnel files and qualification records. The agency must maintain clear, written, signed, and up to date job descriptions and respite agreements when applicable, as well as a file available to the Department or CDDP for inspection that includes written documentation of the following for each agency employee. The record must include the following:

(a) Written documentation that references and qualifications were checked.

# ADMINISTRATIVE RULES

(b) Written documentation of an approved criminal records check by the Department as required by OAR 407-007-0200 to 407-007-0370.

(c) Written documentation of employees' notification of mandatory abuse training and reporter status prior to supervising individuals and annually thereafter.

(d) Written documentation of any founded reports of child abuse or substantiated abuse allegations.

(e) Written documentation kept current that the agency staff person has successfully completed competency-based training in areas identified by the agency's training plan as required by Oregon's Core Competencies defined in OAR chapter 411, division 325 and chapter 411, division 335 and that is appropriate to their job description.

(f) Written documentation of 12 hours of job-related in-service training annually.

(g) Proctor providers must meet all of the certification standards as written in the child foster certification OAR chapter 411, divisions 346 and 335 or the adult foster home licensing standards OAR Chapter 411, divisions 335 and 360 or Child Welfare administrative rules, chapter 413, divisions 200 and 220 whichever apply to the type of foster home.

(15) Agency documentation requirements. All documentation required by this rule must:

(a) Be prepared at the time, or immediately following the event being recorded.

(b) Be accurate and contain no willful falsification.

(c) Be legible, dated and signed by the person(s) making the entry.

(d) Be maintained for no less than three years.

(e) Be made readily available for the purposes of inspection.

(16) Dissolution of agency. Prior to the dissolution of an agency, a representative of the governing body or owner must notify the Department 30 days in advance in writing and make appropriate arrangement for the transfer of individual's records.

Stat. Auth.: ORS 409.050, 410.070, 427.005, 427.007, & 430.215

Stats. Implemented: ORS 430.021(4) & 430.610 - 430.670

Hist.: SPD 33-2004, f. 11-30-04, cert. ef. 1-1-05; SPD 32-2006, f. 12-27-06, cert. ef. 1-1-07; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10

## 411-335-0100

### Inspections and Investigations

(1) Inspections and investigations required. All services covered by this rule must allow the following types of investigations and inspections:

(a) Quality assurance, certificate renewal and onsite inspections; including a review of records at the agency office, as well as onsite review of at least one or more proctor provider home(s) as selected by the Department.

(b) Complaint investigations; and

(c) Abuse investigations. Priority review may be given when protective service investigations have taken place.

(2) Inspections and investigations by the Department, its designee or proper authority. The Department, its designee, or proper authority shall perform all inspections and investigations.

(3) Unannounced. Any inspection or investigation may be unannounced.

(4) Required documentation. All documentation and written reports required by this rule must be:

(a) Open to inspection and investigation by the Department, its designee or proper authority; and

(b) Submitted to or be made available for review by the Department within the time allotted.

(5) Priority of investigation under (1)(c). When abuse is alleged or death of an individual has occurred and a law enforcement agency, or the Department or its designee has determined to initiate an investigation, the provider must not conduct an internal investigation. For the purposes of this section, an internal investigation is defined as conducting interviews of the alleged victim, witness, the accused person or any other person who may have knowledge of the facts of the abuse allegation or related circumstances, reviewing evidence relevant to the abuse allegation, other than the initial report; or any other actions beyond the initial actions of determining:

(a) If there is reasonable cause to believe that abuse has occurred; or

(b) If the alleged victim is in danger or in need of immediate protective services; or

(c) If there is reason to believe that a crime has been committed; or

(d) What, if any, immediate personnel actions must be taken to assure individual safety.

(6) When an abuse investigation is initiated or completed by the Department or its designee, the Department or its designee shall provide notification in accordance with OAR 407-045-0290 and 407-045-0320.

(7) The Department or its designee shall conduct investigations and complete reports in accordance with procedures prescribed in OAR chapter 407, division 045. The report must include the findings based upon the abuse investigation.

(8) Upon completion of the abuse investigation. Upon completion of the abuse investigation by the Department, its designee, or law enforcement agency, an agency may conduct an investigation to determine if any additional personnel actions are necessary.

(9) Abuse Investigation and Protective Services Report. Upon completion of the investigation report according to OAR chapter 407, division 045 the sections of the report, which are public records and not exempt from disclosure under the public records law and in accordance with OAR 407-045-0330 shall be provided to the appropriate provider. The agency must implement the actions necessary within the deadlines listed, to prevent further abuse as stated in the report.

(10) Plan of correction. A plan of correction must be submitted to the CDDP and the Department for any noncompliance found during an inspection under these rules.

Stat. Auth.: ORS 409.050, 410.070, 427.005, 427.007, & 430.215

Stats. Implemented: ORS 430.021(4) & 430.610 - 430.670

Hist.: SPD 33-2004, f. 11-30-04, cert. ef. 1-1-05; SPD 32-2006, f. 12-27-06, cert. ef. 1-1-07; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10

## 411-340-0020

### Definitions

As used in OAR chapter 411, division 340:

(1) "Abuse" means abuse as defined in OAR 407-045-0260.

(2) "Abuse Investigation and Protective Services" means reporting and investigation activities as required by OAR 407-045-0300 and any subsequent services or supports necessary to prevent further abuse.

(3) "Activities of Daily Living (ADL)" mean those self-care activities that must be accomplished by an individual for continued well-being including mobility, dressing and grooming, bathing and personal hygiene, toileting, bowel and bladder care, and eating.

(4) "Adaptive Behavior" means the degree to which an individual meets the standards of personal independence and social responsibility expected for age and culture group.

(5) "Administration of Medication" means the act of a person responsible for the individual's care and employed by or under contract to the individual, the individual's legal representative, or a provider organization, of placing a medication in, or on, an individual's body.

(6) "Administrative Review" means the formal process that is used when the individual or the individual's legal representative is not satisfied with the decision made by the brokerage about a complaint involving the provision of services or a provider.

(7) "Adult" means an individual 18 years or older with developmental disabilities.

(8) "Assistant Director" means the assistant director of the Department of Human Services, Seniors and People with Disabilities Division, or that person's designee.

(9) "Basic Benefit" means the type and amount of support services available to each eligible individual, specifically:

(a) Access to the brokerage services listed in OAR 411-340-0120(1); and if required

(b) Access to an amount of support services funds used to assist with the purchase of supports listed in OAR 411-340-0130(6). Either:

(A) An amount when an individual is a Medicaid recipient and is eligible for, and has chosen to receive, services available through the Support Services Waiver; or

(B) An amount of the state's General Fund when an individual is either not eligible for Medicaid or Medicaid waiver services or does not otherwise receive Medicaid benefits.

(10) "Basic Supplement" means an amount of support services funds in excess of the basic benefit to which an individual may have access in order to purchase necessary supports based on demonstration of extraordinary long-term need on the Basic Supplement Criteria Inventory, Form DHS 0203.

(11) "Basic Supplement Criteria Inventory (Form DHS 0203)" means the written inventory of an individual's circumstances that is completed and scored by the brokerage to determine whether the individual is eligible for a basic supplement.

(12) "Benefit Level" means the total annual amount of support service funds for which an individual is eligible. The benefit level includes the basic benefit and any exceptions to the basic benefit financial limits.

(13) "Certificate" means a document issued by the Seniors and People with Disabilities Division to a brokerage, or to a provider organization requiring certification under OAR 411-340-0170(2), that certifies the brokerage or provider organization is eligible to receive state funds for support services.

(14) "Choice" means the individual's expression of preference, opportunity for, and active role in decision-making related to the selection of assessments, services, providers, goals and activities, and verification of satisfaction with these services. Choice may be communicated verbally, through sign language, or by other communication methods.

(15) "Chore Services" mean services needed to maintain a clean, sanitary, and safe environment in an individual's home. Chore services include heavy household chores such as washing floors, windows, and walls, tacking down loose rugs and tiles, and moving heavy items of furniture for safe access and egress.

(16) "Client Process Monitoring System (CPMS)" means the Department of Human Services' computerized system for enrolling and terminating services for individuals with developmental disabilities.

(17) "Community Developmental Disability Program (CDDP)" means an entity that is responsible for planning and delivery of services for individ-

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uals with developmental disabilities according to OAR chapter 411, division 320. A CDDP operates in a specific geographic service area of the state under a contract with the Seniors and People with Disabilities Division, Local Mental Health Authority, or other entity as contracted by the Seniors and People with Disabilities Division.

(18) "Community Living and Inclusion Supports" mean services that facilitate independence and promote community integration by supporting the individual to gain or maintain skills to live as independently as possible in the type of home the individual chooses. Community living and inclusion supports provide support for the individual to participate in activities in integrated settings that promote community inclusion and contribution.

(a) Community living and inclusion supports include supports designed to develop or maintain skills for self-care, ability to direct supports, care of the immediate environment, and may include instruction in skills an individual wishes to acquire, retain, or improve that enhance independence, productivity, integration, or maintain the individual's physical and mental skills. Community living and inclusions supports include supports in the following areas:

(A) Personal skills, which includes eating, bathing, dressing, personal hygiene, and mobility;

(B) Socialization, which includes development or maintenance of self-awareness and self-control, social responsiveness, social amenities, and interpersonal skills;

(C) Community participation, recreation, or leisure, which includes the development or maintenance of skills to use available community services, facilities, or businesses;

(D) Communication, which includes development or maintenance of expressive and receptive skills in verbal and non-verbal language and the functional application of acquired reading and writing skills; and

(E) Personal environmental skills, which includes development or maintenance of skills such as planning and preparing meals, budgeting, laundry, and housecleaning.

(b) Community living and inclusion supports may or may not be work related.

(19) "Complaint" means a verbal or written expression of dissatisfaction with services or providers.

(20) "Comprehensive Services" mean a package of developmental disability services and supports that include one of the following living arrangements regulated by the Seniors and People with Disabilities Division alone or in combination with any associated employment or community inclusion program regulated by the Seniors and People with Disabilities Division:

(a) Twenty-four hour residential services including but not limited to services provided in a group home, foster home, or through a supported living program; or

(b) In-home supports provided to an individual in the individual or family home costing more than the individual cost limit.

(c) Comprehensive services do not include support services for adults enrolled in brokerages or for children enrolled in long-term supports for children or children's intensive in-home services.

(21) "Crisis Diversion Services" mean the services authorized and provided according to OAR 411-320-0160 that are intended to maintain an individual at home or in the family home while an individual is in emergent status. Crisis diversion services may include short-term residential placement services indicated on an individual's Support Services Brokerage Plan of Care Crisis Addendum, as well as additional support as described in an Individual Support Plan.

(22) "Developmental Disability" means a disability that originates in the developmental years, that is likely to continue, and significantly impacts adaptive behavior as diagnosed and measured by a qualified professional. Developmental disabilities include mental retardation, autism, cerebral palsy, epilepsy, or other neurological disabling conditions that require training or support similar to that required by individuals with mental retardation, and the disability:

(a) Originates before the individual reaches the age of 22 years, except that in the case of mental retardation, the condition must be manifested before the age of 18;

(b) Originates and directly affects the brain and has continued, or must be expected to continue, indefinitely;

(c) Constitutes a significant impairment in adaptive behavior; and

(d) Is not primarily attributed to a mental or emotional disorder, sensory impairment, substance abuse, personality disorder, learning disability, or Attention Deficit Hyperactivity Disorder (ADHD).

(23) "DHS" means the Department of Human Services.

(24) "Emergent Status" means a temporary, unpredictable situation when an individual enrolled in a brokerage may be allowed to receive Seniors and People with Disabilities Division-paid support exceeding the individual cost limit to remain in the individual's home or family home or to enter a short-term out-of-home residential placement without exiting support services. Individuals are considered in emergent status when the community developmental disability program of the individual's county of residence has determined that the individual meets criteria for crisis diversion services according to OAR 411-320-0160.

(25) "Employer-Related Supports" mean activities that assist individuals and, when applicable, their family members with fulfilling roles and obligations as employers as described in the Individual Support Plan. Supports to the employer include but are not limited to:

(a) Education about employer responsibilities;

(b) Orientation to basic wage and hour issues;

(c) Use of common employer-related tools such as job descriptions; and

(d) Fiscal intermediary services.

(26) "Entry" means admission to a Seniors and People with Disabilities Division-funded developmental disability service provider.

(27) "Environmental Accessibility Adaptations" mean physical adaptations that are necessary to ensure the health, welfare, and safety of the individual in the home, or that enable the individual to function with greater independence in the home.

(a) Environmental accessibility adaptations include but are not limited to:

(A) Environmental modification consultation to determine the appropriate type of adaptation;

(B) Installation of shatter-proof windows;

(C) Hardening of walls or doors;

(D) Specialized, hardened, waterproof, or padded flooring;

(E) An alarm system for doors or windows;

(F) Protective covering for smoke detectors, light fixtures, and appliances;

(G) Sound and visual monitoring systems;

(H) Fencing;

(I) Installation of ramps, grab-bars, and electric door openers;

(J) Adaptation of kitchen cabinets and sinks;

(K) Widening of doorways;

(L) Handrails;

(M) Modification of bathroom facilities;

(N) Individual room air conditioners for an individual whose temperature sensitivity issues create behaviors or medical conditions that put the individual or others at risk;

(O) Installation of non-skid surfaces;

(P) Overhead track systems to assist with lifting or transferring;

(Q) Specialized electric and plumbing systems that are necessary to accommodate the medical equipment and supplies necessary for the welfare of the individual; or

(R) Modifications to a vehicle to meet the unique needs of the individual (lift, interior alterations such as seats, head and leg rests and belts, special safety harnesses, or other unique modifications to keep the individual safe in the vehicle).

(b) Environmental accessibility adaptations exclude:

(A) Adaptations or improvements to the home that are of general utility and are not of direct medical or remedial benefit to the individual, such as carpeting, roof repair, and central air conditioning; and

(B) Adaptations that add to the total square footage of the home.

(28) "Environmental Modification Consultant" means either an independent provider, provider organization, or general business paid with support services funds, to provide advice to an individual, the individual's legal representative, or the individual's personal agent about the environmental accessibility adaptation required to meet the individual's needs.

(29) "Exit" means either termination from a Seniors and People with Disabilities Division-funded developmental disability service provider or transfer from one Seniors and People with Disabilities Division-funded program to another. Exit does not mean transfer within a provider's program within a county.

(30) "Family" for determining individual eligibility for brokerage services as a resident in the family home and for determining who may receive family training, means a unit of two or more persons that include at least one individual with developmental disabilities where the primary caregiver is:

(a) Related to the individual with developmental disabilities by blood, marriage, or legal adoption; or

(b) In a domestic relationship where partners share:

(A) A permanent residence;

(B) Joint responsibility for the household in general (e.g. child-rearing, maintenance of the residence, basic living expenses); and

(C) Joint responsibility for supporting a member of the household with developmental disabilities and the individual with developmental disabilities is related to one of the partners by blood, marriage, or legal adoption.

(31) "Family Training" means training and counseling services for the family of an individual that increase the family's capacity to care for, support, and maintain the individual in the home. Family training includes:

(a) Instruction about treatment regimens and use of equipment specified in the Individual Support Plan;

(b) Information, education, and training about the individual's developmental disability, medical, and behavioral conditions; and

(c) Counseling for the family to relieve the stress associated with caring for an individual with developmental disabilities.

(32) "Fiscal Intermediary" means a person or entity that receives and distributes support services funds on behalf of an individual who employs

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persons to provide services, supervision, or training in the home or community according to the Individual Support Plan.

(33) "Founded Reports" means the Department of Human Services, Children, Adults, and Families Division or Law Enforcement Authority (LEA) determination, 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.

(34) "General Business Provider" means an organization or entity selected by an individual or the individual's legal representative, and paid with support services funds that:

(a) Is primarily in business to provide the service chosen by the individual to the general public;

(b) Provides services for the individual through employees, contractors, or volunteers; and

(c) Receives compensation to recruit, supervise, and pay the persons who actually provide support for the individual.

(35) "Habilitation Services" mean services designed to assist individuals in acquiring, retaining, and improving the self-help, socialization, and adaptive skills necessary to reside successfully in home and community-based settings. Habilitation services include supported employment and community living and inclusion supports.

(36) "Hearing" means the formal process following an action that would terminate, suspend, reduce, or deny a service. This is a formal process required by federal law (42 CFR 431.200-250). A hearing is also known as a Medicaid Fair Hearing and contested case hearing.

(37) "Home" means an individual's primary residence that is not under contract with the Department of Human Services to provide services to an individual as a licensed or certified foster home, residential care facility, assisted living facility, nursing facility, or other residential support program site.

(38) "Homemaker Services" mean the general household activities such as meal preparation and routine household services required to maintain a clean, sanitary, and safe environment in an individual's home.

(39) "Incident Report" means a written report of any unusual incident involving an individual.

(40) "Independence" means the extent to which individuals with developmental disabilities exert control and choice over their own lives.

(41) "Independent Provider" means a person selected by an individual or the individual's legal representative and paid with support services funds that personally provide services to the individual.

(42) "Individual" means an adult with developmental disabilities for whom services are planned and provided.

(43) "Individual Cost Limit" means the maximum annual benefit level available under the Support Services Waiver.

(44) "Individual Support Plan (ISP)" means the written details of the supports, activities, and resources required for an individual to achieve personal goals. The Individual Support Plan is developed at minimum annually to reflect decisions and agreements made during a person-centered process of planning and information gathering. The Individual Support Plan is the individual's plan of care for Medicaid purposes.

(45) "Integration" means:

(a) The use by individuals with developmental disabilities of the same community resources that are used by and available to other persons in the community;

(b) Participation in the same community activities in which persons without a developmental disability participate, together with regular contact with persons without a developmental disability; and

(c) Individuals with developmental disabilities live in homes that are in proximity to community resources and foster contact with persons in their community.

(46) "Legal Representative" means an attorney at law who has been retained by or for an individual, or a person or agency authorized by the court to make decisions about services for the individual.

(47) "Mandatory Abuse Reporter" means any public or private official who, while acting in an official capacity, comes in contact with and has reasonable cause to believe that an individual with developmental disabilities has suffered abuse, or that any person with whom the official comes in contact, while acting in an official capacity, has abused an individual with developmental disabilities. Pursuant to ORS 430.765(2), psychiatrists, psychologists, clergy, and attorneys are not mandatory abuse reporters with regard to information received through communications that are privileged under ORS 40.225 to 40.295.

(48) "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.

(49) "Mental Retardation" means significantly sub-average general intellectual functioning existing concurrently with significant impairments in adaptive behavior that are manifested during the developmental period, prior to 18 years of age. Definitions and classifications must be consistent with the "Manual of Terminology and Classification in Mental Retardation" by the American Association on Mental Deficiency, 1977 Revision.

(50) "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.

(51) "Nursing Care Plan" means a plan developed by a registered nurse that describes the medical, nursing, psychosocial, and other needs of the individual and how those needs shall be met. The Nursing Care Plan includes which tasks shall be taught, assigned, or delegated to the qualified provider or family.

(52) "Occupational Therapy" means the services provided by a professional licensed under ORS 675.240 that are defined under the approved State Medicaid Plan, except that the amount, duration, and scope specified in the State Medicaid Plan do not apply.

(53) "Personal Agent" means a person who works directly with individuals and families to provide or arrange for support services, is a case manager for the provision of waiver case management services, meets the qualifications set forth in OAR 411-340-0150(5), and is:

(a) A trained employee of a brokerage; or

(b) A person who has been engaged under contract to the brokerage to allow the brokerage to meet responsibilities in geographic areas where personal agent resources are severely limited.

(54) "Personal Emergency Response Systems" mean electronic devices required by certain individuals to secure help in an emergency for safety in the community.

(55) "Person-Centered Planning" means a process, either formal or informal, for gathering and organizing information that helps an individual:

(a) Determine and describe choices about personal goals and lifestyle preferences;

(b) Design strategies and networks of support to achieve goals and a preferred lifestyle using individual strengths, relationships, and resources; and

(c) Identify, use, and strengthen naturally occurring opportunities for support at home and in the community.

(d) Methods for gathering information vary, but all are consistent with individual needs and preferences ranging from simple interviews with the individual, to informal observations in home and community settings, to formally structured meetings.

(56) "Physical Therapy" means the services provided by a professional licensed under ORS 688.020 that are defined under the approved State Medicaid Plan, except that the amount, duration, and scope specified in the State Medicaid Plan do not apply.

(57) "Plan Year" means 12 consecutive months used to calculate an individual's annual benefit level. Unless otherwise set according to the conditions of OAR 411-340-0120(6)(b), the initial plan year begins on the start date specified on the individual's first authorized Individual Support Plan after enrollment in a brokerage. Subsequent plan years begin on the anniversary of the start date of the initial Individual Support Plan.

(58) "Positive Behavioral Theory and Practice" means a proactive approach to individual behavior and behavior interventions that:

(a) Emphasizes the development of functional alternative behavior and positive behavior intervention;

(b) Uses the least intervention possible;

(c) Ensures that abusive or demeaning interventions are never used; and

(d) Evaluates the effectiveness of behavior interventions based on objective data.

(59) "Prescription Medication" means any medication that requires a physician prescription before it may be obtained from a pharmacist.

(60) "Primary Caregiver" means the person identified in an Individual Support Plan as providing the majority of service and support for an individual in the individual's home.

(61) "Productivity" means:

(a) Engagement in income-producing work by an individual with developmental disabilities that is measured through improvements in income level, employment status, or job advancement; or

(b) Engagement by an individual with developmental disabilities in work contributing to a household or community.

(62) "Provider Organization" means an entity selected by an individual or the individual's legal representative, and paid with support services funds that:

(a) Is primarily in business to provide supports for individuals with developmental disabilities;

(b) Provides supports for the individual through employees, contractors, or volunteers; and

(c) Receives compensation to recruit, supervise, and pay the persons who actually provide support for the individual.

(63) "Provider Organization Director" means the employee of a provider organization, or the employee's designee, responsible for administration and provision of services according to these rules.

(64) "Psychotropic Medication" means a medication whose prescribed intended effect is to affect or alter thought processes, mood, or behavior. Psychotropic medication includes but is not limited to anti-psychotic, antidepressant, anxiolytic (anti-anxiety), and behavior medications. Because a medication may have many different effects, the medication's classification depends upon its stated, intended effect when prescribed.

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(65) "Quality Assurance" means a systematic procedure for assessing the effectiveness, efficiency, and appropriateness of services.

(66) "Respite" means intermittent services provided on a periodic basis for the relief of, or due to the temporary absence of, persons normally providing the supports to individuals unable to care for themselves.

(67) "Restraint" means any physical hold, device, or chemical substance that restricts, or is meant to restrict, the movement or normal functioning of an individual.

(68) "Self-Administration of Medication" means the individual manages and takes his or her own medication, identifies his or her medication and the times and methods of administration, places the medication internally in or externally on his or her own body without staff assistance upon written order of a physician, and safely maintains the medication without supervision.

(69) "Self-Determination" means a philosophy and process by which individuals with developmental disabilities are empowered to gain control over the selection of support services that meet their needs. The basic principles of self-determination are:

(a) Freedom. The ability for an individual with a developmental disability, together with freely-chosen family and friends, to plan a life with necessary support services rather than purchasing a predefined program;

(b) Authority. The ability for an individual with a developmental disability, with the help of a social support network if needed, to control a certain sum of resources in order to purchase support services;

(c) Autonomy. The arranging of resources and personnel, both formal and informal, that shall assist an individual with a developmental disability to live a life in the community rich in community affiliations; and

(d) Responsibility. The acceptance of a valued role in an individual's 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 individuals with developmental disabilities.

(70) "SPD" means the Department of Human Services, Seniors and People with Disabilities Division.

(71) "Social Benefit" means a service or financial assistance solely intended to assist an individual with a developmental disability to function in society on a level comparable to that of a person who does not have such a developmental disability.

(a) Social benefits may not:

(A) Duplicate benefits and services otherwise available to persons regardless of developmental disability;

(B) Provide financial assistance with food, clothing, shelter, and laundry needs common to persons with or without developmental disabilities; or

(C) Replace other governmental or community services available to an individual.

(b) Financial assistance provided as a social benefit may not exceed the actual cost of the support required by an individual to be supported in the individual's home and must be either:

(A) Reimbursement for an expense previously authorized in an Individual Support Plan; or

(B) An advance payment in anticipation of an expense authorized in a previously authorized Individual Support Plan.

(72) "Special Diet" means specially prepared food or particular types of food, ordered by a physician and periodically monitored by a dietician, specific to an individual's medical condition or diagnosis that are needed to sustain an individual in the individual's home. Special diets are supplements and are not intended to meet an individual's complete daily nutritional requirements. Special diets may include:

(a) High caloric supplements;

(b) Gluten-free supplements; and

(c) Diabetic, ketogenic, or other metabolic supplements.

(73) "Specialized Medical Equipment and Supplies" mean devices, aids, controls, supplies, or appliances that enable individuals to increase their abilities to perform activities of daily living or to perceive, control, or communicate with the environment in which they live. Specialized medical equipment and supplies include items necessary for life support, ancillary supplies and equipment necessary to the proper functioning of such items, and durable and non-durable medical equipment not available under the State Medicaid Plan. Specialized medical equipment and supplies may not include items not of direct medical or remedial benefit to the individual. Specialized medical equipment and supplies must meet applicable standards of manufacture, design, and installation.

(74) "Specialized Supports" mean treatment, training, consultation, or other unique services necessary to achieve outcomes in the Individual Support Plan that are not available through State Medicaid Plan services or other support services listed in OAR 411-340-0130(6). Typical supports include the services of a behavior consultant, a licensed nurse, or a social or sexual consultant to:

(a) Assess the needs of the individual and family, including environmental factors;

(b) Develop a plan of support;

(c) Train caregivers to implement the plan of support;

(d) Monitor implementation of the plan of support; and

(e) Revise the plan of support as needed.

(75) "Speech and Language Therapy" means the services provided by a professional licensed under ORS 681.250 that are defined under the approved State Medicaid Plan, except that the amount, duration, and scope specified in the State Medicaid Plan do not apply.

(76) "Substantiated" means an abuse investigation has been completed by the Department of Human Services or its designee and the preponderance of the evidence establishes the abuse occurred.

(77) "Support" means assistance that individuals require, solely because of the affects of developmental disability, to maintain or increase independence, achieve community presence and participation, and improve productivity. Support is flexible and subject to change with time and circumstances.

(78) "Supported Employment Services" means provision of job training and supervision available to assist an individual who needs intensive ongoing support to choose, get, and keep a job in a community business setting. Supported employment is a service planned in partnership with public vocational assistance agencies and school districts and through Social Security Work Incentives when available.

(79) "Support Services" mean the services of a brokerage listed in OAR 411-340-0120(1) as well as the uniquely determined activities and purchases arranged through the brokerage support services that:

(a) Complement the existing formal and informal supports that exist for an individual living in the individual's own home or family home;

(b) Are designed, selected, and managed by the individual or the individual's legal representative;

(c) Are provided in accordance with an Individual Support Plan; and

(d) May include purchase of supports as a social benefit required for an individual to live in the individual's home or the family home.

(80) "Support Services Brokerage" or "Brokerage" means an entity, or distinct operating unit within an existing entity, that uses the principles of self-determination to perform the functions listed in OAR 411-340-0120(1) associated with planning and implementation of support services for individuals with developmental disabilities.

(81) "Support Services Brokerage Director" or "Brokerage Director" means the employee of a publicly or privately-operated brokerage, or that person's designee, who is responsible for administration and provision of services according to these rules.

(82) "Support Services Brokerage Plan of Care Crisis Addendum" means the short-term plan that is required by the Seniors and People with Disabilities Division to be added to an Individual Support Plan to describe crisis diversion services an individual is to receive while the individual is in emergent status in a short-term residential placement.

(83) "Support Services Brokerage Policy Oversight Group" or "Policy Oversight Group" means the group that meets the requirements of OAR 411-340-0150(1) that is formed to provide consumer-based leadership and advice to each brokerage regarding issues such as development of policy, evaluation of services, and use of resources.

(84) "Support Services Funds" mean public funds designated by the brokerage for assistance with the purchase of supports according to each Individual Support Plan.

(85) "These Rules" mean the rules in OAR chapter 411, division 340.

(86) "Transportation" means services that allow individuals to gain access to community services, activities, and resources that are not medical in nature.

(87) "Unusual Incident" means incidents involving serious illness or accidents, death of an individual, injury or illness of an individual requiring inpatient or emergency hospitalization, suicide attempts, a fire requiring the services of a fire department, an act of physical aggression, or any incident requiring abuse investigation.

Stat. Auth.: ORS 409.050 & 410.070

Stats. Implemented: ORS 427.005, 427.007 & 430.610 – 430.695

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## 411-340-0030

### Certification of Support Service Brokerages and Provider Organizations

(1) CERTIFICATE REQUIRED.

(a) No person or governmental unit acting individually or jointly with any other person or governmental unit may establish, conduct, maintain, manage, or operate a brokerage without being certified by SPD under this rule.

(b) No person or governmental unit acting individually or jointly with any other person or governmental unit may establish, conduct, maintain, or operate a provider organization without either certification under this rule or current SPD license or certification as described in OAR 411-340-0170(1).

(c) Certificates are not transferable or assignable and are issued only for the brokerage, or for the provider organization requiring certification under

# ADMINISTRATIVE RULES

OAR 411-340-0170(2), and persons or governmental units named in the application.

(d) Certificates are issued for a maximum of two years.

(e) SPD shall conduct a review of the brokerage, or the provider organization requiring certification under OAR 411-340-0170(2), prior to the issuance of a certificate.

(2) CERTIFICATION. A brokerage, or a provider organization requiring certification under OAR 411-340-0170(2), must apply for an initial certificate and for a certificate renewal.

(a) The application must be on a form provided by SPD and must include all information requested by SPD.

(b) The applicant requesting certification as a brokerage must identify the maximum number of individuals to be served.

(c) To renew certification, the brokerage or provider organization must make application at least 30 days but not more than 120 days prior to the expiration date of the existing certificate. On renewal of brokerage certification, no increase in the maximum number of individuals to be served by the brokerage may be certified unless specifically approved by SPD.

(d) Application for renewal must be filed no more than 120 days prior to the expiration date of the existing certificate and shall extend the effective date of the existing certificate until SPD takes action upon the application for renewal.

(e) Failure to disclose requested information on the application or providing incomplete or incorrect information on the application may result in denial, revocation, or refusal to renew the certificate.

(f) Prior to issuance or renewal of the certificate, the applicant must demonstrate to the satisfaction of SPD that the applicant is capable of providing services identified in a manner consistent with the requirements of these rules.

(3) CERTIFICATE EXPIRATION, TERMINATION OF OPERATIONS, OR CERTIFICATE RETURN.

(a) Unless revoked, suspended, or terminated earlier, each certificate to operate a brokerage or provider organization shall expire on the expiration date specified on the certificate.

(b) If a certified brokerage or provider organization is discontinued, the certificate automatically terminates on the date operation is discontinued.

(4) CHANGE OF OWNERSHIP, LEGAL ENTITY, LEGAL STATUS, OR MANAGEMENT CORPORATION. The brokerage, or provider organization requiring certification under OAR 411-340-0170(2), must notify SPD in writing of any pending action resulting in a 5 percent or more change in ownership and of any pending change in the brokerage's or provider organization's legal entity, legal status, or management corporation.

(5) NEW CERTIFICATE REQUIRED. A new certificate for a brokerage or provider organization is required upon change in a brokerage's or provider organization's ownership, legal entity, or legal status. The brokerage or provider organization must submit a certificate application at least 30 days prior to change in ownership, legal entity, or legal status.

(6) CERTIFICATE DENIAL, REVOCATION, OR REFUSAL TO RENEW. SPD may deny, revoke, or refuse to renew a certificate when SPD finds the brokerage or provider organization, the brokerage or provider organization director, or any person holding 5 percent or greater financial interest in the brokerage or provider organization:

(a) Demonstrates substantial failure to comply with these rules such that the health, safety, or welfare of individuals is jeopardized and the brokerage or provider organization fails to correct the noncompliance within 30 calendar days of receipt of written notice of non-compliance;

(b) Has demonstrated a substantial failure to comply with these rules such that the health, safety, or welfare of individuals is jeopardized during two inspections within a six year period (for the purpose of this rule, "inspection" means an on-site review of the service site by SPD for the purpose of investigation or certification);

(c) Has been convicted of a felony or any crime as described in OAR 411-340-0070(4);

(d) Has been convicted of a misdemeanor associated with the operation of a brokerage or provider organization;

(e) Falsifies information required by SPD to be maintained or submitted regarding services of individuals, program finances, or individuals' funds;

(f) Has been found to have permitted, aided, or abetted any illegal act that has had significant adverse impact on individual health, safety, or welfare; or

(g) Has been placed on the current Centers for Medicare and Medicaid Services list of excluded or debarred providers.

(7) NOTICE OF CERTIFICATE DENIAL, REVOCATION, OR REFUSAL TO RENEW. Following a SPD finding that there is a substantial failure to comply with these rules such that the health, safety, or welfare of individuals is jeopardized, or that one or more of the events listed in section (6) of this rule has occurred, SPD may issue a notice of certificate revocation, denial, or refusal to renew.

(8) IMMEDIATE SUSPENSION OF CERTIFICATE. When SPD finds a serious and immediate threat to individual health and safety and sets forth the specific reasons for such findings, SPD may, by written notice to the certificate holder, immediately suspend a certificate without a pre-suspension

hearing and the brokerage or provider organization may not continue operation.

(9) HEARING. An applicant for a certificate or a certificate holder may request a hearing pursuant to the contested case provisions of ORS chapter 183 upon written notice from SPD of denial, suspension, revocation, or refusal to renew a certificate. In addition to, or in lieu of a hearing, the applicant or certificate holder may request an administrative review by the SPD Assistant Director. An administrative review does not preclude the right of the applicant or certificate holder to a hearing.

(a) The applicant or certificate holder must request a hearing within 60 days of receipt of written notice by SPD of denial, suspension, revocation, or refusal to renew a certificate. The request for a hearing must include an admission or denial of each factual matter alleged by SPD and must affirmatively allege a short plain statement of each relevant, affirmative defense the applicant or certificate holder may have.

(b) In the event of a suspension pursuant to section (8) of this rule and during the first 30 days after the suspension of a certificate, the brokerage or provider organization may submit a written request to SPD for an administrative review. SPD shall conduct the review within 10 days after receipt of the request for an administrative review. Any review requested after the end of the 30-day period following certificate suspension shall be treated as a request for hearing under section (9)(a) of this rule. If following the administrative review the suspension is upheld, the brokerage or provider organization may request a hearing pursuant to the contested case provisions of ORS chapter 183.

Stat. Auth.: ORS 409.050 & 410.070

Stats. Implemented: ORS 427.005, 427.007 & 430.610 – 430.695

Hist.: MHD 9-2001(Temp), f. 8-30-01, cert. ef. 9-1-01 thru 2-27-02; MHD 5-2002, f. 2-26-02 cert. ef. 2-27-02; Renumbered from 309-041-1770, SPD 22-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 8-2005, f. & cert. ef. 6-23-05; SPD 17-2006, f. 4-26-06, cert. ef. 5-1-06; SPD 8-2008, f. 6-27-08, cert. ef. 6-29-08; SPD 8-2009, f. & cert. ef. 7-1-09; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10

## 411-340-0040

### Abuse and Unusual Incidents in Support Service Brokerages and Provider Organizations

(1) ABUSE PROHIBITED. No adult or individual as defined in OAR 411-340-0020 shall be abused nor shall any employee, staff, or volunteer of the brokerage or provider organization condone abuse.

(a) Brokerages and provider organizations must have in place appropriate and adequate disciplinary policies and procedures to address instances when a staff member has been identified as an accused person in an abuse investigation as well as when the allegation of abuse has been substantiated.

(b) All employees of a brokerage or provider organization are mandatory abuse reporters. The brokerage or provider organization must:

(A) Notify all employees of mandatory reporting status at least annually on forms provided by DHS; and

(B) Provide all employees with a DHS-produced card regarding abuse reporting status and abuse reporting.

(2) UNUSUAL INCIDENTS.

(a) A brokerage or provider organization must prepare an incident report at the time of an unusual incident, as defined in OAR 411-340-0020, involving an individual and a brokerage or provider organization employee. The incident report must be placed in the individual's record and must include:

(A) Conditions prior to or leading to the unusual incident;

(B) A description of the unusual incident;

(C) Staff response at the time; and

(D) Review by the brokerage administration and follow-up to be taken to prevent recurrence of the unusual incident.

(b) A brokerage or provider organization must send copies of all incident reports involving abuse that occurs while an individual is receiving brokerage or provider organization services to the CDDP.

(c) A provider organization must send copies of incident reports of all unusual incidents that occur while the individual is receiving services from a provider organization to the individual's brokerage within five working days of the unusual incident.

(d) The brokerage must immediately report to the CDDP, and the provider organization must immediately report to the CDDP with notification to the brokerage, any incident or allegation of abuse falling within the scope of OAR 407-045-0260.

(A) When an abuse investigation has been initiated, the CDDP must provide notice to the program according to OAR 407-045-0290.

(B) When an abuse investigation has been completed, the CDDP must provide notice of the outcome of the investigation according to OAR 407-045-0320.

(e) In the case of a serious illness, injury, or death of an individual, the brokerage or provider organization must immediately notify:

(A) The individual's legal representative, parent, next of kin, designated contact person, or other significant person;

(B) The CDDP;

(C) In the case of the provider organization, the individual's brokerage;

and

(D) SPD.

Stat. Auth.: ORS 409.050 & 410.070

# ADMINISTRATIVE RULES

Stats. Implemented: ORS 427.005, 427.007 & 430.610 – 430.695  
Hist.: MHD 9-2001(Temp), f. 8-30-01, cert. ef. 9-1-01 thru 2-27-02; MHD 5-2002, f. 2-26-02 cert. ef. 2-27-02; MHD 4-2003(Temp); f. & cert. ef. 7-1-03 thru 12-27-03; Renumbered from 309-041-1780, SPD 22-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 8-2005, f. & cert. ef. 6-23-05; SPD 17-2006, f. 4-26-06, cert. ef. 5-1-06; SPD 8-2008, f. 6-27-08, cert. ef. 6-29-08; SPD 8-2009, f. & cert. ef. 7-1-09; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10

## 411-340-0050

### Inspections and Investigations in Support Service Brokerages and Provider Organizations

(1) Entities certified under these rules must allow the following types of investigations and inspections:

- (a) Quality assurance and on-site inspections;
- (b) Complaint investigations; and
- (c) Abuse investigations.

(2) DHS, CDDP, or proper authority shall perform all inspections and investigations.

(3) Any inspection or investigation may be unannounced.

(4) All documentation and written reports required by this rule must be:

(a) Open to inspection and investigation by DHS, CDDP, or proper authority; and

(b) Submitted to DHS within the time allotted.

(5) When abuse is alleged or death of an individual has occurred and a law enforcement agency, DHS, or CDDP has determined to initiate an investigation, the brokerage or provider organization may not conduct an internal investigation without prior authorization from DHS. For the purposes of this rule, an "internal investigation" is defined as:

(a) Conducting interviews with the alleged victim, witness, the accused person, or any other person who may have knowledge of the facts of the abuse allegation or related circumstances;

(b) Reviewing evidence relevant to the abuse allegation, other than the initial report; or

(c) Any other actions beyond the initial actions of determining:

(A) If there is reasonable cause to believe that abuse has occurred;

(B) If the alleged victim is in danger or in need of immediate protective services;

(C) If there is reason to believe that a crime has been committed; or

(D) What, if any, immediate personnel actions must be taken.

(6) DHS or the CDDP shall conduct abuse investigations as set forth in OAR 407-045-0250 through 407-045-0360 and shall complete an abuse investigation and protective services report according to OAR 407-045-0320.

(7) Upon completion of the abuse investigation by DHS, CDDP, or a law enforcement agency, a provider may conduct an investigation without further DHS approval to determine if any other personnel actions are necessary.

(8) Upon completion of the abuse investigation and protective services report, the sections of the report that are public records and not exempt from disclosure under the public records law and in accordance with OAR 407-045-0330 shall be provided to the appropriate brokerage or provider organization.

(9) The brokerage or provider organization may be required to submit to SPD a plan of improvement for any noncompliance found during an inspection pursuant to section (1)(a) of this rule.

Stat. Auth.: ORS 409.050 & 410.070

Stats. Implemented: ORS 427.005, 427.007 & 430.610 – 430.695

Hist.: MHD 9-2001(Temp), f. 8-30-01, cert. ef. 9-1-01 thru 2-27-02; MHD 5-2002, f. 2-26-02 cert. ef. 2-27-02; Renumbered from 309-041-1790, SPD 22-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 8-2005, f. & cert. ef. 6-23-05; SPD 17-2006, f. 4-26-06, cert. ef. 5-1-06; SPD 8-2008, f. 6-27-08, cert. ef. 6-29-08; SPD 8-2009, f. & cert. ef. 7-1-09; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10

## 411-340-0070

### Support Services Brokerage and Provider Organization Personnel Policies and Practices

(1) Brokerages and provider organizations must maintain up-to-date written position descriptions for all staff as well as a file available to SPD or CDDP for inspection that includes written documentation of the following for each staff:

(a) Reference checks and confirmation of qualifications prior to hire;

(b) Written documentation of a background check completed by DHS in accordance with OAR 407-007-0200 to 407-007-0370;

(c) Satisfactory completion of basic orientation, including instructions for mandatory abuse reporting and training specific to developmental disabilities and skills required to carry out assigned work if the employee is to provide direct assistance to individuals;

(d) Written documentation of employee notification of mandatory abuse reporter status;

(e) Written documentation of any founded report of child abuse or a substantiated abuse allegation;

(f) Written documentation of any complaints filed against the staff and the results of the complaint process, including if any, disciplinary action; and

(g) Legal eligibility to work in the United States.

(2) Any employee providing direct assistance to individuals must be at least 18 years of age and capable of performing the duties of the job as described in a current job description signed and dated by the employee.

(3) An application for employment at the brokerage or provider organization must inquire whether an applicant has been found to have committed abuse.

(4) Any employee of the brokerage or provider organization, or any subject individual as required under OAR 407-007-0200 to 407-007-0370 who has or will have contact with an eligible individual of support services, must have an approved criminal records check in accordance with OAR 407-007-0200 to 407-007-0370 and under ORS 181.534.

(a) The brokerage or provider organization may not use public funds to support, in whole or in part, the employment in any capacity of a person who has been hired on or after January 1, 2010, or is subject to criminal records checks after January 1, 2010 as required by administrative rule, and who has been convicted:

(A) Of a crime listed in Exhibit 340-1;

(B) In the last 10 years, of a crime involving the delivery or manufacture of a controlled substance;

(C) Of an attempt, conspiracy, or solicitation to commit a crime described in Exhibit 340-1; or

(D) Of a crime in another jurisdiction that is substantially equivalent to a crime described in Exhibit 340-1.

(b) A person may not be authorized as a provider or meet qualifications as described in this rule if the person has been hired on or after January 1, 2010, or is subject to criminal records checks after January 1, 2010 as required by administrative rule, and who has been convicted:

(A) Of a crime listed in Exhibit 340-1;

(B) In the last 10 years, of a crime involving the delivery or manufacture of a controlled substance;

(C) Of an attempt, conspiracy, or solicitation to commit a crime described in Exhibit 340-1; or

(D) Of a crime in another jurisdiction that is substantially equivalent to a crime described in Exhibit 340-1.

(5) Each brokerage and provider organization regulated by these rules must be a drug-free workplace.

Stat. Auth.: ORS 409.050 & 410.070

Stats. Implemented: ORS 427.005, 427.007 & 430.610 – 430.695

Hist.: MHD 9-2001(Temp), f. 8-30-01, cert. ef. 9-1-01 thru 2-27-02; MHD 5-2002, f. 2-26-02 cert. ef. 2-27-02; Renumbered from 309-041-1810, SPD 22-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 21-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-29-08; SPD 8-2008, f. 6-27-08, cert. ef. 6-29-08; SPD 8-2009, f. & cert. ef. 7-1-09; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10

## 411-340-0080

### Support Service Brokerage and Provider Organization Records

(1) CONFIDENTIALITY. Brokerage and provider organization records of services to individuals must be kept confidential in accordance with ORS 179.505, 45 CFR 205.50, 45 CFR 164.512 Health Insurance Portability and Accountability Act (HIPAA), 42 CFR Part 2 HIPAA, and any DHS rules or policies pertaining to individual service records.

(2) ABUSE. Brokerage and provider organizations must maintain documentation in a separate provider file of inquiry into, and subsequent answer of, whether an independent provider or an employee of a provider organization has been found to have committed abuse. Records must also include any founded reports of child abuse or substantiated allegations of abuse against the independent provider or employee of a provider organization.

(3) DISCLOSURE AND CONFIDENTIALITY.

(a) For the purpose of disclosure from individual medical records under these rules, brokerages, and provider organizations requiring certification under OAR 411-340-0170(2), shall be considered "providers" as defined in ORS 179.505(1), and 179.505 shall be applicable.

(b) Access to records by DHS does not require authorization by the individual or family.

(c) For the purpose of disclosure from non-medical individual records, all or portions of the information contained in the non-medical individual records may be exempt from public inspection under the personal privacy information exemption to the public records law set forth in ORS 192.502(2).

(4) GENERAL FINANCIAL POLICIES AND PRACTICES. The brokerage or provider organization must:

(a) Maintain up-to-date accounting records consistent with generally accepted accounting principles that accurately reflect all revenue by source, all expenses by object of expense, and all assets, liabilities, and equities.

(b) As a provider organization, or as a brokerage offering services to the general public, establish and revise as needed a fee schedule identifying the cost of each service provided. Billings for Title XIX funds may not exceed the customary charges to private individuals for any like item or service charged by the brokerage or provider organization.

(c) Develop and implement written statements of policy and procedure as are necessary and useful to assure compliance with any DHS rule pertaining to fraud and embezzlement.

(5) RECORDS RETENTION. Records must be retained in accordance with OAR chapter 166, division 150, Secretary of State, Archives Division.

(a) Financial records, supporting documents, statistical records, and all other records (except individual records) must be retained for a minimum of three years after the close of the contract period.

(b) Individual records must be kept for a minimum of seven years.

[Publications: Publications referenced are available from the agency.]



# ADMINISTRATIVE RULES

Stat. Auth.: ORS 409.050 & 410.070  
Stats. Implemented: ORS 427.005, 427.007 & 430.610 – 430.695  
Hist.: MHD 9-2001(Temp), f. 8-30-01, cert. ef. 9-1-01 thru 2-27-02; MHD 5-2002, f. 2-26-02 cert. ef. 2-27-02; Renumbered from 309-041-1820, SPD 22-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 8-2005, f. & cert. ef. 6-23-05; SPD 8-2008, f. 6-27-08, cert. ef. 6-29-08; SPD 8-2009, f. & cert. ef. 7-1-09; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10

## 411-340-0130

### Using Support Services Funds to Purchase Supports

(1) A brokerage may use support services funds to assist individuals to purchase supports in accordance with an ISP when:

(a) Supports are necessary for an individual to live in the individual's own home or in the family home;

(b) Cost-effective arrangements for obtaining the required supports, applying public, private, formal, and informal resources available to the eligible individual are specified in the ISP;

(c) An individual is receiving crisis diversion services according to OAR 411-320-0160 and:

(A) Crisis diversion services are not allowed by OAR 411-320-0160 to provide the necessary support;

(B) The support was identified as necessary prior to the onset of the crisis;

(C) Support services funds are not expended to such an extent that the support services funds that may be required to purchase the remainder of necessary supports following the termination of crisis diversion services shall be unavailable; and

(D) Support services funds are used for no more than 90 days following the determination that the individual shall enter a comprehensive service.

(d) The ISP projects the amount of support services funds, if any, that may be required to purchase the remainder of necessary supports that are within the benefit level; and

(e) The ISP has been authorized for implementation.

(2) Goods and services purchased with support services funds on behalf of individuals are provided only as social benefits.

(3) LIMITS OF FINANCIAL ASSISTANCE. Assistance with purchase of individual supports in any plan year is limited to the individual's annual benefit level.

(a) Individuals must have access throughout the plan year to the total annual amount of support services funds for which they are eligible that are determined to be necessary to implement an authorized ISP, even if there is a delay in implementation of the ISP, unless otherwise agreed to in writing by the individual or the individual's legal representative.

(b) SPD may require that annual benefit level amounts be calculated and applied on a monthly basis when an individual's eligibility for Medicaid changes during a plan year, an individual's benefit level changes, or when an individual's ISP is developed and written to be in effect for less than 12 months.

(A) Except in the case of an individual whose benefit level changes as the result of a change in eligibility for the Support Services Waiver, when an individual's benefit level changes, the monthly benefit level shall be 1/12 of the annual benefit level for which the individual would be eligible should the change in benefit level remain in effect for 12 calendar months. The monthly benefit level shall be applied each month for the remainder of the plan year in which the individual's change in benefit level occurred, from the date the change occurred.

(B) In the case of an individual whose Support Services Waiver eligibility changes, the new monthly benefit level is calculated based on the remainder of the General Fund contribution to the individual benefit level being evenly distributed across the remaining months of the plan year. The monthly benefit level shall be applied each month for the remainder of the plan year in which the individual's change in Support Services Waiver eligibility occurred, from the date the change occurred.

(C) In the case of an individual with an ISP developed for a partial plan year, the monthly benefit level shall be 1/12 of the annual benefit level for which the individual would be eligible should the individual's ISP be in effect for 12 calendar months. The monthly benefit level shall be applied each month during which the ISP of less than 12 months' duration is in effect.

(c) Estimates of individual plan costs must be based on the SPD rate guidelines for costs of frequently used services.

(A) SPD rate guidelines notwithstanding, final costs may not exceed local usual and customary charges for these services as evidenced by the brokerage's own documentation.

(B) The brokerage must establish a process for review and approval of all budgets based on estimates exceeding SPD rate guidelines and must monitor the authorized ISP involved for continued cost effectiveness.

(4) EXCEPTIONS TO BASIC BENEFIT FINANCIAL LIMITS. Exceptions to the basic benefit annual support services fund limit may be only as follows.

(a) Individuals with extraordinary long-term need as demonstrated by a score of 60 or greater on the Basic Supplement Criteria Inventory (Form DHS 0203) may have access to a basic supplement in order to purchase necessary supports.

(A) For Medicaid recipients choosing services under the Support Services Waiver, the basic supplement must result in a plan year cost that is not greater than the individual cost limit.

(B) For individuals who are not Medicaid recipients choosing services under the Support Services Waiver, the basic supplement must result in a plan year cost that is not greater than the state's General Fund contribution to the individual cost limit, calculated according to the Medicaid match rate current at the beginning of the plan year, and adjusted annually to correspond to changes in the Medicaid match rates.

(C) The brokerage director, or a designee from brokerage management and administration, must administer the Basic Supplement Criteria Inventory only after receiving SPD-approved training. The brokerage director or designee must score basic supplement criteria according to written and verbal instruction received from SPD.

(D) The trained brokerage director or a designee from a brokerage's management or administration must administer the Basic Supplement Criteria Inventory within 30 calendar days of the documented request of the individual or the individual's legal representative.

(E) The brokerage director or designee must send written notice of findings regarding eligibility for a basic supplement to the individual and the individual's legal representative within 45 calendar days of the written request for a basic supplement. This written notice must include:

(i) An offer for the individual and the individual's legal representative to discuss the findings in person with the director and with the individual's personal agent in attendance if desired;

(ii) A notice of the complaint process under OAR 411-340-0060; and

(iii) A notice of planned action.

(F) Annual ISP reviews for recipients of the basic supplement must include a review of circumstances and resources to confirm continued need according to the instructions included with the Basic Supplement Criteria Inventory.

(b) Individuals who have been assessed as in need of, and meeting criteria for, crisis diversion services by the CDDP of the individual's county of residence according to OAR 411-320-0160, may receive short-term assistance with purchase of support in excess of the individual's benefit level. Use of crisis diversion services may only be authorized by the CDDP of the individual's county of residence or by the Regional Crisis Diversion Program responsible for the individual's county of residence.

(A) Length of emergent status may be authorized only by the CDDP of the individual's county of residence, or the Regional Crisis Diversion Program responsible for the individual's county of residence, depending on the source of the crisis diversion funds. Emergent status for an individual shall not exceed 270 consecutive days.

(B) Funds associated with crisis diversion services may be used to pay the difference in cost between the authorized ISP and the supports authorized by either the CDDP of the individual's county of residence or the Regional Crisis Diversion Program responsible for crisis diversion services in the individual's county of residence, depending on the source of crisis diversion services funds required to meet the short-term need.

(C) Although costs for crisis diversion services may bring the individual's total plan year cost temporarily above the individual cost limit, the individual's costs may not exceed the cost of the state's current ICF/MR daily cost per individual nor shall plan year expenses at or above the individual cost limit make the individual eligible for comprehensive services.

(i) Individuals placed in emergent status due to receiving crisis diversion services authorized and provided according to OAR 411-320-0160 may remain enrolled in, and receive support services from, the brokerage while both crisis diversion services and support services are required to stabilize and maintain the individual at home or in the family home. In no case, may the individual remain enrolled in the brokerage under emergent status for more than 270 consecutive days.

(ii) Support services provided during emergent status are subject to all requirements of this rule.

(iii) The individual's personal agent must participate with CDDP or Regional Crisis Diversion Program staff in efforts to stabilize supports and return costs to the individual's benefit level, documenting reviews of effectiveness at least every 90 days while the individual is receiving crisis diversion services.

(c) Individuals whose source of support funds are, in whole or in part, an individual-specific redirection of funds through SPD contract from a SPD-regulated residential, work, or day habilitation service to support services funds, or to comprehensive in-home support funds regulated by OAR chapter 411, division 330 prior to enrollment in a brokerage, may have access to the amount specified in the SPD contract as available for the individual's use. This provision is only applicable when each transition is separate and specific to the individual and the services being converted are not subject to statewide service transitions.

(A) Individual plan year costs must always be less than the individual cost limit; and

(B) The brokerage must review the need for supports and their cost-effectiveness with the individual and the individual's legal representative at least annually and must make budget reductions when allowed by the ISP.

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(d) Individuals whose support funds were specifically assigned through SPD contract to self-directed support services prior to the date designated by SPD for transfer of the individual from self-directed support services to a brokerage may have access to the amount specified in the SPD contract as available for the individual's use.

(A) Individual plan year costs must always be less than the individual cost limit; and

(B) The brokerage must review the need for supports and their cost-effectiveness with the individual and the individual's legal representative at least annually and must make budget reductions when allowed by the ISP.

(e) Individuals transferring from SPD's Home and Community-Based Waiver Services for the Aged and Adults with Physical Disabilities who have been determined ineligible for those waiver service funds in accordance with OAR 411-015-0015(4)(c), shall have limited access to support services funds as described in these rules. The amount of support services funds available shall be equal to SPD's previous service costs for the individual for no more than 365 calendar days. The 365 calendar days begins the date the individual starts receiving support services exclusively through a brokerage.

(f) For Medicaid recipients eligible for and choosing services under the Support Services Waiver, individuals may have access to a basic supplement for ADLs to purchase needed support services under the following conditions:

(A) The individual must have additional assistance needs with ADLs after development of their ISP within the basic benefit, extraordinary long-term need fund limit, or other exceptions provided in this rule. The services include:

- (i) Basic personal hygiene;
- (ii) Toileting, bowel, and bladder care;
- (iii) Mobility, transfers, and comfort;
- (iv) Planning and preparing nutritious meals and assuring adequate fluid intake;

(v) Assisting with administration of medications, assuring medication is taken as ordered by physician, observing for reactions, and reminding appropriate persons when prescriptions need to be filled;

- (vi) Maintaining clean oxygen equipment and supply; and
- (vii) Delegated nursing tasks.

(B) ADL services may include the following activities if they are incidental to the provision of ADLs, essential for the health and welfare of the individual, and provided solely for the individual receiving support services:

- (i) Light housekeeping tasks necessary to maintain a healthy and safe environment;
- (ii) Arranging for necessary medical appointments;
- (iii) Observation of an individual's status and reporting of significant changes to appropriate people;
- (iv) First aid and handling emergencies; and
- (v) Extra support due to developmental disability.

(C) Activities and goals related to the provision of ADL services must be sufficiently documented in the individual's ISP.

(D) Planned expenses must be based upon the least costly means of providing adequate services and must only be to the extent necessary to meet the documented ADL needs.

(E) The supplement for ADLs may not cause the cost per any plan year to exceed the individual cost limit. There is an exception for individuals receiving both support services under these rules who had a benefit level at the individual cost limit and state plan personal care services under OAR chapter 411, division 034, as of June 30, 2005. These individuals may continue to access the basic supplement and the supplement for ADLs until the individual terminates their receipt of support services or becomes ineligible for one of the supplements. The combined basic benefit, the basic supplement, and supplement for ADLs must remain above the individual cost limit to remain eligible for this exception.

(F) For Medicaid recipients receiving state plan personal care services under OAR chapter 411, division 034 entering support services after June 30, 2005, the Medicaid Personal Care Assessment (Form SDS 0531A) shall serve as the individual's authorized ISP for a period not to exceed 90 days.

(G) The supplemental ADL services are not intended to replace the resources available to an individual receiving support services under these rules from their natural support system of relatives, friends, neighbors, or other available sources of support.

## (5) AMOUNT, METHOD, AND SCHEDULE OF PAYMENT.

(a) The brokerage must disburse, or arrange for disbursement of, support services funds to qualified providers on behalf of individuals up to the amount agreed upon in an authorized ISP. The brokerage is specifically prohibited from reimbursement of individuals or individuals' families for expenses related to services and from advancing funds to individuals or individuals' families to obtain services.

(b) The method and schedule of payment must be specified in written agreements between the brokerage and the individual or the individual's legal representative.

(6) TYPES OF SUPPORTS PURCHASED. Supports eligible for purchase with support services funds are:

(a) Chore services. Chore services may be provided only in situations where no one else in the household is capable of either performing or paying

for the services and no other relative, caregiver, landlord, community, volunteer agency, or third-party payer is capable of or responsible for providing these services;

- (b) Community living and inclusion supports;
- (c) Environmental accessibility adaptation;
- (d) Family training;

(A) Family training must be provided:

(i) By licensed psychologists, medical professionals, clinical social workers, or counselors as described in OAR 411-340-0160(7); or

(ii) In organized conferences and workshops that are limited to topics related to the individual's developmental disability, identified support needs, or specialized medical or rehabilitative support needs.

(B) Family training may not be provided to paid caregivers.

(c) Homemaking services. Homemaking services may be provided only when the person regularly responsible for general housekeeping activities as well as caring for an individual in the home is temporarily absent, temporarily unable to manage the home as well as care for self or the individual in the home, or needs to devote additional time to caring for the individual;

- (f) Occupational therapy services;
- (g) Personal emergency response systems;
- (h) Physical therapy services;
- (i) Respite;

(A) Respite may be provided in the individual's or respite provider's home, a foster home, a group home, a licensed day care center, or a community care facility that is not a private residence.

(B) Respite includes two types of care, neither of which may be characterized as eight-hours-a-day, five-days-a-week services or provided to allow caregivers to attend school or work.

(i) Temporary respite must be provided on less than a 24-hour basis.

(ii) Twenty-four hour overnight care must be provided in segments of 24-hour units that may be sequential but may not exceed 14 consecutive days without permission from SPD.

(j) Special diets. Special diets may not provide or replace the nutritional equivalent of meals and snacks normally required regardless of developmental disability.

(k) Specialized medical equipment and supplies as well as the following provisions:

(A) When specialized medical equipment and supplies are primarily and customarily used to serve a medical purpose, the purchase, rental, or repair of specialized medical equipment and supplies with support services funds must be limited to the types of equipment and supplies permitted under the State Medicaid Plan and specifically those that are not excluded under OAR 410-122-0080.

(B) Support services funds may be used to purchase more of an item than the number allowed under the State Medicaid Plan after the limits specified in the State Medicaid Plan have been reached, requests for purchases have been denied by the State Medicaid Plan or private insurance, and the denial has been upheld in an applicable hearing or private insurance benefit appeals process.

(C) Devices, aids, controls, supplies, or appliances primarily and customarily used to enable an individual to increase the individual's abilities to perform ADLs or to perceive, control, or communicate with the environment in which the individual lives, may be purchased with support services funds when the individual's developmental disability otherwise prevents or limits the individual's independence in these areas. Equipment and supplies that may be purchased for this purpose must be of direct benefit to the individual and include:

- (i) Adaptive equipment for eating, (i.e., utensils, trays, cups, bowls that are specially designed to assist an individual to feed him or herself);
- (ii) Positioning devices;
- (iii) Specially designed clothes to meet the unique needs of the individual, (e.g., clothes designed to prevent access by the individual to the stoma, etc.);

- (iv) Assistive technology items;
- (v) Computer software used by the individual to express needs, control supports, plan, and budget supports;
- (vi) Augmentative communication devices;
- (vii) Environmental adaptations to control lights, heat, stove, etc.; or
- (viii) Sensory stimulation equipment and supplies that help an individual calm, provide appropriate activity, or safely channel an obsession (e.g., vestibular swing, weighted blanket, tactile supplies like creams and lotions);

- (l) Specialized supports;
- (m) Speech and language therapy services;
- (n) Supported employment; and
- (o) Transportation.

(7) CONDITIONS OF PURCHASE. The brokerage must arrange for supports purchased with support services funds to be provided:

(a) In settings and under contractual conditions that allow the individual to freely redirect support services funds to purchase supports and services from another qualified provider;

(A) Individuals who choose to combine support services funds to purchase group services must receive written instruction from the brokerage about the limits and conditions of such arrangements;

# ADMINISTRATIVE RULES

(B) Combined support services funds cannot be used to purchase existing, or create new, comprehensive services;

(C) Individual support expenses must be separately projected, tracked, and expensed, including separate contracts, employment agreements, and timekeeping for staff working with more than one individual;

(D) A provider organization resulting from the combined arrangements for community living and inclusion supports or supported employment services must be certified according to these rules; and

(E) Combined arrangements for residential supports must include a plan for maintaining an individual at home after the loss of roommates.

(b) In a manner consistent with positive behavioral theory and practice and where behavior intervention is not undertaken unless the behavior:

(A) Represents a risk to health and safety of the individual or others;

(B) Is likely to continue and become more serious over time;

(C) Interferes with community participation;

(D) Results in damage to property; or

(E) Interferes with learning, socializing, or vocation.

(c) In accordance with applicable state and federal wage and hour regulations in the case of personal services, training, and supervision;

(d) In accordance with applicable state or local building codes in the case of environmental accessibility adaptations to the home;

(e) In accordance with Oregon Board of Nursing rules in OAR chapter 851 when services involve performance of nursing services or delegation, teaching, and assignment of nursing tasks; and

(f) In accordance with OAR 411-340-0160 through 411-340-0180 governing provider qualifications and responsibilities.

(8) **INDEPENDENT PROVIDER, PROVIDER ORGANIZATION, AND GENERAL BUSINESS PROVIDER AGREEMENTS AND RESPONSIBILITIES.** When support services funds are used to purchase services, training, supervision, or other personal assistance for individuals, the brokerage must require and document that providers are informed of:

(a) Mandatory responsibility to report suspected abuse;

(b) Responsibility to immediately notify the person or persons, if any, specified by the individual or the individual's legal representative of any injury, illness, accident, or unusual circumstance that occurs when the provider is providing individual services, training, or supervision that may have a serious effect on the health, safety, physical or emotional well-being, or level of services required;

(c) Limits of payment:

(A) Support services fund payments for the agreed-upon services are considered full payment and the provider under no circumstances may demand or receive additional payment for these services from the individual, the individual's family, or any other source unless the payment is a financial responsibility (spend-down) of an individual under the Medically Needy Program; and

(B) The provider must bill all third party resources before using support services funds unless another arrangement is agreed upon by the brokerage and described in the ISP.

(d) The provisions of section (9) of this rule regarding sanctions that may be imposed on providers; and

(e) The requirement to maintain a drug-free workplace.

(9) **SANCTIONS FOR INDEPENDENT PROVIDERS, PROVIDER ORGANIZATIONS, AND GENERAL BUSINESS PROVIDERS.**

(a) A sanction may be imposed on a provider when the brokerage determines that, at some point after the provider's initial qualification and authorization to provide supports purchased with support services funds, the provider has:

(A) Been convicted of any crime that would have resulted in an unacceptable criminal records check upon hiring or authorization of service, including crimes as described in OAR 411-340-0070(4);

(B) Been convicted of unlawfully manufacturing, distributing, prescribing, or dispensing a controlled substance;

(C) Surrendered his or her professional license or had his or her professional license suspended, revoked, or otherwise limited;

(D) Failed to safely and adequately provide the authorized services;

(E) Had a founded report of child abuse or a substantiated abuse allegation;

(F) Failed to cooperate with any DHS or brokerage investigation or grant access to or furnish, as requested, records or documentation;

(G) Billed excessive or fraudulent charges or been convicted of fraud;

(H) Made false statement concerning conviction of crime or substantiation of abuse;

(I) Falsified required documentation;

(J) Failed to comply with the provisions of section (8) of this rule or OAR 411-340-0140; or

(K) Been suspended or terminated as a provider by another division within DHS.

(b) The following sanctions may be imposed on a provider:

(A) The provider may no longer be paid with support services funds;

(B) The provider may not be allowed to provide services for a specified length of time or until specified conditions for reinstatement are met and approved by the brokerage or SPD, as applicable; or

(C) The brokerage may withhold payments to the provider.

(c) If the brokerage makes a decision to sanction a provider, the brokerage must notify the provider by mail of the intent to sanction.

(d) The provider may appeal a sanction within 30 days of the date the sanction notice was mailed to the provider. The provider must appeal a sanction separately from any appeal of audit findings and overpayments.

(A) A provider of Medicaid services may appeal a sanction by requesting an administrative review by the SPD Assistant Director.

(B) For an appeal regarding provision of Medicaid services to be valid, written notice of the appeal must be received by SPD within 30 days of the date the sanction notice was mailed to the provider.

(e) At the discretion of SPD, providers who have previously been terminated or suspended by any DHS division may not be authorized as providers of Medicaid services.

Stat. Auth.: ORS 409.050 & 410.070

Stats. Implemented: ORS 427.005, 427.007 & 430.610 – 430.695

Hist.: MHD 9-2001(Temp), f. 8-30-01, cert. ef. 9-1-01 thru 2-27-02; MHD 5-2002, f. 2-26-02, cert. ef. 2-27-02; MHD 4-2003(Temp), f. & cert. ef. 7-1-03 thru 12-27-03; Renumbered from 309-041-1870, SPD 22-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 10-2004(Temp), f. & cert. ef. 4-30-04 thru 10-25-04; SPD 32-2004, f. & cert. ef. 10-25-04; SPD 38-2004(Temp), f. 12-30-04, cert. ef. 1-1-05 thru 6-30-05; SPD 8-2005, f. & cert. ef. 6-23-05; SPD 17-2006, f. 4-26-06, cert. ef. 5-1-06; SPD 21-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-29-08; SPD 8-2008, f. 6-27-08, cert. ef. 6-29-08; SPD 8-2009, f. & cert. ef. 7-1-09; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10

## 411-340-0140

### Using Support Services Funds for Certain Purchases Is Prohibited

(1) Support services funds may not be used to support, in whole or in part, the employment in any capacity of a person who has been hired on or after January 1, 2010, or is subject to criminal records checks after January 1, 2010 as required by administrative rule, and who has been convicted:

(a) Of a crime listed in Exhibit 340-1;

(b) In the last 10 years, of a crime involving the delivery or manufacture of a controlled substance;

(c) Of an attempt, conspiracy, or solicitation to commit a crime described in Exhibit 340-1; or

(d) Of a crime in another jurisdiction that is substantially equivalent to a crime described in Exhibit 340-1.

(2) Support services funds may not be used to pay for:

(a) Services, materials, or activities that are illegal;

(b) Services or activities that are carried out in a manner that constitutes abuse as defined in OAR 407-045-0260;

(c) Notwithstanding abuse as defined in OAR 407-045-0260, services from persons who engage in verbal mistreatment and subject an individual to the use of derogatory names, phrases, profanity, ridicule, harassment, coercion, or intimidation by threatening injury or withholding of services or supports;

(d) Notwithstanding abuse as defined in OAR 407-045-0260, services that restrict an individual's freedom of movement by seclusion in a locked room under any condition;

(e) Materials or equipment that have been determined unsafe for the general public by recognized consumer safety agencies;

(f) Individual or family vehicles;

(g) Health and medical costs that the general public normally must pay including:

(A) Medications;

(B) Health insurance co-payments;

(C) Dental treatments and appliances;

(D) Medical treatments;

(E) Dietary supplements including but not limited to vitamins and experimental herbal and dietary treatments; or

(F) Treatment supplies not related to nutrition, incontinence, or infection control.

(h) Ambulance services;

(i) Legal fees;

(j) Vacation costs for transportation, food, shelter, and entertainment that would normally be incurred by anyone on vacation, regardless of developmental disability, and are not strictly required by the individual's need for personal assistance in all home and community settings;

(k) Individual services, training, or supervision that has not been arranged according to applicable state and federal wage and hour regulations;

(l) Services, activities, materials, or equipment that are not necessary, cost-effective, or do not meet the definition of support or social benefits as defined in OAR 411-340-0020;

(m) Educational services for school-age individuals over the age 18, including professional instruction, formal training, and tutoring in communication, socialization, and academic skills, and post-secondary educational services such as those provided through two- or four-year colleges for individuals of all ages;

(n) Services provided in a nursing facility, correctional institution, or hospital;

(o) Services, activities, materials, or equipment that may be obtained by the individual or family through other available means such as private or public insurance, or other governmental or public services;

(p) Unless under certain conditions and limits specified in SPD guidelines, employee wages or contractor charges for time or services when the

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individual is not present or available to receive services including but not limited to employee paid time off, hourly “no show” charge, and contractor travel and preparation hours;

(q) Services or activities for which the legislative or executive branch of Oregon government has prohibited use of public funds;

(r) Notwithstanding abuse as defined in OAR 407-045-0260, services when there is sufficient evidence to believe that the individual or the individual’s legal representative has engaged in fraud or misrepresentation, failed to use resources as agreed upon in the ISP, refused to accept or delegate record keeping required to use brokerage resources, or otherwise knowingly misused public funds associated with brokerage services; or

(s) Notwithstanding abuse as defined in OAR 407-045-0260, services that, in the opinion of the individual’s personal agent, are characterized by failure to act or neglect that leads to or is in imminent danger of causing physical injury through negligent omission, treatment, or maltreatment of an individual including but not limited to the failure to provide an individual with adequate food, clothing, shelter, medical services, supervision, or through condoning or permitting abuse of an individual by any other person. However, no individual may be considered neglected for the sole reason that he or she voluntarily relies on treatment through prayer alone in lieu of medical treatment.

Stat. Auth.: ORS 409.050 & 410.070

Stats. Implemented: ORS 427.005, 427.007 & 430.610 – 430.695

Hist.: MHD 9-2001(Temp), f. 8-30-01, cert. ef. 9-1-01 thru 2-27-02; MHD 5-2002, f. 2-26-02 cert. ef. 2-27-02; MHD 4-2003(Temp), f. & cert. ef. 7-1-03 thru 12-27-03; Renumbered from 309-041-1880, SPD 22-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 8-2005, f. & cert. ef. 6-23-05; SPD 17-2006, f. 4-26-06, cert. ef. 5-1-06; SPD 8-2008, f. 6-27-08, cert. ef. 6-29-08; SPD 8-2009, f. & cert. ef. 7-1-09; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10

## 411-340-0160

### Standards for Independent Providers Paid with Support Services Funds

#### (1) GENERAL INDEPENDENT PROVIDER QUALIFICATIONS.

Each independent provider who is paid as a contractor, a self-employed person, or an employee of the individual or the individual’s legal representative to provide homemaker, respite, habilitation, transportation, chore, family training, occupational therapy, physical therapy, speech and language, dietitian, or specialized supports must:

(a) Be at least 18 years of age;

(b) Have approval to work based on current SPD policy and a criminal records check completed by DHS in accordance with OAR 407-007-0200 to 407-007-0370. The brokerage may not use public funds to pay, in whole or in part, an independent provider in any capacity who has been hired on or after January 1, 2010, or is subject to criminal records checks after January 1, 2010 as required by administrative rule, and who has been convicted:

(A) Of a crime listed in Exhibit 340-1;

(B) In the last 10 years, of a crime involving the delivery or manufacture of a controlled substance;

(C) Of an attempt, conspiracy, or solicitation to commit a crime described in Exhibit 340-1; or

(D) Of a crime in another jurisdiction that is substantially equivalent to a crime described in Exhibit 340-1.

(c) Be legally eligible to work in the United States;

(d) Not be a spouse of the individual;

(e) Demonstrate by background, education, references, skills, and abilities that he or she is capable of safely and adequately performing the tasks specified on the ISP, with such demonstration confirmed in writing by the individual or the individual’s legal representative and including:

(A) Ability and sufficient education to follow oral and written instructions and keep any records required;

(B) Responsibility, maturity, and reputable character exercising sound judgment;

(C) Ability to communicate with the individual; and

(D) Training of a nature and type sufficient to ensure that the provider has knowledge of emergency procedures specific to the individual being cared for.

(f) Hold current, valid, and unrestricted appropriate professional license or certification where services and supervision requires specific professional education, training, and skill;

(g) Understand requirements of maintaining confidentiality and safeguarding individual information;

(h) Not be on the current Centers for Medicare and Medicaid Services list of excluded or debarred providers; and

(i) If providing transportation, have a valid driver’s license and proof of insurance, as well as other license or certification that may be required under state and local law depending on the nature and scope of the transportation service.

(2) BEHAVIOR CONSULTANTS. Behavior consultants providing specialized supports must:

(a) Have education, skills, and abilities necessary to provide behavior consultation services, including knowledge and experience in developing plans based on positive behavioral theory and practice;

(b) Have received at least two days of training in the Oregon Intervention Services Behavior Intervention System, and have a current certificate; and

(c) Submit a resume to the brokerage indicating at least one of the following:

(A) A bachelor’s degree in special education, psychology, speech and communication, occupational therapy, recreation, art or music therapy, or a behavioral science field and at least one year of experience with individuals who present difficult or dangerous behaviors; or

(B) Three years experience with individuals who present difficult or dangerous behaviors and at least one year of that experience must include providing the services of a behavior consultant.

(3) SOCIAL OR SEXUAL CONSULTANTS. Social or sexual consultants providing specialized supports must:

(a) Have the education, skills, and abilities necessary to provide social or sexual consultation services; and

(b) Submit a resume to the brokerage indicating at least one of the following:

(A) A bachelor’s degree in special education, psychology, social work, counseling, or other behavioral science field and at least one year of experience with individuals; or

(B) Three years experience with individuals who present social or sexual issues and at least one year of that experience must include providing the services of a social or sexual consultant.

(4) NURSING CONSULTANTS. Nursing consultants providing specialized supports must:

(a) Have a current Oregon nursing license; and

(b) Submit a resume to the brokerage indicating the education, skills, and abilities necessary to provide nursing services in accordance with state law, including at least one year of experience with individuals.

(5) ENVIRONMENTAL MODIFICATION CONSULTANTS. Environmental modification consultants must be licensed general contractors and have experience evaluating homes, assessing the needs of the individual, and developing cost-effective plans that shall make the home safe and accessible for the individual.

(6) ENVIRONMENTAL ACCESSIBILITY ADAPTATION PROVIDERS. Environmental accessibility adaptation providers must be building contractors licensed as applicable under either OAR chapter 812, Construction Contractor’s Board, or OAR chapter 808, Landscape Contractors Board.

(7) FAMILY TRAINING PROVIDERS. Providers of family training must be:

(a) Psychologists licensed under ORS 675.030;

(b) Social workers licensed under ORS 675.530;

(c) Counselors licensed under ORS 675.715; or

(d) Medical professionals licensed under ORS 677.100.

(8) DIETICIANS. Dietitians providing special diets must be licensed according to ORS 691.415 through 691.465.

Stat. Auth.: ORS 409.050 & 410.070

Stats. Implemented: ORS 427.005, 427.007 & 430.610 – 430.695

Hist.: MHD 9-2001(Temp), f. 8-30-01, cert. ef. 9-1-01 thru 2-27-02; MHD 5-2002, f. 2-26-02 cert. ef. 2-27-02; Renumbered from 309-041-1900, SPD 22-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 8-2005, f. & cert. ef. 6-23-05; SPD 17-2006, f. 4-26-06, cert. ef. 5-1-06; SPD 8-2008, f. 6-27-08, cert. ef. 6-29-08; SPD 8-2009, f. & cert. ef. 7-1-09; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10

## 411-345-0020

### Definitions

As used in these rules, the following definitions apply:

(1) “Abuse” means abuse of an adult as defined in OAR 407-045-0260.

(2) “Abuse Investigation and Protective Services” means an investigation as required by OAR 407-045-0300 and any subsequent services or supports necessary to prevent further abuse.

(3) “Administration of Medication” means the act of a staff member, who is responsible for the individual’s care, of placing a medication in, or on, an individual’s body.

(4) “Adult” means a person 18 years or older with developmental disabilities for whom services are planned and provided.

(5) “Advocate” means a person other than paid staff who has been selected by the individual or by the individual’s legal representative to help the individual understand and make choices in matters relating to identification of needs and choices of services, especially when rights are at risk or have been violated.

(6) “Aid to Physical Functioning” means any special equipment prescribed for an individual by a physician, therapist, or dietitian which maintains or enhances the individual’s physical functioning.

(7) “Alternative to Employment Service” means any service that has as its primary goal(s) addressing the academic, recreational, social or therapeutic needs of the individuals for whom it serves and is conducted away from the individual’s residence.

(8) “Annual ISP Meeting” means an annual meeting, coordinated by a case manager of the community mental health program, which is attended by the ISP team members (OAR 411-345-0020(29)) and other persons such as

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an advocate as appropriate. The purpose of the meeting is to determine needs, coordinate services and training, and develop an Individual Support Plan.

(9) "Board of Directors" means a group of individuals formed to set policy and give directions to a program designed to provide employment and/or alternatives to employment services for individuals with developmental disabilities. This includes local advisory boards used by multi-state organizations.

(10) "Case Manager" means an employee of the community mental health program or other agency which contracts with the County or Department, who is selected to plan, procure, coordinate and monitor individual support plan services and to act as a proponent for persons with developmental disabilities.

(11) "Certificate" means a document issued by Seniors and People with Disabilities to a provider of employment and/or alternative to employment services which certifies that the provider is eligible to receive state funds for the provision of these services.

(12) "Choice" means the individual's expression of preferences of activities and services through verbal, sign language or other communication method.

(13) "Community Based Service" means any service or program providing opportunities for the majority of an individual's time to be spent in community participation and/or integration.

(14) "Community Mental Health Program" or "CMHP" means the organization of all services for individuals with mental or emotional disturbances, developmental disabilities or chemical dependency, operated by, or contractually affiliated with, a local mental health authority, operated in a specific geographic area of the state under an intergovernmental agreement or direct contract with the Department.

(15) "Complaint Investigation" means an investigation of any allegation which has been made to a proper authority that the service provider has taken an action which is alleged to be contrary to law, rule or policy that is not covered by an abuse investigation or a grievance procedure.

(16) "Controlled Substance" means any drug classified as Schedules 1-5 under the Federal Controlled Substance Act.

(17) "Department" means the Oregon Department of Human Services, Seniors and People with Disabilities, an organizational unit within the Department that focuses on the planning of services, policy development and regulation of programs for persons that have developmental disabilities, or are elderly, or have physical disabilities.

(18) "Developmental Disability" means a disability attributable to mental retardation, autism, cerebral palsy, epilepsy or other neurological handicapping condition which requires training or support similar to that required by individuals with mental retardation, and the disability:

(a) Originates before the individual attains the age of 22 years, except that in the case of mental retardation the condition must be manifested before the age of 18; and

(b) Has continued, or may be expected to continue, indefinitely; and

(c) Constitutes a substantial handicap to the ability of the person to function in society; or

(d) Results in significant subaverage general intellectual functioning with concurrent deficits in adaptive behavior which are manifested during the developmental period. Individuals of borderline intelligence may be considered to have mental retardation if there is also serious impairment of adaptive behavior. Definitions and classification must be consistent with the "Manual of Terminology and Classification in Mental Retardation" by the American Association on Mental Deficiency, 1983 Revision. Mental retardation is synonymous with mental deficiency.

(19) "Director" means the individual responsible for administration of the employment or alternative to employment service and provision of support services for individuals.

(20) "Employment Service" means any service that has as its primary goal the employment of individuals, including job assessment, job development, training, and ongoing supports.

(21) "Entry" means admission to a Department-funded developmental disability service.

(22) "Exit" means termination from a Department-funded developmental disability service provider. Exit from a service does not include transfer within a service.

(23) "Facility Based Service" means any service or program that occurs in a location serving more than eight individuals.

(24) "Founded Reports" means the Department of Human Services, Children, Adults, and Families Division or Law Enforcement Authority (LEA) determination, 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.

(25) "Grievance" means a formal complaint by the individual or a person acting on his/her behalf about any aspect of the program or an employee of the program.

(26) "Incident Report" means a written report of any injury, accident, acts of physical aggression or unusual incident involving an individual.

(27) "Independence" is defined as the extent to which persons with mental retardation or developmental disabilities, with or without staff assistance, exert control and choice over their own lives.

(28) "Individual" means a person with developmental disabilities for whom services are planned and provided.

(29) "Individual Support Plan" or "ISP" means a written plan of support and training services for an individual covering a 12-month period which addresses an individual's support needs and each service provider's program plan. This written plan of training services was formerly referred to as Individual Habilitation Plan (IHP).

(30) "Individual Support Plan Team" or "ISP Team" means a team composed of the individual, the case manager, the individual's legal guardian, representatives of all current service providers, and advocate or others determined appropriate by the individual receiving services. If the individual is unable to or does not express a preference, other appropriate team membership may be determined by the ISP team members.

(31) "Integration" means that persons with mental retardation or other developmental disabilities live in the community and use the same community resources that are used by and available to other members of the community, participate in the same community activities other community members participate in, and have contact with other community members. For the purpose of this rule, it is further defined as a location where eight or fewer individuals are in an area and have regular contact with persons without a developmental disability.

(32) "Legal Representative" means the parent if the individual is under age 18, unless the court appoints another individual or agency to act as guardian. For those individuals over the age of 18, a legal representative means an attorney at law who has been retained by or for the adult, or a person who is authorized by the court to make decisions about services for the individual.

(33) "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.

(34) "Physical Restraint" means restricting the movement of an individual or restricting the movement or normal function of a portion of the individual's body.

(35) "Prescription Medication" means any medication that requires a physician prescription before it may be obtained from a pharmacist.

(36) "Productivity" is defined in ORS 427.005(14) as "engagement in income producing work by a person with mental retardation or other developmental disabilities which is measured through improvements in income level, employment status or job advancement or engagement by a person with mental retardation or other developmental disabilities in work contributing to a household or community."

(37) "Protection" means necessary actions taken to prevent subsequent abuse or exploitation of the individual, to prevent self-destructive acts, and to safeguard an individual's person, property and funds as possible.

(38) "Psychotropic Medication" is defined as a medication whose prescribed intent is to affect or alter thought processes, mood, or behavior. This includes, but is not limited to, anti-psychotic, antidepressant, anxiolytic (anti-anxiety), and behavior medications. Because a medication may have many different effects, its classification depends upon its stated, intended effect when prescribed.

(39) "Self-administration of Medication" means the individual manages and takes his/her own medication. It includes identifying his/her medication and the times and methods of administration, placing the medication internally in or externally on his or her own body without staff assistance, upon the written order of a physician, and safely maintaining the medication(s) without supervision.

(40) "Service Provider" or "Service" means a public or private community agency or organization that provides recognized mental health or developmental disability service(s) and is approved by the Department or other appropriate agency to provide these service(s). For the purpose of this rule "provider" or "Program" is synonymous with "service provider."

(41) "Significant Other" means a person selected by the individual to be his/her friend.

(42) "Staff" means a paid employee responsible for providing services to individuals and whose wages are paid in part or in full with funds contracted through the Department.

(43) "Substantiated" means an abuse investigation has been completed by the Department of Human Services or its designee and the preponderance of the evidence establishes the abuse occurred.

(44) "Support" means those ancillary services other than direct training including, but not limited to, assisting an individual to maintain skill competencies, achieve community access and social integration, enhance productivity, increase independent functioning and enjoy a satisfying life-style. Support also means training, the systematic, planned maintenance, development or enhancement of employment, social or self care skills, or the planned sequence of systematic interactions, activities, structured learning situations, or educational experiences designed to meet each individual's specified needs.

(45) "Supported Employment" means the provision of situational assessment, job development, job training and ongoing support necessary to

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place, maintain or change the employment of an individual in an integrated work setting. Work must be performed on a full or part-time basis, averaging at least 20 hours per week for each pay period. The individual is compensated in accordance with the Fair Labor Standards Act.

(46) "Transfer" means movement of an individual from one site to another administered by the same service provider and which has not been addressed within the ISP.

(47) "Transition Plan" means a written plan for the period of time between an individual's entry into a particular service and when the individual's ISP is developed. The plan must include a summary of the services necessary to facilitate adjustment to the services offered, the supports necessary to ensure health and safety, and the assessments and consultations necessary for the ISP development.

(48) "Unit of Service" means the equivalent of an individual receiving services 25 hours per week, 52 weeks per year minus the following: personal/vacation/sick leave allowed by the service provider or employer; holidays as recognized by the State of Oregon; and up to four days for all-staff in-service training. Any deviation from the 25 hours per week per individual served must be agreed to and documented by the ISP team.

(49) "Unusual Incident" means those incidents involving serious illness or accidents, death of an individual, injury or illness of an individual requiring inpatient or emergency hospitalization, suicide attempts, a fire requiring the services of a fire department, or any incident requiring an abuse investigation.

Stat. Auth.: ORS 409.050 & 410.070

Stats. Implemented: ORS 430.610, 430.630 & 430.670

Hist.: MHD 26-1982(Temp), f. & cf. 12-3-82; MHD 9-1983, f. & cf. 6-7-83; MHD 7-1990(Temp), f. & cert. ef. 6-12-90; MHD 13-1990, f. & cert. ef. 12-7-90; MHD 1-1997, f. & cert. ef. 1-31-97; Renumbered from 309-047-0005, SPD 23-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10

## 411-345-0080

### Inspections and Investigations

(1) Inspections and investigations required. All services covered by this rule must allow the following types of investigations and inspections:

- (a) Quality assurance, certificate renewal and on-site inspections;
- (b) Complaint investigations; and
- (c) Abuse investigations.

(2) Inspections and investigations by the Department, its designee or proper authority. All inspections and investigations shall be performed the Department, its designee, or proper authority.

(3) Unannounced. Any inspection or investigation may be unannounced.

(4) Required documentation. All documentation and written reports required by his rule must be:

(a) Open to inspection and investigation by the Department, its designee or proper authority; and

(b) Submitted to the Department within the time allotted.

(5) Priority investigation under (1)(c) of this rule. When abuse is alleged or death of an individual has occurred and a law enforcement agency, or the Department or its designee, has determined to initiate an investigation, the service provider must not conduct an internal investigation without prior authorization from the Department. For the purposes of this section, an internal investigation is defined as conducting interviews of the alleged victim, witness, the accused person or any other persons who may have knowledge of the facts of the abuse allegation or related circumstances; reviewing evidence relevant to the abuse allegation, other than the initial report; or any other actions beyond the initial actions of determining:

- (a) If there is reasonable cause to believe that abuse has occurred; or
  - (b) If the alleged victim is in danger or in need of immediate protective services; or
  - (c) If there is reason to believe that a crime has been committed; or
  - (d) What, if any, immediate personnel actions shall be taken.
- (6) When an abuse investigation has been initiated, the CDDP must provide notice to the program according to OAR 407-045-0290.

(7) The Department or its designee must complete an Abuse Investigation and Protective Services Report according to OAR 407-045-0320. The report must include the findings based upon the abuse investigation.

(8) When an abuse investigation has been completed, the CDDP must provide notice of the outcome of the investigation according to OAR 407-045-0320.

(9) Upon completion of the abuse investigation by the Department, its designee, or a law enforcement agency, a service provider may conduct an investigation without further Department approval to determine if any other personnel actions are necessary.

(10) Abuse Investigation and Protective Services Report. Upon completion of the investigation report according to OAR 407-045-0320, the sections of the report that are public records and not exempt from disclosure under the public records law must be provided to the appropriate service provider in accordance to OAR 407-045-0330. The service provider must implement the actions necessary within the deadlines listed, to prevent further abuse as stated in the report.

(11) Plan of Improvement. A plan of improvement must be submitted to the CMHP and the Department for any noncompliance found during an inspection under this rule.

Stat. Auth.: ORS 409.050 & 410.070

Stats. Implemented: ORS 430.610, 430.630 & 430.670

Hist.: MHD 26-1982(Temp), f. & cf. 12-3-82; MHD 9-1983, f. & cf. 6-7-83; MHD 7-1990(Temp), f. & cert. ef. 6-12-90; MHD 13-1990, f. & cert. ef. 12-7-90; MHD 1-1997, f. & cert. ef. 1-31-97; Renumbered from 309-047-0035, SPD 23-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10

## 411-345-0100

### Program Management

(1) Nondiscrimination. The service must comply with all applicable state and federal statutes, rules and regulations in regard to nondiscrimination in employment practices.

(2) Prohibition against retaliation. A community program or service provider must not retaliate against any staff who reports in good faith suspected abuse or retaliate against the adult with respect to any report. An accused person cannot self-report solely for the purpose of claiming retaliation.

(a) Subject to penalty. Any community facility, community program or person that retaliates against any person because of a report of suspected abuse or neglect shall be liable according to ORS 430.755, in a private action to that person for actual damages and, in addition, shall be subject to a penalty up to \$1000, notwithstanding any other remedy provided by law.

(b) Adverse action defined. Any adverse action is evidence of retaliation if taken within 90 days of a report of abuse. Adverse action means only those actions arising solely from the filing of an abuse report. For purposes of this subsection, "adverse action" means any action taken by a community facility, community program or person involved in a report against the person making the report or against the adult because of the report and includes but is not limited to:

(A) Discharge or transfer from the community program, except for clinical reasons;

(B) Discharge from or termination of employment;

(C) Demotion or reduction in remuneration for services; or

(D) Restriction or prohibition of access to the community program or the individual(s) served by the program.

(3) Documentation requirements. All entries required by this rule, unless stated otherwise, must:

(a) Be prepared at the time, or immediately following the event being recorded;

(b) Be accurate and contain no willful falsifications;

(c) Be legible, dated and signed by the person(s) making the entry; and

(d) Be maintained for no less than three years.

(4) Provider Service Payment Limitation. Effective February 1, 2010, monthly service rates, as authorized in SPD payment and reporting systems for individuals enrolled in employment and alternatives to employment services, paid to certified providers for delivering employment and alternatives to employment services as prescribed in these rules shall be limited to a maximum of \$1,800 per month.

(5) Independence, productivity and integration. As stated in ORS 427.007 the service must have a written policy which states that each individual's Individual Support Plan is developed to meet each of the following:

(a) Employment and activities which address each individual's level of independence;

(b) Employment and activities which address each individual's productivity; and

(c) Employment and activities which address each individual's integration into the local community.

(6) Dissolution of service. Prior to the dissolution of a service, a representative of the governing body or owner must notify the Department in writing 30 days in advance and make appropriate arrangements for the transfer of individual records.

Stat. Auth.: ORS 409.050 & 410.070

Stats. Implemented: ORS 430.610, 430.630 & 430.670

Hist.: MHD 26-1982(Temp), f. & cf. 12-3-82; MHD 9-1983, f. & cf. 6-7-83; MHD 7-1990(Temp), f. & cert. ef. 6-12-90; MHD 13-1990, f. & cert. ef. 12-7-90; MHD 1-1997, f. & cert. ef. 1-31-97; Renumbered from 309-047-0045, SPD 23-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10

## 411-345-0210

### Health and Safety: Personnel

(1) Basic Personnel Policy and Procedure. The service must have in place personnel policies and procedures that address suspension, increased supervision or other appropriate disciplinary employment procedures when a staff member has been identified as an accused person in an abuse investigation. The program must also have in place personnel policies and procedures which address disciplinary and termination of employment when the allegation of abuse has been substantiated.

(2) Mandatory abuse reporting personnel policies and procedures. Any employee of a private agency which contracts with a CMHP is required to report incidents of abuse when the employee comes in contact with and has reasonable cause to believe that an individual has suffered abuse or that any person with whom the employee comes in contact, while acting in an official

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capacity, has abused the individual. Notification of mandatory reporting status must be made at least annually to all employees on forms provided by the Department. All employees must be provided with a Department-produced card regarding abuse reporting status and abuse reporting. For reporting purposes the following shall apply:

(a) Agencies providing services to adults must report abuse of an adult to the CDDP where the adult resides and if there is reason to believe a crime has been committed a report must also be made to law enforcement.

(b) Agencies providing services to children must report abuse of a child to DHS Child Welfare or law enforcement in the county where the child resides.

(3) Application for employment. An application for employment at the program must inquire whether an applicant has been found to have committed abuse.

(4) Criminal records checks. Any employee, volunteer, advisor, or any subject individual as required under OAR 407-007-0200 to 407-007-0370 who has or will have contact with a resident of the program, must have an approved criminal records check in accordance with OAR 407-007-0200 to 407-007-0370 and under ORS 181.534.

(a) The program may not use public funds to support, in whole or in part, the employment in any capacity of a person who has been hired on or after January 1, 2010, or is subject to criminal records checks after January 1, 2010 as required by administrative rule, and who has been convicted:

(A) Of a crime listed in Exhibit 345-1;

(B) In the last 10 years, of a crime involving the delivery or manufacture of a controlled substance;

(C) Of an attempt, conspiracy, or solicitation to commit a crime described in Exhibit 345-1; or

(D) Of a crime in another jurisdiction that is substantially equivalent to a crime described in Exhibit 345-1.

(b) A person may not be authorized as a provider or meet qualifications as described in this rule if the person has been hired on or after January 1, 2010, or is subject to criminal records checks after January 1, 2010 as required by administrative rule, and who has been convicted:

(A) Of a crime listed in Exhibit 345-1;

(B) In the last 10 years, of a crime involving the delivery or manufacture of a controlled substance;

(C) Of an attempt, conspiracy, or solicitation to commit a crime described in Exhibit 345-1; or

(D) Of a crime in another jurisdiction that is substantially equivalent to a crime described in Exhibit 345-1.

(5) Director qualifications. The service must be operated under the supervision of a Director who has a minimum of a bachelor's degree and two years of experience, including supervision, in the developmental disabilities, social services/mental health or related field or six years of experience, including supervision, in the field of developmental disabilities or a social services/mental health field.

(6) Staff qualifications. Any staff who supervise individuals must:

(a) Be at least 18 years of age;

(b) Have approval to work based on current Department of Human Services policy and procedures for review of criminal records as described in section (4) of this rule; and

(c) Be capable of performing the duties of the job as described in a current job description which the staff has signed and dated.

(7) Personnel files and qualifications records. The service must maintain a personnel file on each staff person. In addition, the program must maintain the following on each staff person in a file available to the Department or its designee for inspection:

(a) Written documentation that references and qualifications were checked;

(b) Written documentation of six hours of pre-service training prior to supervising individuals including mandatory abuse reporting training;

(c) CPR and first-aid certification obtained from a recognized training agency within three months of employment and kept current if needed to meet the staffing requirements as described in OAR 411-345-0220(1)(b)(A) and (B);

(d) Written documentation of 12 hours of job-related in-service training annually;

(e) Written documentation of employee notification of mandatory abuse reporting status;

(f) Written documentation of any founded report of child abuse or a substantiated abuse allegation;

(g) Written documentation of an approved criminal records check by the Department of Human Services; and

(h) Written documentation of any grievances filed against the staff person and the results of the grievance process, including, if any, disciplinary action.

Stat. Auth.: ORS 409.050 & 410.070

Stats. Implemented: ORS 430.610, 430.630 & 430.670

Hist.: MHD 7-1990(Temp), f. & cert. ef. 6-12-90; MHD 13-1990, f. & cert. ef. 12-7-90; MHD 1-1997, f. & cert. ef. 1-31-97; Renumbered from 309-047-0100, SPD 23-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10

## 411-345-0230

### Health and Safety: Incident Reports and Emergency Notifications

(1) Incident reports. A written report that describes any injury, accident, act of physical aggression or unusual incident involving an individual must be placed in the individual's record. Such description must include:

(a) Conditions prior to or leading to the incident;

(b) A description of the incident;

(c) Staff response at the time; and

(d) Administrative review and follow-up to be taken to prevent a recurrence of the injury, accident, physical aggression or unusual incident.

(2) Sent to case manager. Copies of all unusual incident (as defined by 411-345-0020(47)) reports must be sent to the case manager within five working days of the incident.

(3) Immediate notification of allegations of abuse and abuse investigations. The program must notify the CMHP immediately of an incident or allegation of abuse falling within the scope of OAR 407-045-0260.

(4) Immediate notification. In the case of an unusual incident requiring emergency response, the service must immediately notify:

(a) The individual's legal guardian or conservator, parent, next of kin, designated contact person and other significant person;

(b) The Community Mental Health Program;

(c) The individual's residential provider, if applicable; and

(d) Any other agency responsible for the individual.

(5) Missing person notification. In the case of an individual who is missing or absent without supervision beyond the time frames established by the ISP team, the service must immediately notify:

(a) The individual's designated contact person;

(b) The individual's guardian, if any, or nearest responsible relative;

(c) The individual's residential provider, if applicable;

(d) The local police department; and

(e) The Community Mental Health Program.

Stat. Auth.: ORS 409.050 & 410.070

Stats. Implemented: ORS 430.610, 430.630 & 430.670

Hist.: MHD 7-1990(Temp), f. & cert. ef. 6-12-90; MHD 13-1990, f. & cert. ef. 12-7-90; MHD 1-1997, f. & cert. ef. 1-31-97; Renumbered from 309-047-0110, SPD 23-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10

## 411-345-0290

### Certificate Denial, Suspension, Revocation, Refusal to Renew

(1) Conditions. The Department may deny, revoke or refuse to renew a certificate when it finds the provider, or any person holding five percent or greater financial interest in the provider:

(a) Demonstrates substantial failure to comply with these rules such that the health, safety or welfare of individuals is jeopardized and fails to correct the noncompliance within 30 calendar days of receipt of written notice of non-compliance; or

(b) Has demonstrated a substantial failure to comply with these rules such that the health, safety or welfare of individuals is jeopardized during two inspections within a six year period (for the purpose of this subsection, "inspection" means an onsite review of the service site by the Department for the purpose of investigation or certification); or

(c) Has demonstrated a failure to comply with applicable laws relating to safety from fire; or

(d) Has been convicted of a felony or any crime as described in OAR 411-345-0210(4);

(e) Has been convicted of a misdemeanor associated with the operation of an employment and alternative to employment service; or

(f) Falsifies information required by the Department to be maintained or submitted regarding care of individuals, employment and alternative to employment program finances or individuals' funds; or

(g) Has been found to have permitted, aided or abetted any illegal act which has had significant adverse impact on individual health, safety or welfare.

(2) Immediate suspension of certificate. In any case where the Department finds a serious and immediate threat to individual health and safety and sets forth the specific reasons for such findings, the Department may, by written notice to the certificate holder, immediately suspend a certificate without a pre-suspension hearing and the service may not continue operation.

(3) Notice of certificate revocation or denial. Following a Department finding that there is a substantial failure to comply with these rules such that the health, safety or welfare of individuals is jeopardized, or that one or more of the events listed in section (1) of this rule has occurred, the Department may issue a notice of certificate revocation, denial or refusal to renew.

(4) Informal process. Following the notice issued pursuant to section (3) of this rule, the Department shall provide the certificate holder an opportunity for an informal conference within 10 calendar days from the date of the notice.

(5) Hearing. Following issuance of a notice of certificate revocation, denial or refusal to renew, the Department shall provide the opportunity for a hearing pursuant to OAR 411-345-0300.

Stat. Auth.: ORS 409.050 & 410.070

Stats. Implemented: ORS 430.610, 430.630 & 430.670

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Hist.: MHD 7-1990(Temp), f. & cert. ef. 6-12-90; MHD 13-1990, f. & cert. ef. 12-7-90; MHD 1-1997, f. & cert. ef. 1-31-97; Renumbered from 309-047-0135, SPD 23-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10

## 411-346-0110

### Definitions

(1) "30 Day Emergency Certificate" means a foster care home certificate issued for 30 days.

(2) "Abuse" means:

(a) Abuse of a child as defined in ORS 419B.005; and

(b) Abuse of an adult as defined in OAR 407-045-0260 when an individual over the age of 18 resides in a certified child foster home.

(3) "Administrator" means the Assistant Director of the Department of Human Services, Seniors and People with Disabilities Division, or that person's designee.

(4) "Alternate Caregiver" means any person over the age of 18 having contact with the child.

(5) "Aversive Stimuli" means the use of any natural or chemical product to alter a child's behavior such as the use of hot sauce or soap in the mouth, and spraying ammonia or lemon water in the face of a child. Psychotropic medications are not considered aversive stimuli.

(6) "Alternative Educational Plan (AEP)" means any school plan that does not occur within the physical school setting.

(7) "Appeal" means the process that the foster provider may use to petition the suspension, denial, non-renewal or revocation of their certificate or application under ORS chapter 183.

(8) "Applicant(s)" means a person who wants to become a child foster provider and is applying for a child foster home certificate or is renewing a child foster home certificate and lives at the residence where a child(ren) in care shall live.

(9) "Behavior Supports" means a positive training plan used by the foster provider and alternate caregivers to help children develop the self control and self direction necessary to assume responsibilities, make daily living decisions, and learn to conduct themselves in a manner that is socially acceptable.

(10) "Case Plan" means the goal-oriented, time-limited, individualized plan of action for a child and the child's family developed by the child's family and the Department of Human Services, Children, Adults and Families Division for promotion of the child's safety, permanency, and well being.

(11) "Case Worker" means an employee of the Department of Human Services, Children, Adults and Families Division.

(12) "Certificate" means a document, issued by the Department of Human Services, Seniors and People with Disabilities Division, that notes approval to operate a child foster home, for a period not to exceed one year.

(13) "Certifier" or "Certifying Agency" means the Department of Human Services, Seniors and People with Disabilities Division or Community Developmental Disability Program who is authorized to gather required documentation for the issuance of a child foster home certificate.

(14) "Chemical Restraint" means the use of a psychotropic drug or other drugs to control or modify behavior in place of a meaningful support or treatment plan.

(15) "Child" means:

(a) An individual under the age of 18 who has a provisional eligibility determination of developmental disability; or

(b) A young adult age 18 through 21 who is remaining in the same foster home for the purpose of completing their Individualized Education Plan, based on their Individual Support Plan team recommendation and an approved certification variance.

(16) "Child Foster Home (CFH)" means a home certified by the Department of Human Services, Seniors and People with Disabilities Division that is maintained and lived in by the person named on the foster home certificate.

(17) "Child Foster Home Contract" means an agreement between a provider and the Department of Human Services that describes the responsibility of the foster care provider and the Department of Human Services.

(18) "Child Placing Agency" means the Department of Human Services, Community Developmental Disability Program, or the Oregon Youth Authority.

(19) "Commercial Basis" means providing temporary care for individuals not identified as members of the household, and receiving compensation for the care provided.

(20) "Community Developmental Disability Program (CDDP)" means an entity that is responsible for planning and delivery of services for persons with mental retardation or other developmental disabilities in a specific geographic area of the state under a contract with the Department of Human Services or a local mental health authority.

(21) "Denial" means the refusal of the certifying agency to issue a certificate of approval to operate a foster home for children because the agency has determined that the home or the applicant is not in compliance with one or more of these rules.

(22) "Developmental Disability" is always provisional and means:

(a) For children five years and younger.

(A) The condition or impairment must be expected to last indefinitely and must not be otherwise primarily attributed to mental illness, substance abuse, an emotional disorder, Attention Deficit and Hyperactivity Disorder (ADHD), a learning disability, or sensory impairment; AND

(B) There are standardized tests demonstrating adaptive impairment (more than two standard deviations below the norm) in at least two of the following areas of functioning:

(i) Self care;

(ii) Receptive and expressive language;

(iii) Learning;

(iv) Mobility; and

(v) Self-direction; OR

(C) There is a statement by a licensed medical practitioner that the child has a condition or syndrome that shall likely cause significant adaptive impairment in at least two of the areas listed in section (22)(a)(B) of this rule.

(b) For children six years and older.

(A) There is a diagnosis of mental retardation; OR

(B) There is a diagnosis of developmental disability; AND

(C) There is a significant adaptive impairment (more than two standard deviations below the norm) in at least two of the following areas:

(i) Self-care;

(ii) Receptive and expressive language;

(iii) Learning;

(iv) Mobility; and

(v) Self-direction; AND

(D) The condition or impairment must be expected to last indefinitely and must not be otherwise primarily attributed to mental illness, substance abuse, an emotional disorder, Attention Deficit and Hyperactivity Disorder (ADHD), a learning disability, or sensory impairment; and be expected to last indefinitely; AND

(E) The individual is expected to indefinitely need multiple, specialized supports.

(23) "Department-Approved Intervention Methods" means the method or intervention used for behavior management approved by the Department of Human Services. The Department-approved intervention method is the Oregon Intervention System.

(24) "DHS-CW" means the child welfare program area within the Department of Human Services, Children, Adults and Families Division.

(25) "DHS" means the Department of Human Services.

(26) "Discipline" for the purpose of these rules, discipline is synonymous with behavior supports.

(27) "Domestic Animals" means any various animals domesticated so as to live and breed in a tame condition. Examples of domestic animals are dogs, cats, and domesticated farm stock.

(28) "Direct Nursing Services" means the provision of individual-specific advice, plans or interventions, based on nursing process as outlined by the Oregon State Board of Nursing, by a nurse at the home or facility. Direct nursing service differs from administrative nursing services. Administrative nursing services include non-individual-specific services, such as quality assurance reviews, authoring health related agency policies and procedures, or providing general training for the foster provider or alternate caregivers.

(29) "Educational Surrogate" means an individual who acts in place of a parent in safeguarding a child's rights in the special education decision-making process:

(a) When the parent cannot be identified or located after reasonable efforts;

(b) When there is reasonable cause to believe that the child has a disability and is a ward of the state; or

(c) At the request of a parent or adult student.

(30) "Exception" means the process that the Department of Human Services uses to determine that the applicant possesses the qualifications to be a foster provider despite a record of criminal conviction or arrests in accordance with OAR 407-007-0200 to 407-007-0370 (Criminal Records Check Rules).

(31) "Foster Care" means 24-hour substitute care in a certified foster home for children placed away from their parents or guardians.

(32) "Foster Provider" means the certified care provider who resides at the address listed on the foster home certificate. For the purpose of these rules, "foster provider" is synonymous with child foster parent or relative caregiver and is considered a private agency for purposes of mandatory reporting of abuse.

(33) "Founded Reports" means the Department of Human Services, Children, Adults, and Families Division or Law Enforcement Authority (LEA) determination, 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.

(34) "Guardian" means a parent for individuals less than 18 years of age, or a person or agency appointed by a court, who is authorized by the court to make decisions about services for the foster child.

(35) "Health Care Provider" means a person or health care facility licensed, certified or otherwise authorized or permitted by law of this state to



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administer health care in the ordinary course of business or practice of a profession.

(36) "Home Inspection" means an on-site, physical review of the applicant's home to assure the applicant meets all health and safety requirements within these rules.

(37) "Home Study" is the assessment process used for the purpose of determining an applicant's abilities to care for children in need of foster care placement.

(38) "Incident Report" means a written report of any injury, accident, acts of physical aggression, or unusual incident involving the foster child.

(39) "Individualized Education Plan (IEP)" means a written plan of instructional goals and objectives in conference with the teacher, parent or guardian, student, and a representative of the school district.

(40) "Individual Support Plan (ISP)" means the written details of the supports, activities and resources required to meet the health, safety, financial and personal goals of the foster child. The ISP is the individual's Plan of Care for Medicaid purposes.

(41) "Individual Support Plan Team (ISP team)" means a team composed of:

- (a) The child in foster care, when appropriate;
- (b) The foster provider;
- (c) The guardian;
- (d) Relatives of the child;
- (e) The Community Developmental Disability Program Services

Coordinator; and  
(f) Any other approved persons who are well liked by the child and approved by the child and the child's guardian to serve on the team.

(42) "Mandatory Reporter" means any individual who is required by Oregon statute and rule to report suspected abuse or neglect of an adult or child to the proper authorities.

(43) "Mechanical Restraint" means any mechanical device material, object or equipment that is attached or adjacent to an individual's body that the individual cannot easily remove or easily negotiate around and restricts freedom of movement or access to the individual's body.

(44) "Member of the Household" means any adults and children living in the home, including any foster provider, employees or volunteers assisting in the care provided to children placed in the home, and excluding the foster children placed in the home.

(45) "Misuse of Funds" includes, but is not limited to providers or their staff:

- (a) Borrowing from or loaning money to a child;
- (b) Witnessing a will in which the provider or a staff is a beneficiary;
- (c) Adding the provider's name to an individual's bank account(s) or other titles for personal property without approval of the individual, when of age to give legal consent, or the individual's legal representative and authorization of the Individual Support Plan team;
- (d) Inappropriately expending or theft of an individual's personal funds;
- (e) Using an individual's personal funds for the provider's or staff's own benefit; or
- (f) Commingling an individual's funds with provider or another individual's funds.

(46) "Monitoring" means the observation by the Department of Human Services, Seniors and People with Disabilities Division, or designee, of a certified child foster home to determine continuing compliance with certification rules.

(47) "Nurse" means a person who holds a valid, current license as a registered nurse (RN) or licensed practical nurse (LPN) from the Oregon Board of Nursing.

(48) "Nursing Care Plan" means a plan of care developed by a Registered Nurse (RN) that describes the medical, nursing, psychosocial, and other needs of the individual and how those needs shall be met. The nursing care plan includes which tasks shall be taught or delegated to the foster provider and alternate caregivers.

(49) "Occupant" means any person having official residence in a certified child foster home.

(50) "Oregon Intervention System (OIS)" means a system of providing training to people who work with designated individuals to intervene physically or non-physically to keep individuals from harming self or others. The system is based on a proactive approach that includes methods of effective evasion, deflection and escape from holding.

(51) "Oregon Youth Authority (OYA)" means an agency that has been given commitment and supervision responsibilities over those youth offenders, by order of the juvenile court under ORS 137.124 or other statute, until the time that a lawful release authority authorizes release or terminates the commitment or placement.

(52) "Permanent Foster Care Placement Agreement" means a long term contractual placement agreement between the foster parent and the Department of Human Services, Children, Adults and Families Division, approved by the juvenile court that specifies the responsibilities and authority of the foster parent and the commitment by the permanent foster parent to raise a child until the age of majority.

(53) "Physical Restraint" means any manual physical holding of or contact with an individual that restricts the individual's freedom of movement.

(54) "Physical Intervention" means the use of any physical action or any response to maintain the health and safety of an individual or others during a potentially dangerous situation or event.

(55) "Protected Health Information" means any oral or written health information that identifies the child and relates to the child's past, present or future physical or mental health condition, health care treatment or payment for health care treatment.

(56) "Psychotropic Medication" means a medication whose prescribed intent is to affect or alter thought processes, mood, or behavior. This includes, but is not limited to, anti-psychotic, antidepressant, anxiolytic (anti-anxiety), and behavior medications. Because a medication may have many different effects, its classification depends upon its stated, intended effect when prescribed.

(57) "Respite Care" means short-term services for a period of up to 14 consecutive days. Respite care may include both day and overnight care.

(58) "Revocation" means the action taken by the certifying agency to rescind a child foster home certificate of approval after determining that the child foster home is not in compliance with one or more of these rules.

(59) "Service Coordinator" means an employee of the Department of Human Services, a Community Developmental Disability Program, or agency that contracts with the Community Developmental Disability Program or the Department of Human Services who is selected to plan, procure, coordinate, and monitor individual support services and acts as a proponent for individuals with developmental disabilities.

(60) "Significant Medical Needs" means, but is not limited to, total assistance required for all activities of daily living such as access to food or fluids, daily hygiene, which is not attributable to the child's chronological age, and frequent medical interventions required by the care plan for health and safety of the child.

(61) "SPD" means the Department of Human Services, Seniors and People with Disabilities Division.

(62) "Specialized Diet" means that the amount, type of ingredients or selection of food or drink items is limited, restricted, or otherwise regulated under a physician's order. Examples include, but are not limited to, low calorie, high fiber, diabetic, low salt, lactose free, low fat diets.

(63) "Substantiated" means an abuse investigation has been completed by the Department of Human Services or its designee and the preponderance of the evidence establishes the abuse occurred.

(64) "Suspension of Certificate" means a temporary withdrawal of the approval to operate a child foster home after the certifying agency determines that the child foster home is not in compliance with one or more of these rules.

(65) "These Rules" means the Oregon Administrative Rules in chapter 411, division 346.

(66) "Unauthorized Absence" means any length of time when a child is absent from the foster home, without prior approval as specified on the Individual Support Plan.

(67) "Unusual Incident" means those incidents involving serious illness or accidents, death of an individual, injury or illness of an individual requiring inpatient or emergency hospitalization, suicide attempts, a fire requiring the services of a fire department, or any incident requiring an abuse investigation.

(68) "Unsupervised Contact" means the time the foster child is cared for, supported or monitored, by an alternate caregiver, without the direct supervision or presence of the certified foster provider.

(69) "Variance" means a temporary exemption from a regulation or provision of these rules that may be granted by the Department of Human Services, Seniors and People with Disabilities Division, upon written application by the Community Developmental Disability Program.

(70) "Volunteer" means any individual assisting in a child foster home without pay to support the care provided to children placed in the child foster home.

Stat. Auth.: ORS 409.050, 410.070, 430.215, & 443.835

Stats. Implemented: ORS 443.830 & 443.835

Hist.: MHD 15-2000(Temp), f. & cert. ef. 11-30-00 thru 5-28-01; MHD 3-2001, f. 5-25-01, cert. ef. 5-28-01; Renumbered from 309-046-0110, SPD 34-2004, f. 11-30-04, cert. ef. 1-1-05; SPD 10-2007, f. 6-27-07, cert. ef. 7-5-07; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10

## 411-346-0150

### General Requirements for Certification

(1) The applicant or foster provider must participate in certification and certification renewal studies, and in the ongoing monitoring of their homes.

(2) The applicant or foster provider must give the information required by SPD to verify compliance with all applicable rules, including change of address and change of number of persons in the household such as relatives, employees or volunteers.

(3) The applicant seeking certification from SPD must complete the SPD application forms. When two or more adults living in the home share foster provider responsibilities to any degree, they must be listed on the application as applicant and co-applicant.

(4) The applicant must disclose each state or territory they have lived in the last five years and for a longer period if requested by the certifier. The dis-

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closure must include the address, city, state and zip code of previous residences.

(5) Information provided by the applicants must include:

(a) Names and addresses of any agencies in the United States where any occupant of the home has been licensed or certified to provide care to children or adults and the status of such license or certification. This may include, but is not limited to, the licenses or certificates for residential care, nurse, nurse's aide, and foster care;

(b) Proposed number, gender, age range, disability and support needs of children to be served in foster care;

(c) School reports for any child of school age living in the home at the time of initial application. School reports for any child of school age living in the home within the last year may also be required;

(d) Names and addresses of at least four persons, three of whom are unrelated, who have known each applicant for two years or more and who can attest to their character and ability to care for children. SPD may contact schools, employers, adult children and other sources as references;

(e) Reports of all criminal charges, arrests or convictions, the dates of offenses, and the resolution of those charges for all employees or volunteers and persons living in the home. If the applicant's minor children shall be living in the home, the applicants must also list reports of all criminal or juvenile delinquency charges, arrests or convictions, the dates of offenses, and the resolution of those charges;

(f) Founded reports of child abuse or substantiated abuse allegations, with dates, locations and resolutions of those reports for all persons living in the home, as well as all applicant or provider employees, independent contractors and volunteers;

(g) Demonstration, upon initial certification, of successful completion of 15 hours of pre-service training.

(h) Demonstration, upon initial certification, of income sufficient to meet the needs and to ensure the stability and financial security of the family, independent of the foster care payment;

(i) All child support obligations in any state, whether the obligor is current with payments or in arrears, and whether any applicant's or foster provider's wages are being attached or garnished for any reason;

(j) A physician's statement, on a form provided by SPD, that each applicant is physically and mentally capable of providing care;

(k) A floor plan of the house showing the location of:

(A) Rooms, indicating the bedrooms for the foster child, caregiver, and other occupants of the home;

(B) Windows;

(C) Exit doors;

(D) Smoke detectors and fire extinguishers; and

(E) Wheel chair ramps, if applicable; and

(l) A diagram of the house and property showing safety devices for fire places, wood stoves, water features, outside structures and fencing.

(6) Falsification or omission of any of the information for certification may be grounds for denial or revocation of the child foster home certification.

(7) Applicants must be at least 21 years of age. Applicants who are "Indian," as defined in the Indian Child Welfare Act, may be 18 years of age or older, if an Indian child to be placed is in the legal custody of DHS-CW.

(8) Applicants, providers, alternate caregivers, providers' employees or volunteers, other occupants in the home who are 18 years or older, and other adults having regular contact in the home with the foster children must consent to a criminal records check by DHS, in accordance with OAR 407-007-0200 to 407-007-0370 (Criminal Records Check Rules) and under ORS 181.534. SPD may require a criminal records check on members of the household under 18 if there is reason to believe that a member may pose a risk to children placed in the home. All persons subject to a criminal records check are required to complete an Oregon criminal records check and a national criminal records check, as defined in OAR 407-007-0200 to 407-007-0370, including the use of fingerprint cards.

(a) Public funds may not be used to pay, in whole or in part, a provider, providers' employees, alternate caregivers, volunteers, or any other subject individual under OAR 407-007-0200 to 407-007-0370, who has been hired on or after January 1, 2010 or who are subject to a criminal records check after January 1, 2010 as required by administrative rule, and who have been convicted:

(A) Of a crime listed in Exhibit 346-1;

(B) In the last 10 years, of a crime involving the delivery or manufacture of a controlled substance;

(C) Of an attempt, conspiracy, or solicitation to commit a crime described in Exhibit 346-1; or

(D) Of a crime in another jurisdiction that is substantially equivalent to a crime described in Exhibit 346-1.

(b) A person may not be authorized as a provider or meet qualifications as described in this rule if the person has been hired on or after January 1, 2010, or is subject to criminal records checks after January 1, 2010 as required by administrative rule, and who has been convicted:

(A) Of a crime listed in Exhibit 346-1;

(B) In the last 10 years, of a crime involving the delivery or manufacture of a controlled substance;

(C) Of an attempt, conspiracy, or solicitation to commit a crime described in Exhibit 346-1; or

(D) Of a crime in another jurisdiction that is substantially equivalent to a crime described in Exhibit 346-1.

(9) The applicant or foster provider may request to withdraw their application any time during the certification process by notifying the certifier in writing. Written documentation by the certifier of verbal notice may substitute for written notification.

(10) SPD may not issue or renew a certificate if an applicant or member of the household:

(a) Has, after completing the DHS criminal records check required by SPD, a fitness determination of "denied."

(b) Has, at any time, been convicted of a felony in Oregon or any jurisdiction that involves:

(A) Child abuse or neglect;

(B) Spousal abuse;

(C) Criminal activity against children, including child pornography;

(D) Violence specifically including rape, sexual assault, or homicide;

(E) Of a crime listed in Exhibit 346-1;

(F) In the last 10 years, of a crime involving the delivery or manufacture of a controlled substance;

(G) Of an attempt, conspiracy, or solicitation to commit a crime described in Exhibit 346-1; or

(H) Of a crime in another jurisdiction that is substantially equivalent to a crime described in Exhibit 346-1.

(c) Has, within the past five years from the date the DHS criminal records check was signed been convicted of a felony in Oregon or any jurisdiction that involves:

(A) Physical assault or battery (other than against a spouse or child); or

(B) Any drug-related offense.

(d) Has been found to have abused or neglected a child or adult as defined in ORS 419B.005 or as listed in OAR 407-045-0260.

(e) Has, within the past five years from the date the child foster home application was signed, been found to have abused or neglected a child or adult in the United States as defined by that jurisdiction or any other jurisdiction.

(11) SPD may not issue or renew a certificate for a minimum of five years if the applicant is found to have a license or certificate to provide care to children or adults, suspended, revoked or not renewed by other than voluntary request. This shall be grounds for suspension and revocation of the certificate.

(12) SPD may not issue or renew a certificate based on an evaluation of any negative references, school reports, physician's statement, or previous licensing or certification reports from other agencies or states.

(13) A DHS employee may be a foster provider, or an employee of an agency that contracts with DHS as a foster provider, if the employee's position with DHS does not influence referral, regulation or funding of such activities. Prior to engaging in such activity, the employee must obtain written approval from their Administrator. The written approval must be on file with their Administrator and in the SPD certification file.

(14) An application is incomplete and void unless all supporting materials are submitted to SPD within 90 days from the date of the application.

(15) An application may not be considered complete until all required information is received and verified by SPD. Within 60 days upon receipt of the completed application, a decision shall be made by SPD to approve or deny certification.

(16) SPD shall determine compliance with these rules based on receipt of the completed application material, an investigation of information submitted, an inspection of the home, a completed home study, and a personal interview with the provider. A certificate is valid for one year unless revoked or suspended earlier.

(17) SPD may attach conditions to the certificate that limit, restrict, or specify other criteria for operation of the child foster home.

(18) A condition may be attached to the certificate that limits the provider to the care of a specific individual. No other referrals shall be made to a provider with this limitation.

(19) A child foster home certificate is not transferable or applicable to any location or persons other than those specified on the certificate.

(20) The foster provider who cares for children funded by DHS must enter into a contract with DHS and follow the DHS rules governing reimbursement for services and refunds.

(21) The foster provider cannot be the parent or legal guardian of any children placed in their home for foster care services funded by DHS.

(22) If the applicant or foster provider intends to provide care for an individual with significant medical needs the provider must have the following:

(a) An equivalent of one year of full-time experience in providing direct care to individuals;

(b) Health care professional qualifications.

(A) Such as a registered nurse (RN) or licensed practical nurse (LPN);

or

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(B) Has the equivalent of two additional years full-time experience providing care and support to individual(s) who have a medical condition that is serious and could be life-threatening;

(c) Copies of all current health related license or certificates and provide those documents to the certifying agent;

(d) Current certification in First Aid and Cardiopulmonary Resuscitation (CPR). The CPR training must be done by a recognized training agency and the CPR certificate must be appropriate to the ages of the children served in the foster home;

(e) Current satisfactory references from at least two medical professionals, such as a physician and registered nurse, who have direct knowledge of the applicant's ability and past experiences as a caregiver. The medical professional references serve as two of the four references in section (5)(d) of this rule; and

(f) Positive written recommendation from SPD's Medically Fragile Children's Unit (MFCU) if the provider or applicant has provided services through the program or if the provider or applicant has historically received services through the program for a child in their family home or foster home.

(23) A foster provider must not accept an individual with significant medical needs unless an initial care plan addressing the health and safety supports is in place at the time of placement.

Stat. Auth.: ORS 409.050, 410.070, 430.215, & 443.835

Stats. Implemented: ORS 443.830 & 443.835

Hist.: MHD 15-2000(Temp), f. & cert. ef. 11-30-00 thru 5-28-01; MHD 3-2001, f. 5-25-01, cert. ef. 5-28-01; Renumbered from 309-046-0150, SPD 34-2004, f. 11-30-04, cert. ef. 1-1-05; SPD 10-2007, f. 6-27-07, cert. ef. 7-5-07; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10

## 411-346-0180

### Professional Responsibilities of the Foster Provider

#### (1) TRAINING AND DEVELOPMENT.

(a) The foster provider must complete a minimum of 15 hours of pre-service training prior to certification, and ten hours annually for certification renewal. SPD or CDDP staff may require additional hours of training based on the needs of the children served in the home.

(b) The foster provider must participate in training provided or approved by SPD or the CDDP. Such training shall include educational opportunities designed to enhance the foster provider's awareness, understanding and skills to meet the special needs of children placed in their home.

(c) The foster provider must complete mandatory reporting training prior to initial certification and annually thereafter.

(d) Mandatory reporter training must be appropriate to the ages of the individuals living in the child foster home.

(2) RELATIONSHIP WITH THE CHILD PLACING AGENCY. The foster provider must:

(a) Take part in planning, preparation, pre-placement activities and visitation for the children placed in their home;

(b) Participate as team members in developing and implementing the ISP when initiated by the CDDP Service Coordinator for the children placed in their home;

(c) In advance or within one working day, notify the certifier of changes likely to affect the life and circumstances of the foster family or the safety in the home including, but not limited to the following:

(A) Foster family illness;

(B) Divorce, legal separation or loss of a household member;

(C) Significant change in financial circumstances;

(D) New household members or placement of a foster child by another agency, including respite care;

(E) Arrests or criminal involvement;

(F) The addition of firearms;

(G) Swimming pools; or

(H) Pets.

(d) Immediately notify the child's CDDP Service Coordinator and guardian of injury, illness, accidents, or any unusual incidents or circumstances that may have a serious effect on the health, safety, physical or emotional well-being of the foster child;

(e) Notify the legal guardian and CDDP staff of any unauthorized absence of a foster child within 12 hours, or other mutually agreed upon time, as determined by the ISP Team;

(f) Sign and abide by the responsibilities described in the Child Foster Home Contract or Agreement;

(g) Allow the certifying and placing agency reasonable access to their home and to the children placed in their care. This includes access by family members when placement is voluntary. For the purpose of these rules, reasonable access means with prior notice, unless there is cause for not giving such notice;

(h) Allow SPD or CDDP staff access to:

(A) Investigate reports of abuse, violations of a regulation or provision of these rules;

(B) Inspect or examine the home, the foster children's records and accounts, and the physical premises, including the buildings, grounds, equipment, and any vehicles; and

(C) Interview the child, adult or alternate caregivers.

(i) Participate in interviews conducted by SPD or CDDP staff; and

(j) Authorize substitute caregivers to permit entrance by SPD or CDDP staff for the purpose of inspection and investigation.

(3) ACCEPTING CHILDREN FOR CARE.

(a) Effective July 1, 2007, except as described in section (3)(c) of this rule, a certified provider must not exceed the following maximum number of children in the home:

(A) A total of four children when one certified adult lives in the home; or

(B) A total of seven children when two certified adults live in the home.

(b) All homes are limited to two children under the age of three.

(c) Any providers certified prior to July 1, 2007 with a capacity greater than the numbers listed in section (3)(a) of this rule must meet the standard through attrition as children move out of the foster home.

(d) Any child foster home provider contracted by a proctor agency to provide proctor care services must be limited to serving a total of two children.

(e) At the time of referral, the foster provider must be given available information about the child, including behavior, skill level, medical status and other relevant information. The foster provider is obligated to decline the referral of any child based on the referral information, parameters of their certification, or if they feel their skill level shall not safely or effectively support the child.

(f) A foster provider may provide respite care in the provider's home for a child upon approval by the CDDP or SPD.

(g) A foster provider must obtain approval from the Child Foster Home Certifier prior to accepting a child for placement.

(h) A child who turns 18 may continue to reside in their current certified child foster home when it has been determined by the ISP team it is in the best interest of the child to remain in the same home. When it has been determined by the ISP team a child who is turning 18 shall remain in their current certified child foster home the foster provider must:

(A) Submit a variance request to SPD in accordance with OAR 411-346-0210; and

(B) Submit to SPD and the CDDP, a copy of the ISP addendum signed by the ISP team noting it is in the best interest of the foster child to remain in the current certified foster home.

(i) Any variance to sections (3)(a), through (3)(h) of this rule must take into consideration the maximum safe physical capacity of the home including:

(A) Sleeping arrangements;

(B) The ratio of adult to child;

(C) The level of supervision available;

(D) The skill level of the foster provider;

(E) Individual plans for egress during fire;

(F) The needs of the other children in placement; and

(G) The desirability of keeping siblings placed together.

(j) The foster provider must not care for unrelated adults on a commercial basis in their own home or accept children for day care in their own home while currently certified as a foster provider.

(k) The foster provider may exit a foster child by giving 30 days written notice to the designated CDDP staff, except where undue delay shall jeopardize the health, safety, or well-being of the child or others.

(l) The foster provider must notify SPD prior to a voluntary closure of a child foster home, and give the foster child(ren)'s guardian and the CDDP 30 days written notice, except in circumstances where undue delay might jeopardize the health, safety or well-being of the foster child(ren), or foster provider.

(4) RELATIONSHIP WITH THE CHILD'S FAMILY. In accordance with the child's ISP and the guardian, the foster provider must:

(a) Support the child's relationship with the child's family members, including siblings;

(b) Assist the CDDP staff, and the guardian in planning visits with the child and the child's family members; and

(c) Provide the child reasonable opportunities to communicate with their family members.

(5) CONFIDENTIALITY.

(a) The foster provider and the provider's family must treat personal information about a child or a child's family in a confidential manner. Confidential information is to be disclosed on a need to know basis to law enforcement, CDDP staff, DHS-CW child protective services staff, DHS-CW case workers, and medical professionals who are treating or providing services to the child. The information shared must be limited to the health, safety and service needs of the child.

(b) In addition to the requirements in section (5)(a) of this rule, the foster provider and the provider's family must comply with the provisions of ORS 192.518 to 192.523 and therefore may use or disclose a child's protected health information only:

(A) To law enforcement, CDDP staff, DHS-CW staff;

(B) As authorized by the child's personal representative or guardian appointed under ORS 125.305, 419B.370, 419C.481 or 419C.555;

(C) For purposes of obtaining health care treatment for the child;

(D) For purposes of obtaining payment for health care treatment; or

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(E) As permitted or required by state or federal law or by order of a court.

(c) The foster provider must keep all written records for each foster child in a manner that ensures their confidentiality.

## (6) MANDATORY REPORTING.

(a) The foster provider and their employees and volunteers are mandatory reports of suspected abuse or neglect of any child under ORS 419B.005. Upon reasonable cause to believe that abuse or neglect has occurred, all adult members of the household and any foster provider, employees, independent contractors or volunteers must report pertinent information to DHS-CW or law enforcement.

(b) When the certified child foster provider, their employees, independent contractors, or volunteers are providing services to an individual 18 years or older and has reason to believe abuse as defined in OAR 407-045-0260 has occurred, they must report the pertinent information to the CDDP or law enforcement in accordance with ORS 430.737.

(c) Any restraint or intervention that results in an injury to the child, as defined in ORS 419B.005, must be reported by the foster provider. Same day verbal notification is required. The foster provider must notify DHS-CW and the child's CDDP Service Coordinator.

Stat. Auth.: ORS 409.050, 410.070, 430.215, & 443.835

Stats. Implemented: ORS 443.830 & 443.835

Hist.: MHD 15-2000(Temp), f. & cert. ef. 11-30-00 thru 5-28-01; MHD 3-2001, f. 5-25-01, cert. ef. 5-28-01; Renumbered from 309-046-0180, SPD 34-2004, f. 11-30-04, cert. ef. 1-1-05; SPD 10-2007, f. 6-27-07, cert. ef. 7-5-07; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10

## 411-346-0220

### Inactive Referral Status; Denial, Suspension, Revocation, Refusal to Renew

(1) INACTIVE REFERRAL STATUS. SPD may require that a foster provider go on inactive referral status. Inactive referral status is a period, not to exceed 12 months or beyond the duration of the foster provider's current certificate, when during that time no agency shall refer additional children to the home and the provider may not accept additional children. The foster provider may request to be placed on inactive referral status. The certifier may recommend that SPD initiate inactive referral status.

(a) SPD may place a foster provider on inactive referral status for reasons including, but not limited to the following:

(A) SPD or DHS-CW is currently assessing an allegation of abuse in the home.

(B) The special needs of the children currently in the home require so much of the foster provider's care and attention that additional children may not be placed in the home.

(C) The foster provider has failed to meet individualized training requirements or SPD has asked the foster provider to obtain additional training to enhance his or her skill in caring for the children placed in the home.

(D) The family or members of the household are experiencing significant family or life stress or changes in physical or mental health conditions that may be impairing their ability to provide care. Examples include, but are not limited to:

(i) Separation or divorce and relationship conflicts;

(ii) Marriage;

(iii) Death;

(iv) Birth of a child;

(v) Adoption;

(vi) Employment difficulties;

(vii) Relocation;

(viii) Law violation; or

(ix) Significant changes in the care needs of their own family members (children or adults).

(b) SPD shall notify the foster provider immediately upon placing them on inactive referral.

(c) Within 30 days of initiating inactive referral status, SPD shall send a letter to the foster provider that confirms the inactive status, states the reason for the status, and the length of inactive referral status.

(d) When the foster provider initiates inactive referral status, the inactive status ends at the request of the foster provider and when SPD has determined the conditions that warranted the inactive referral status have been resolved.

(A) There must be no conditions in the home that compromise the safety of the children already placed in the home.

(B) If applicable, a mutually agreed upon plan must be developed to address the issues prior to resuming active status.

(C) The foster provider must be in compliance with all certification rules, including training requirements, prior to a return to active status.

## (2) DENIAL, SUSPENSION, REVOCATION, REFUSAL TO RENEW.

(a) SPD shall deny, suspend, revoke, or refuse to renew a child foster care certificate where it finds there has been substantial failure to comply with these rules.

(b) Failure to disclose requested information on the application or providing falsified, incomplete or incorrect information on the application shall constitute grounds for denial or revocation of the certificate.

(c) SPD shall deny, suspend, revoke, or refuse to renew a certificate if the foster provider fails to submit a plan of correction, implement a plan of correction, or comply with a final order of SPD.

(d) Failure to comply with OAR 411-346-0200(5) (Environmental Standards) may constitute grounds for denial, revocation, or refusal to renew.

(e) SPD may suspend the child foster home certificate where imminent danger to health or safety of individuals exists.

(f) SPD shall deny, suspend, revoke, or refuse to renew a certificate if the foster provider is convicted of any crime listed in Exhibit 346-1 or as described in OAR 411-346-0150(8).

(g) Suspension shall result in the removal of children placed in the foster home and no placements shall be made during the period of suspension.

(h) The applicant or foster provider whose certificate has been denied or revoked may not reapply for certification for five years after the date of denial or revocation.

(i) SPD shall provide the applicant or the foster provider a written notice of denial, suspension, or revocation that states the reason for such action.

(j) Such revocation, suspension, or denial shall be done in accordance with the rules of SPD and ORS chapter 183 that governs contested cases.

Stat. Auth.: ORS 409.050, 410.070, 430.215, & 443.835

Stats. Implemented: ORS 443.830 & 443.835

Hist.: MHD 15-2000(Temp), f. & cert. ef. 11-30-00 thru 5-28-01; MHD 3-2001, f. 5-25-01, cert. ef. 5-28-01; Renumbered from 309-046-0220, SPD 34-2004, f. 11-30-04, cert. ef. 1-1-05; SPD 10-2007, f. 6-27-07, cert. ef. 7-5-07; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10

## 411-350-0020

### Definitions

(1) "Abuse" means abuse of a child as defined in ORS 419B.005.

(2) "Activities of Daily Living (ADL)" mean activities usually performed in the course of a normal day in a child's life such as eating, dressing and grooming, bathing and personal hygiene, mobility (ambulation and transfer), elimination (toileting, bowel, and bladder management), and cognition and behavior (play and social development).

(3) "Aide" means a nonlicensed caregiver who may or may not be a certified nursing assistant.

(4) "Assistant Director" means the Assistant Director of the Department of Human Services, Seniors and People with Disabilities Division, or that individual's designee.

(5) "Billing Provider" means an organization that enrolls and contracts with the Seniors and People with Disabilities Division to provide services through its employees and bills the Seniors and People with Disabilities Division for the provider's services.

(6) "Child" means an individual who is under the age of 18 and eligible for medically fragile children services.

(7) "Clinical Criteria (Form DHS-0519)" means the assessment tool used by the Seniors and People with Disabilities Division to evaluate the intensity of the challenges and care needs of medically fragile children.

(8) "Cost Effective" means that in the opinion of the service coordinator, a specific service meets the child's service needs and costs less than, or is comparable to, other similar service options considered.

(9) "Delegation" means that a registered nurse authorizes an unlicensed individual to perform nursing tasks and confirms that authorization in writing. Delegation may occur only after the registered nurse follows all steps of the delegation process as outlined in OAR chapter 851, division 047. Delegation by physicians is also allowed.

(10) "DHS" means the Department of Human Services.

(11) "Family Home" means the residence of a child that may, for the purpose of these rules, include a certified foster home.

(12) "Founded Reports" means the Department of Human Services, Children, Adults, and Families Division or Law Enforcement Authority (LEA) determination, 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.

(13) "Grievance" means a process by which an individual may air complaints and seek remedies.

(14) "Hospital Model Waiver" means the waiver program granted by the federal Centers for Medicare and Medicaid Services that allows Title XIX funds to be spent on children living in the family home who otherwise would have to be served in a hospital if the waiver program was not available.

(15) "In-Home Daily Care (IHDC)" means essential supportive daily care delivered by a qualified provider that enables a child to remain, or return to, the family home.

(16) "Medicaid Fair Hearing" means the formal process following an action that would terminate, suspend, reduce, or deny a Medicaid service. This is a formal process required by federal law (42 CFR 431.200-250). A Medicaid Fair Hearing is also known as a contested case hearing.

(17) "Medically Fragile Children (MFC)" means children, who have a health impairment that requires long term, intensive, specialized services on a daily basis and who have been found eligible for medically fragile children services by the Seniors and People with Disabilities Division.

# ADMINISTRATIVE RULES

(18) "Medically Fragile Children's Unit (MFCU)" means the program for medically fragile children administered by the Department of Human Services, Seniors and People with Disabilities Division.

(19) "Nurse" means an individual who holds a valid, current license from the Oregon Board of Nursing as a registered nurse (RN) or licensed practical nurse (LPN).

(20) "Nursing Care Plan" means a plan of care developed by a registered nurse that describes the medical, nursing, psychosocial, and other needs of a child, and how those needs shall be met. The nursing care plan includes which tasks shall be taught, assigned, or delegated to the qualified provider or primary caregiver. When a nursing care plan exists, it becomes a part of the plan of care.

(21) "Nursing Tasks or Services" mean the care or services that require the education and training of a licensed professional nurse to perform. Nursing tasks or services may be delegated.

(22) "OHP" means the Oregon Health Plan.

(23) "Parent" means biological parent, adoptive parent, or legal guardian.

(24) "Plan of Care" means a written document developed for each eligible child by the service coordinator and the primary caregiver that describes the individual needs of the child, the needs and resources of the family that impact the child, and how those individual needs shall be met with family and public resources. The plan of care includes the nursing care plan when one exists.

(25) "Primary Caregiver" means the parent or foster provider that provides the direct care of the child at the times that a paid provider is not available.

(26) "Provider or Performing Provider" means an individual who meets the requirements of OAR 411-350-0080 that is qualified to receive payment from the Seniors and People with Disabilities Division for in-home daily care. Providers work directly with medically fragile children. Providers may be employees of billing providers, employees of the parent, or independent contractors.

(27) "Respite" means intermittent services provided on a periodic basis for the relief of, or due to the temporary absence of, the primary caregiver.

(28) "Service Budget" means the monthly dollar amount allotted for the care of the child based on the clinical criteria level of care determination. The service budget consists of in-home care and, if the child is on a waiver, waived services. Service budgets increase or decrease in direct relationship to the increasing or decreasing clinical criteria score.

(29) "Service Coordinator" means an employee of the Seniors and People with Disabilities Division who ensures a child's eligibility for medically fragile children services and provides assessment, case planning, service implementation, and evaluation of the effectiveness of the services.

(30) "SPD" means the Department of Human Services, Seniors and People with Disabilities Division.

(31) "Specialized Diet" means specially prepared or particular types of food needed to sustain a child in the family home.

(32) "Substantiated" means an abuse investigation has been completed by the Department of Human Services or its designee and the preponderance of the evidence establishes the abuse occurred.

(33) "Supplant" means take the place of.

(34) "These Rules" means the rules in OAR chapter 411, division 350.

(35) "Waivered Services" mean a menu of disability related services and supplies, beyond in-home daily care and the Oregon Health Plan, that are specifically identified by the Title XIX Centers for Medicare and Medicaid Services Waiver.

Stat. Auth.: ORS 409.050 & 417.346

Stats. Implemented: ORS 427.005, 427.007 & 430.215

Hist.: MHD 21-1998(Temp), f. 11-25-98, cert. ef. 12-1-98 thru 5-29-99; MHD 3-1999, f. 5-17-99, cert. ef. 5-28-99; MHD 8-2003(Temp) F. & cert. ef. 12-11-03 thru 6-7-04; Renumbered from 309-044-0110, SPD 14-2004, f. & cert. ef. 6-1-04; SPD 1-2009, f. 2-24-09, cert. ef. 3-1-09; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10

## 411-350-0050

### Scope and Limitations of MFC Services

(1) MFC services are intended to support, not supplant, the natural supports supplied by the primary caregiver. The primary caregiver is expected to provide a minimum of 40 hours per week of the child's care. MFC services are not available to replace services provided by the primary caregiver or to replace other governmental or community services.

(2) MFC services may include, for a child on the Hospital Model Waiver, a combination of the following services based upon the needs of the child as determined by the service coordinator and as consistent with the child's plan of care:

- (a) In-home daily care;
- (b) Environmental accessibility adaptations; or
- (c) Goods, services, and supplies.

(3) IN-HOME DAILY CARE (IHDC). IHDC services may include a combination of assistance with ADLs, nursing services, or other supportive services provided by qualified providers. The extent of the IHDC services may vary, but the extent of service is limited as described in this rule.

(a) SPD shall only authorize IHDC service hours that support a parent in their primary caregiving role.

(b) IHDC services include:

(A) Basic personal hygiene — Assistance with bathing and grooming;

(B) Toileting, bowel, and bladder care — Assistance in the bathroom, diapering, external cleansing of perineal area, and care of catheters, ostomies, and bags;

(C) Mobility — Ambulation, transfers, comfort, positioning, and assistance with range of motion exercises;

(D) Nutrition — Preparing meals, special diets, gastrostomy feedings, monitoring intake and output, and feeding;

(E) Skin care — Dressing changes and ostomy care;

(F) Respiratory — Monitoring and administering oxygen, applying and adjusting ventilators and other respiratory equipment, providing inhalation therapies, and monitoring and responding to apnea monitors and oximeters;

(G) Cardiovascular — Monitoring of vital signs, and monitoring, replacement, and flushing of vascular access sites;

(H) Neurological — Monitoring of seizures, administering medication, and observing status; and

(I) Other nursing or personal care tasks or services.

(c) When any of the IHDC services listed in section (3)(b) of this rule are essential to the health and welfare of the child and listed in the job description signed by the parent and paid provider, the provider may provide the following supportive services:

(A) Housekeeping tasks necessary to maintain a healthy and safe environment for the child;

(B) Arranging for necessary medical equipment, supplies, or medications;

(C) Arranging for necessary medical appointments;

(D) Accompanying the child to appointments, outings, or community-based activities; or

(E) Participating in activities with the child to enhance development or learning.

(d) The service coordinator shall base the number of IHDC service hours upon the projected amount of time to perform the specified assistance for the child, for which the child must be physically present. IHDC service hours may be spread throughout the time authorized in the billing form or used in large blocks of time as the parent determines. IHDC service hours may only be used when the child is physically residing in the family home.

(e) IHDC services must:

(A) Be previously authorized by SPD before services begin;

(B) Be based on the assessed service needs of the child consistent with, and documented in, the plan of care as determined by the service coordinator;

(C) Be delivered through the most cost effective method as determined by the service coordinator; and

(D) Include a physician's order when nursing services are to be provided. SPD determines whether payment of nursing services, or the hours of IHDC services as ordered by the physician, shall be authorized for payment according to these rules.

(f) SPD does not authorize IHDC service hours:

(A) That supplant the IHDC services available from family, community, other government or public services, insurance plans, schools, philanthropic organizations, friends, or relatives.

(B) For the purpose of allowing a parent to work or attend school.

(4) ENVIRONMENTAL ACCESSIBILITY ADAPTATIONS.

(a) SPD shall authorize environmental accessibility adaptations when:

(A) Necessary to ensure the health, welfare, and safety of the child in the family home, or to enable the child to function with greater independence in the family home;

(B) Determined to be the most cost effective solution; and

(C) Provided in accordance with applicable state or local building codes by licensed contractors.

(b) Environmental accessibility adaptations exclude:

(A) Adaptations or improvements to the family home that are of general utility and are not of direct medical or remedial benefit to the child; and

(B) Adaptations that add to the total square footage of the family home.

(c) For environmental accessibility adaptations that singly or together exceed \$5,000, SPD may protect its interest for the entire amount of the adaptations through liens or other legally available means.

(d) Environmental accessibility adaptations that are provided in a rental structure must be authorized in writing by the owner of the structure prior to initiation of the work. This does not preclude any reasonable accommodations required under the Americans with Disabilities Act.

(5) GOODS, SERVICES, AND SUPPLIES. Goods, services, and supplies may include any combination of the following:

(a) Specialized medical equipment and supplies. Specialized medical equipment and supplies may include, among others, communication devices, adaptive clothing, adaptive eating equipment, or adaptive sensory or habilitation devices or supplies. Specialized medical equipment and supplies funded by OHP are excluded.

(b) Respite. Respite services are authorized on a limited basis for relief of, or due to the temporary absence of, the primary caregiver. Respite services are not available to allow primary caregivers to attend school or work.

# ADMINISTRATIVE RULES

(c) Homemaker. Homemaker services consist of general household activities to allow the primary caregiver time to care for the child. SPD shall not authorize homemaker services if the child receives paid IHDC of 16 hours or more per day regardless of the type of service provider.

(d) Chore. Chore services are services needed to maintain the family home in a clean, sanitary, and safe environment. Chore services include heavy household chores such as window washing or carpet cleaning. Chore services may be provided only in situations where no one else in the family home, or any other individual, is capable of performing or providing these services.

(e) Non-medical transportation. Non-medical transportation is provided in order to enable a child to gain access to community services, activities, and resources as specified in the plan of care. Non-medical transportation excludes transportation provided by family members. Non-medical transportation does not replace medical transportation furnished or reimbursed by OHP.

(f) Family training. Funding for family training is included in the monthly service budget as calculated by the service coordinator. Family training services include services that increase the primary caregiver's capacity to care for the child.

(A) Conference or workshop registrations.

(i) SPD shall authorize conference or workshop registrations that:

(I) Directly relate to the child's disability; and

(II) Increase the knowledge and skills of the primary caregiver.

(ii) Travel and lodging expenses are excluded.

(iii) Meals not included in the registration cost are excluded.

(B) Counseling services.

(i) To be authorized by SPD, the counseling services must:

(I) Be provided by licensed mental health providers;

(II) Directly relate to the child's disability, the ability of the primary caregiver to care for the child, and the related impact on the family or couple;

(III) Be short term; and

(IV) Have treatment goals prior approved by the service coordinator.

(ii) Counseling services are excluded for:

(I) Therapy that could be obtained through OHP or other payment mechanisms;

(II) General marriage counseling;

(III) Therapy to address primary caregiver or other family members' psychopathology; or

(IV) Counseling that addresses stressors not directly attributed to the child.

(g) Specialized consultation. Specialized consultation services are services provided by a physical therapist, occupational therapist, speech and language pathologist, or other professional. Specialized consultation services must have exhausted the limits identified under OHP.

(h) Specialized diets. A specialized diet is in addition to meals a primary caregiver would provide and specific to a child's medical condition or diagnosis. Specialized diet services include registered dietician services. A specialized diet must be ordered by a physician and monitored at least annually and as necessary by a dietician. SPD shall not authorize food that constitutes a full nutritional regime.

(i) Other. SPD shall authorize other goods, services, and supplies for payment if:

(A) Directly related to the child's disability;

(B) Included in an approved plan of care;

(C) Needed to maintain the health and safety of the child;

(D) Cost effective;

(E) Not typical for a parent to provide a child of the same age; and

(F) Required to help the primary caregiver to continue to meet the needs of caring for the child.

(j) Goods, services, and supplies paid for by SPD must be documented by receipts or invoices. The receipts or invoices must be maintained by SPD for five years. If no receipt or invoice is available, the primary caregiver must submit to SPD in writing, a statement that the primary caregiver received the goods, services, or supplies, and the date the goods, services, or supplies were received.

(6) SPD may expend its funds through contract, purchase order, use of credit card, payment directly to the vendor, or any other legal payment mechanism.

(7) MFC services for a child not on the Hospital Model Waiver are limited to IHDC services only.

(8) All MFC services authorized by SPD must be included in a written plan of care in order to be eligible for payment.

(9) The plan of care must use the most cost effective services for safety meeting the child's needs as determined by the service coordinator.

(10) SERVICE LEVELS. SPD shall base the average monthly service budget for the MFC services authorized in the plan of care on the child's service level as follows:

(a) Level I.

(A) A child who is eligible for level I services must:

(i) Be ventilator-dependent for 20 or more hours per day;

(ii) Have a score on the clinical criteria of 75 or greater; and

(iii) Require that the provider or primary caregiver be awake for the full 24 hours.

(B) A child must be ventilator-dependent 24 hours per day for the maximum service budget to be allowed.

(b) Level II.

(A) A child who is eligible for level II services must:

(i) Be ventilator-dependent for 14 to 20 hours per day;

(ii) Have a score on the clinical criteria between 70 and 74; and

(iii) Require the provider or primary caregiver to remain awake for the full 24 hours.

(B) A child must be ventilator-dependent 20 hours per day for the maximum service budget to be allowed.

(c) Level III.

(A) A child who is eligible for level III services must:

(i) Be ventilator-dependent for six to 13 hours per day;

(ii) Have a score on the clinical criteria between 65 and 69; and

(iii) Require the provider or primary caregiver to remain awake for the full 24 hours.

(B) A child must be ventilator-dependent 13 hours per day for the maximum service budget to be allowed.

(d) Level IV.

(A) A child who is eligible for level IV services must:

(i) Be ventilator-dependent for up to six hours per day;

(ii) Have a score on the clinical criteria between 60 and 64; and

(iii) Require the provider or primary caregiver to remain awake for the full 24 hours.

(B) A child must be ventilator-dependent six hours per day for the maximum budget to be allowed.

(e) Level V. A child who is eligible for level V services must:

(A) Have a score on the clinical criteria between 50 and 59; and

(B) Require close proximity of the provider or primary caregiver to monitor for the full 24 hours.

(f) Level VI. A child who is eligible for level VI services must:

(A) Have a score on the clinical criteria less than 50;

(B) Meet the other eligibility criteria in OAR 411-350-0030; and

(C) Not have been transitioned out of MFC services.

(11) EXCEPTIONS. Exceptions, not to exceed 60 consecutive days without SPD supervisor review and approval, shall only be authorized by SPD in the following circumstances:

(a) To prevent the child's hospitalization.

(b) To provide initial teaching of new care needs.

(c) A significant medical condition or event occurs that prevents or seriously impedes the primary caregiver from providing services as documented by a physician.

(12) SPD shall only authorize MFC services to enable the primary caregiver to meet the needs of caring for the child. All MFC services funded by SPD must be based on actual and customary costs related to best practice standards of care for children with similar disabilities.

(13) When multiple children in the same family home or setting qualify for MFC services, the same primary caregiver must provide services to all qualified children if services may be safely delivered by a single primary caregiver, as determined by the service coordinator.

(14) SPD shall not pay for MFC services that are:

(a) Notwithstanding abuse as defined in ORS 419B.005, abusive, aversive, or demeaning;

(b) Experimental;

(c) Illegal, including crimes identified in OAR 411-350-0080(1)(d);

(d) Determined unsafe for the general public by recognized child and consumer safety agencies;

(e) Not necessary or cost effective;

(f) Educational services for school-age children, including professional instruction, formal training, and tutoring in communication, socialization, and academic skills;

(g) Services or activities that the legislative or executive branch of Oregon government has prohibited use of public funds;

(h) Medical treatments; or

(i) Services or supplies provided by private health insurance or OHP.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 427.005, 427.007 & 430.215

Hist.: MHD 21-1998(Temp), f. 11-25-98, cert. ef. 12-1-98 thru 5-29-99; MHD 3-1999, f. 5-17-99, cert. ef. 5-28-99; MHD 8-2003(Temp) f. & cert. ef. 12-11-03 thru 6-7-04; Renumbered from 309-044-0140, SPD 14-2004, f. & cert. ef. 6-1-04; SPD 1-2009, f. 2-24-09, cert. ef. 3-1-09; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10

## 411-350-0080

### Standards for Providers

(1) A provider must:

(a) Be at least 18 years of age;

(b) Maintain a drug-free work place;

(c) Provide evidence satisfactory to SPD that demonstrates by background, education, references, skills, and abilities, the provider is capable of safely and adequately providing the IHDC services authorized;

(d) Consent to and pass a criminal records check by DHS as described in OAR 407-007-0200 to 407-007-0370, and be free of convictions or founded allegations of abuse or neglect by the appropriate agency, including but not limited to DHS. DHS shall perform criminal records rechecks biannually, or

# ADMINISTRATIVE RULES

as needed, if a report of a criminal activity has been received. A person may not be authorized as a provider or meet qualifications as described in this rule if the person has been hired on or after January 1, 2010, or is subject to criminal records checks after January 1, 2010 as required by administrative rule, and who has been convicted:

- (A) Of a crime listed in Exhibit 350-1;
  - (B) In the last 10 years, of a crime involving the delivery or manufacture of a controlled substance;
  - (C) Of an attempt, conspiracy, or solicitation to commit a crime described in Exhibit 350-1; or
  - (D) Of a crime in another jurisdiction that is substantially equivalent to a crime described in Exhibit 350-1.
- (e) Not be a parent, step parent, foster provider, or legal guardian of the child; and
- (f) Sign a Medicaid provider agreement and be enrolled as a Medicaid provider prior to delivery of any IHDC services.
- (2) A provider who is providing IHDC services as a nurse must have:
- (a) A current Oregon nursing license; and
  - (b) Be in good standing with appropriate professional associations and boards.

(3) A provider is not an employee of DHS or the state of Oregon and is not eligible for state benefits and immunities, including but not limited to, Public Employees' Retirement System or other state benefit programs.

(4) If the provider or billing provider is an independent contractor during the terms of the contract, the provider or billing provider must maintain in force, at the providers own expense, professional liability insurance with a combined single limit of not less than \$1,000,000 for each claim, incident, or occurrence. Professional liability insurance is to cover damages caused by error, omission, or negligent acts related to the professional services.

(a) The provider or billing provider must provide written evidence of insurance coverage to SPD prior to beginning work.

(b) There must be no cancellation of insurance coverage without 30 days written notice to SPD.

(5) If the provider is an employee of the parent, the provider must submit to SPD documentation of immigration status required by federal statute. SPD shall maintain documentation of immigration status required by federal statute, as a service to the parent who is the employer.

(6) A billing provider that wishes to enroll with SPD must maintain and submit evidence upon initial application and upon request by SPD of the following:

(a) Current, valid, non-restricted Oregon nurses' licenses for each employee who is providing services as a nurse;

(b) Current criminal records checks on each employee who provides services in a family home that shows the employee has no disqualifying criminal convictions, including crimes as described in OAR 411-350-0080(1)(d);

(c) Professional liability insurance that meets the requirements of section (4) of this rule; and

(d) Any licensure required of the agency by the state of Oregon or federal law or regulation.

(7) A provider must immediately notify the parent and SPD of injury, illness, accidents, or any unusual circumstances that may have a serious effect on the health, safety, physical, emotional well being, or level of service required by the child for whom services are being provided.

(8) Providers described in ORS chapter 418 are required to report suspected child abuse to their local DHS office or to the police in the manner described in ORS chapter 418.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 427.005, 427.007 & 430.215

Hist.: MHD 21-1998(Temp), f. 11-25-98, cert. ef. 12-1-98 thru 5-29-99; MHD 3-1999, f. 5-17-99, cert. ef. 5-28-99; MHD 8-2003(Temp) f. & cert. ef. 12-11-03 thru 6-7-04; Renumbered from 309-044-0170, SPD 14-2004, f. & cert. ef. 6-1-04; SPD 1-2009, f. 2-24-09, cert. ef. 3-1-09; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10

## 411-350-0110

### Payment for MFC Services

(1) Services budgets shall be individually negotiated by SPD, based on the individual needs of the child.

(2) Payment may not be used to support, in whole or in part, the employment in any capacity of a person who has been hired on or after January 1, 2010, or is subject to criminal records checks after January 1, 2010 as required by administrative rule, and who has been convicted:

(A) Of a crime listed in Exhibit 350-1;

(B) In the last 10 years, of a crime involving the delivery or manufacture of a controlled substance;

(C) Of an attempt, conspiracy, or solicitation to commit a crime described in Exhibit 350-1; or

(D) Of a crime in another jurisdiction that is substantially equivalent to a crime described in Exhibit 350-1.

(3) Authorization must be obtained prior to the delivery of any MFC services for those services to be eligible for reimbursement.

(4) Providers must request payment authorization for MFC services provided during an unforeseeable emergency on the first business day following the emergency service. The service coordinator shall determine if the service is eligible for payment. (5) The delivery of authorized MFC services

must occur so that any individual employee of the parent does not exceed 40 hours per work week. SPD shall not authorize services that require the payment of overtime, without prior written authorization by the MFCU supervisor.

(6) SPD shall make payment for MFC services, described in OAR 411-350-0050, after services are delivered as authorized and required documentation is received by the service coordinator.

(7) SPD shall make payment to the individual employee of the parent on behalf of the parent. The following shall be ancillary contributions:

(a) SPD shall pay the employer's share of the Federal Insurance Contributions Act tax (FICA) and withhold the employee's share of FICA as a service to the parent as the provider's employer.

(b) SPD shall cover real and actual costs to the Employment Department, in lieu of the parent as the provider's employer.

(8) Holidays are paid at the same rate as non-holidays.

(9) Travel time to reach the job site is not reimbursable.

(10) In order to be eligible for payment, requests for payments must be submitted to SPD within six months of the delivery of MFC services.

(11) Payment by SPD for MFC services is considered full payment for the services rendered under Title XIX or Title XXI. Under no circumstances may the provider or billing provider demand or receive additional payment for these services from the parent or any other source.

(12) Medicaid funds are the payer of last resort. The provider or billing provider must bill all third party resources until all third party resources are exhausted.

(13) SPD reserves the right to make a claim against any third party payer before or after making payment to the provider of MFC services.

(14) SPD may void without cause prior authorizations that have been issued in the event of any of the following:

(a) Change in the status of the child. Examples include, but are not limited to, hospitalization, improvement in health status, or death of the child;

(b) Decision of the parent to change providers;

(c) Inadequate services, inadequate documentation, or failure to perform other expected duties; or

(d) Documentation of a person who has been hired on or after January 1, 2010, or is subject to criminal records checks after January 1, 2010 as required by administrative rule, and who has been convicted:

(A) Of a crime listed in Exhibit 350-1;

(B) In the last 10 years, of a crime involving the delivery or manufacture of a controlled substance;

(C) Of an attempt, conspiracy, or solicitation to commit a crime described in Exhibit 350-1; or

(D) Of a crime in another jurisdiction that is substantially equivalent to a crime described in Exhibit 350-1.

(e) Any situation, as determined by the service coordinator that puts the child's health or safety at risk.

(15) Upon submission of the billing form for payment, the provider must comply with:

(a) All rules in OAR chapter 411;

(b) 45 CFR Part 84 that implements Title V, Section 504 of the Rehabilitation Act of 1973;

(c) Title II and Title III of the Americans with Disabilities Act of 1991; and

(d) Title VI of the Civil Rights Act of 1964.

(16) All billings must be for MFC services provided within the provider's licensure.

(17) The provider must submit true and accurate information on the billing form. Use of a billing provider does not replace the provider's responsibility for the truth and accuracy of submitted information.

(18) No individual shall submit to SPD:

(a) A false billing form for payment;

(b) A billing form for payment that has been or is expected to be paid by another source; or

(c) Any billing form for MFC services that have not been provided.

(19) SPD shall only make payment to the enrolled provider who actually performs the MFC services or the provider's enrolled billing provider. Federal regulations prohibit SPD from making payment to collection agencies.

(20) Payments may be denied if any provisions of these rules are not complied with.

(21) SPD shall recoup all overpayments. The amount to be recovered:

(a) Is the entire amount determined or agreed to by SPD;

(b) Is not limited to the amount determined by criminal or civil proceedings; and

(c) Includes interest to be charged at allowable state rates.

(22) SPD shall deliver to the provider, by registered or certified mail, or in person, a request for repayment of the overpayment or notification of recoupment of future payments.

(23) Payment schedules with the interest may be negotiated at the discretion of SPD.

(24) If recoupment is sought from a parent whose child received MFC services, hearing rights in OAR 411-350-0118 apply.

# ADMINISTRATIVE RULES

(25) Payment for services provided to more than one child in the same setting at the same time shall not exceed the maximum hourly rate for one child without prior written authorization by the MFCU supervisor.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 427.005, 427.007 & 430.215

Hist.: MHD 21-1998(Temp), f. 11-25-98, cert. ef. 12-1-98 thru 5-29-99; MHD 3-1999, f. 5-17-99, cert. ef. 5-28-99; MHD 8-2003(Temp) f. & cert. ef. 12-11-03 thru 6-7-04; Renumbered from 309-044-0200, SPD 14-2004, f. & cert. ef. 6-1-04; SPD 1-2009, f. 2-24-09, cert. ef. 3-1-09; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10

## 411-350-0120

### Sanctions for MFC Providers

(1) Sanctions may be imposed on a provider when any of the following conditions is determined by SPD to have occurred:

(a) The provider has been convicted of any crime that would have resulted in an unacceptable criminal records check upon hiring or issuance of a provider number, including crimes as described in OAR 411-350-0080(1)(d);

(b) The provider has been convicted of unlawfully manufacturing, distributing, prescribing, or dispensing a controlled substance;

(c) The provider's license has been suspended, revoked, otherwise limited, or surrendered;

(d) The provider has failed to safely provide the MFC services authorized as determined by the parent or the service coordinator;

(e) The provider has had a founded report of child abuse or a substantiated abuse allegation;

(f) The provider has failed to cooperate with any investigation or grant access to or furnish, as requested, records or documentation;

(g) The provider has billed excessive or fraudulent charges or has been convicted of fraud;

(h) The provider has made a false statement concerning conviction of crime or substantiation of abuse;

(i) The provider has falsified required documentation;

(j) The provider has been suspended or terminated as a provider by another division within DHS; or

(k) The provider has not adhered to the provisions of these rules.

(2) SPD may impose the following sanctions on a provider:

(a) Termination from providing MFC services;

(b) Suspension from providing MFC services for a specified length of time or until specified conditions for reinstatement are met and approved by SPD; or

(c) Payments to the provider may be withheld.

(3) If SPD makes a decision to sanction a provider, the provider must be notified by mail of the intent to sanction.

(a) The provider may appeal a sanction by requesting an administrative review by the SPD Assistant Director.

(b) For an appeal to be valid, written notice of the appeal must be received by SPD within 45 days of the date the sanction notice was mailed to the provider.

(c) The provider must appeal a sanction separately from any appeal of audit findings and overpayments.

(4) At the discretion of SPD, providers who have previously been terminated or suspended by any division within DHS may not be re-enrolled as providers of Medicaid services.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 427.005, 427.007 & 430.215

Hist.: MHD 21-1998(Temp), f. 11-25-98, cert. ef. 12-1-98 thru 5-29-99; MHD 3-1999, f. 5-17-99, cert. ef. 5-28-99; MHD 8-2003(Temp) f. & cert. ef. 12-11-03 thru 6-7-04; Renumbered from 309-044-0210, SPD 14-2004, f. & cert. ef. 6-1-04; SPD 1-2009, f. 2-24-09, cert. ef. 3-1-09; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10

## 411-355-0010

### Definitions

(1) "Abuse" means abuse of a child as defined in ORS 419B.005.

(2) "Activities of Daily Living (ADL)" means activities usually performed in the course of a normal day in a child's life such as eating, dressing and grooming, bathing and personal hygiene, mobility (ambulation and transfer), elimination (toileting, bowel and bladder management), and cognition and behavior (play and social development).

(3) "Assistant Director" means the Assistant Director of the Department of Human Services, Seniors and People with Disabilities Division, or that individual's designee.

(4) "Behavior Consultant" means a contractor with specialized skills who meets the requirements of OAR 411-355-0050(2) and provides the services described in OAR 411-355-0040(2).

(5) "Billing Form" means the document generated by the Seniors and People with Disabilities Division that acts as a prior authorization, contract, and payment mechanism for services.

(6) "Billing Provider" means an organization that enrolls and contracts with the Seniors and People with Disabilities Division to provide services through its employees and bills the Seniors and People with Disabilities Division for the provider's services.

(7) "Child" means an individual who is under the age of 18 and eligible for the Medically Involved Children's Program.

(8) "CMS" means Centers for Medicare and Medicaid Services, the federal agency charged with delivery and oversight of all Medicare and Medicaid services.

(9) "Cost Effective" means that in the opinion of the service coordinator, a specific service meets the child's service needs and costs less than, or is comparable to, other service options considered.

(10) "Delegation" means that a registered nurse authorizes an unlicensed individual to perform nursing tasks and confirms that authorization in writing. Delegation may occur only after the registered nurse follows all steps of the delegation process as outlined in OAR chapter 851, division 047.

(11) "Developmental Disability (DD)" is always provisional and means:

(a) For children five years and younger.

(A) The condition or impairment must be expected to last indefinitely and must not be otherwise primarily attributed to mental illness, substance abuse, an emotional disorder, Attention Deficit and Hyperactivity Disorder, a learning disability, or sensory impairment; AND

(B) There is a standardized test demonstrating significant adaptive behavior impairment (more than two standard deviations below the norm) in at least two of the following areas of functioning:

(i) Self care;

(ii) Receptive and expressive language;

(iii) Learning;

(iv) Mobility;

(v) Self-direction; OR

(C) There is a statement by a licensed medical practitioner that the child has a condition or syndrome that shall likely cause significant adaptive impairment in at least two of the areas listed in section (10)(a)(B) of this rule.

(b) For children six years and older.

(A) There is a diagnosis of mental retardation; OR

(B) There is a diagnosis of developmental disability; AND

(C) There is a significant adaptive behavior impairment (more than two standard deviations below the norm) that requires training or supports similar to that required by individuals with mental retardation in at least two of the following areas of functioning:

(i) Self care;

(ii) Receptive and expressive language;

(iii) Learning;

(iv) Mobility;

(v) Self direction; AND

(D) The condition or impairment must be expected to last indefinitely and must not be otherwise primarily attributed to mental illness, substance abuse, an emotional disorder, Attention Deficit and Hyperactivity Disorder, a learning disability, or sensory impairment; AND

(E) The child is expected to need multiple, specialized supports indefinitely.

(12) "DHS" means the Department of Human Services.

(13) "Family Home" means the residence of the child that is not a foster home, group home, or other residential service funded with public funds.

(14) "Founded Reports" means the Department of Human Services, Children, Adults, and Families Division or Law Enforcement Authority (LEA) determination, 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.

(15) "Grievance" means a process by which an individual may air complaints and seek remedies.

(16) "In-Home Daily Care (IHDC)" means essential supportive daily care delivered by a qualified provider that enables a child to remain, or return to, the family home.

(17) "Medically Involved Criteria (Form DHS-0521)" means the assessment tool used by the Seniors and People with Disabilities Division to evaluate the intensity of the challenges presented by children eligible for the Medically Involved Children's Program.

(18) "Medically Involved Children's Program (MICP)" means the waiver program granted by the federal Centers for Medicare and Medicaid Services that allows Title XIX funds to be spent on children living in their family home who otherwise would have to be served in a nursing facility if the waiver program was not available.

(19) "Nurse" means an individual who holds a valid, current license from the Oregon Board of Nursing as a registered nurse (RN) or licensed practical nurse (LPN).

(20) "Nursing Care Plan" means a plan of care developed by a registered nurse that describes the medical, nursing, psychosocial, and other needs of a child, and how those needs shall be met. The nursing care plan includes which tasks shall be taught, assigned, or delegated to the qualified provider or parent. When a nursing care plan exists, it becomes a part of the plan of care.

(21) "Nursing Facility (NF)" means a residential medical facility.

(22) "Nursing Tasks or Services" means the care or services that require the education and training of a licensed professional nurse to perform. Nursing tasks or services may be delegated.

(23) "OHP" means the Oregon Health Plan.



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(24) "Parent" means biological parent, adoptive parent, or legal guardian.

(25) "Plan of Care (POC)" means a written document developed by the service coordinator and the parent that describes the individual needs of the child, the needs and resources of the family that impact the child, and how those individual needs shall be met with family and public resources. The plan of care includes the nursing care plan when one exists.

(26) "Primary Caregiver" means the parent, relative, or other non-paid parental figure that provides the direct care of the child at the times that a paid provider is not available.

(27) "Provider or Performing Provider" means an individual who meets the requirements of OAR 411-355-0050 that is qualified to receive payment from the Seniors and People with Disabilities Division for in-home daily care. Providers work directly with children. Providers may be employees of billing providers, employees of the parent, or independent contractors.

(28) "Respite" means intermittent services provided on a periodic basis for the relief of, or due to the temporary absence of, the primary caregiver.

(29) "Service Budget" means the monthly dollar amount allotted for the care of the child based on a medically involved criteria level of care determination. The service budget consists of in-home care and, if the child is on a waiver, waived services.

(30) "Service Coordinator" means an employee of the Seniors and People with Disabilities Division who ensures a child's eligibility for the Medically Involved Children's Program and provides assessment, case planning, service implementation, and evaluation of the effectiveness of the services.

(31) "SPD" means the Department of Human Services, Seniors and People with Disabilities Division.

(32) "Specialized Diet" means specially prepared or particular types of food needed to sustain a child in the family home.

(33) "Substantiated" means an abuse investigation has been completed by the Department of Human Services or its designee and the preponderance of the evidence establishes the abuse occurred.

(34) "Supplant" means take the place of.

(35) "These Rules" means the rules in OAR chapter 411, division 355.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 427.007 & 430.215

Hist.: SPD 5-2008(Temp), f. & cert. ef. 4-15-08 thru 10-12-08; SPD 14-2008, f. & cert. ef. 10-9-08; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10

## 411-355-0040

### Scope and Limitations of MICP Services

(1) To be authorized and eligible for payment by SPD, all MICP supports and services must be:

- (a) Directly related to the child's disability;
- (b) Required to maintain the health and safety of the child;
- (c) Cost effective;
- (d) Considered not typical for a parent to provide a child of the same age;

(e) Required to help the parent to continue to meet the needs of caring for the child; and

(f) Included in an approved plan of care.

(2) MICP services may include a combination of the following waiver and non-waivered services based upon the needs of the child as determined by the service coordinator and as consistent with the child's plan of care:

- (a) In-home daily care;
- (b) Respite;
- (c) Specialized medical equipment and supplies;
- (d) Motor vehicle adaptations;
- (e) Environmental accessibility adaptations;
- (f) Homemaker and chore;
- (g) Physical, occupational, and speech and language therapy;
- (h) Non-medical transportation;
- (i) Family training;
- (j) Translation;
- (k) Special diets; or
- (l) Specialized consultation (behavior and nursing delegation).

(3) The annual average service budget, as authorized by SPD in the plan of care, dated from the initial plan of care to the anniversary date, must not exceed the allowed maximum service budget amount. Service budgets increase or decrease in direct relationship to the increasing or decreasing medically involved criteria score.

(4) Ninety day exceptions shall only be authorized by SPD in the following circumstances:

(a) The child is at immediate risk of loss of the family home without the expenditure;

(b) The expenditure provides supports for emerging or changing care needs; or

(c) A significant medical condition or event occurs that prevents the primary caregiver from providing care or services as documented by a physician.

(5) SPD shall evaluate exceptions beyond 90 days on an individual basis using the criteria in section (4) of this rule

(6) SPD shall not pay for MICP services that are:

(a) Notwithstanding abuse as defined in ORS 419B.005, abusive, average, or demeaning;

(b) Experimental;

(c) Illegal, including crimes identified in OAR 411-350-0050(1)(a)(F);

(d) Determined unsafe for the general public by recognized child and consumer safety agencies;

(e) Not necessary or cost effective;

(f) Educational services for school-age children, including professional instruction, formal training, and tutoring in communication, socialization, and academic skills; or

(g) Services or activities that the legislative or executive branch of Oregon government has prohibited use of public funds.

(7) When multiple children in the same family home or setting qualify for MICP services, the same provider must provide services to all qualified children if services may be safely delivered by a single provider, as determined by the service coordinator.

(8) IN-HOME DAILY CARE. In-home daily care services include a combination of direct provider support assistance with ADLs, nursing services, or other supportive services provided by qualified providers and agencies. The extent of the services may vary, but the extent of service is limited as described in this rule.

(a) SPD shall only authorize in-home daily care service hours that support a parent in their primary caregiving role.

(b) In-home daily care services provided by qualified providers or agencies include:

(A) Basic personal hygiene — Assistance with bathing and grooming;

(B) Toileting, bowel, and bladder care — Assistance in the bathroom, diapering, external cleansing of perineal area, and care of catheters;

(C) Mobility — Transfers, comfort, positioning, and assistance with range of motion exercises;

(D) Nutrition — Special diets, monitoring intake and output, and feeding;

(E) Skin care — Dressing changes;

(F) Supervision — Providing an environment that is safe and meaningful for the child, interacting with the child to prevent danger to the child and others, and assisting the child with appropriate leisure activities;

(G) Communication — Assisting the child in communicating, using any means used by the child;

(H) Neurological — Monitoring of seizures, administering medication, and observing status; and

(I) Other personal care tasks or services.

(c) When any of the in-home daily care services listed in section (8)(b) of this rule are essential to the health and welfare of the child, the provider may provide the following supportive services:

(A) Housekeeping tasks necessary to maintain a healthy and safe environment for the child;

(B) Arranging for necessary medical equipment, supplies, or medications;

(C) Arranging for necessary medical appointments;

(D) Accompanying the child to appointments, outings, or community-based activities; or

(E) Participating in activities with the child to enhance development.

(d) In-home daily care service hours may be spread throughout the time authorized in the billing form or used in large blocks of time as the parent determines.

(e) In-home daily care services must:

(A) Be previously authorized by SPD before services begin;

(B) Be based on the assessed service needs of the child consistent with, and documented in, the plan of care as determined by the service coordinator;

(C) Be delivered through the most cost effective method as determined by the service coordinator; and

(D) Include a physician's order when nursing services are to be provided. SPD determines whether payment of nursing services, or the hours of in-home daily care services as ordered by the physician, shall be authorized for payment according to these rules.

(f) In-home daily care services exclude:

(A) Hours that supplant the natural supports and services available from family, community, other government or public services, insurance plans, schools, philanthropic organizations, friends, or relatives;

(B) Hours solely to allow a parent to work or attend school; and

(C) The authorization of hours or level of care not supported by the assessed service needs of the child as documented in the plan of care.

(9) RESPITE. Respite services are provided to a child on a periodic or intermittent basis furnished because of the temporary absence of, or need for relief of, the primary caregiver. Respite includes both day and overnight care and may be provided in the family home, qualified provider's home, or qualified facility.

(a) SPD may authorize the following types of qualified providers to provide respite care:

(A) Individual respite provider;

(B) Licensed day care center;

(C) Group home;

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- (D) Foster home; or
- (E) Disability-related or therapeutic recreational camp.
- (b) SPD shall not authorize respite services:
  - (A) Solely to allow primary caregivers to attend school or work;
  - (B) On more than a periodic schedule;
  - (C) For more than 56 days in a calendar year;
  - (D) For more than 14 consecutive days in a calendar month;
  - (E) For more than 10 days per individual plan year when provided at a specialized camp; or
  - (F) To pay for room and board if provided at a licensed site or specialized camp.

(10) **SPECIALIZED EQUIPMENT AND SUPPLIES.** Specialized equipment and supplies include the purchase of devices, aids, controls, supplies, or appliances that are necessary to enable a child to increase their abilities to perform activities of daily living, or to perceive, control, or communicate with the environment in which they live.

- (a) Specialized equipment and supplies may include:
  - (A) Communication devices;
  - (B) Adaptive clothing;
  - (C) Adaptive eating equipment;
  - (D) Adaptive sensory or habilitation devices or supplies;
  - (E) Incontinent supplies; or
  - (F) Increased utility costs associated with medically necessary equipment and procedures.

(b) If a professional is required to assess, identify, adapt, or fit the specialized equipment, SPD shall include the cost in the purchase price of the equipment.

(c) To be authorized by SPD, specialized equipment and supplies must:

- (A) Be in addition to any medical equipment and supplies furnished under OHP;

(B) Be determined necessary to the daily functions of the child; and

(C) Be directly related to the child's disability.

(d) Specialized equipment and supplies exclude:

(A) Items that are not necessary or of direct medical or remedial benefit to the child;

(B) Specialized medical equipment and supplies intended to supplant similar items furnished under OHP;

(C) Items available through family, community, or other governmental resources; and

(D) Items that are considered unsafe for the child.

(11) **MOTOR VEHICLE ADAPTATIONS.** Motor vehicle adaptations are physical adaptations to a vehicle that are necessary to meet the unique needs of the child and ensure the health, welfare, and safety of the child.

(a) SPD shall only authorize motor vehicle adaptations for the primary vehicle used by the child. The motor vehicle adaptations must be cost effective and directly relate to the child's disability.

(b) Motor vehicle adaptations do not include general repair or maintenance and upkeep required by a motor vehicle.

(12) **ENVIRONMENTAL ACCESSIBILITY ADAPTATIONS.** Environmental accessibility adaptations are physical adaptations to a family home that are necessary to ensure the health, welfare, and safety of the child in the family home, or that are necessary to enable the child to function with greater independence around the family home and in family activities. Environmental accessibility adaptations also include an environmental modification consultation to evaluate the family home and make plans to modify the family home to ensure the health, welfare, and safety of the child.

(a) SPD shall authorize environmental accessibility adaptations when:

(A) Related to the child's disability;

(B) Determined to be the most cost effective solution;

(C) Provided in accordance with applicable state or local building codes by licensed contractors. Any modification that impedes egress shall be approved only if a risk assessment demonstrates no safer solution and a safety plan is signed by the parent; and

(D) Authorized in writing by the owner of a rental structure prior to initiation of the work. This does not preclude any reasonable accommodation required under the Americans with Disabilities Act.

(b) For environmental accessibility adaptations that, singly or together, exceed \$5,000, SPD may protect its interest for the entire amount of the adaptations through liens or other legally available means.

(c) Environmental accessibility adaptations exclude:

(A) Adaptations or improvements to the family home that are of general utility and are not for the direct safety, remedial, or long term benefit to the child; and

(B) Adaptations that add to the total square footage of the family home.

(13) **HOMEMAKER AND CHORE.** Homemaker and chore services are services that are required to maintain the family home in a clean, sanitary, and safe environment. Homemaker services include general housekeeping activities while chore services consist of heavy household chores including washing floors, windows, and walls.

(a) SPD shall authorize homemaker and chore services:

(A) When the individual regularly responsible for these activities is temporarily absent or unable to manage the family home and care for him or herself or others in the family home; or

(B) To allow the primary caregiver more time to care for the child enrolled in the MICP.

(b) Homemaker services may not exceed 24 hours per month.

(c) Chore services are considered one-time or intermittent services that are not available on a routine basis.

(d) Homemaker and chore services must be prior authorized by the service coordinator after agreement to scope of work, hours and cost.

(14) **PHYSICAL THERAPY, OCCUPATIONAL THERAPY, AND SPEECH AND LANGUAGE THERAPY.** Physical, occupational, and speech and language therapy are services provided in the family home or clinic setting by a physical therapist, occupational therapist, or speech and language pathologist as defined under OAR 410-120-0000 except that the amount and duration specified in the State Medicaid Plan do not apply. Physical, occupational, and speech and language therapy services are provided as an extension to state plan services and include interventions and treatments that are commonly accepted practice.

(a) To be authorized by SPD, the physical, occupational, and speech and language therapy services must:

(A) Have exhausted the limits identified under OHP and private insurance;

(B) Be denied by OHP for additional treatments;

(C) Be assessed by the professional, service coordinator, and physician concluding that the child would benefit by continued services;

(D) Include medical doctor orders and a therapist's treatment plan with the authorization request;

(E) Identify the number of services provided in the plan year until OHP or private insurance renew; and

(F) Be reviewed by the service coordinator.

(b) The following physical, occupational, and speech and language therapy services are excluded:

(A) Services and treatments that supplant those provided under OHP or other resources;

(B) Services and treatments that are not commonly accepted practice;

(C) Services and treatments offered by a non-licensed professional; and

(D) Services that are not defined under the approved State Medicaid Plan.

(15) **NON-MEDICAL TRANSPORTATION.** Non-medical transportation for children served by the MICP includes transportation provided in order to enable a child to gain access to MICP and other community services, activities, and resources as specified in the plan of care.

(a) Whenever possible, family, neighbors, friends, or community agencies that may provide non-medical transportation service to the child without charge must be utilized.

(b) Authorization of non-medical transportation in the plan of care must identify the parameters and limits of non-medical transportation service for each child.

(c) Non-medical transportation service for the child must be provided through the most cost effective means identified and may be purchased through local commercial transportation or mileage reimbursement to a qualified provider.

(d) Non-medical transportation services are provided for the child and the child must always be present.

(e) Non-medical transportation excludes:

(A) Transportation to and from school and medical appointments;

(B) Transportation provided by parents, guardians, or legally responsible adults;

(C) Transportation typically provided by parents for children of similar age without disabilities; and

(D) Mileage reimbursement in excess of the published federal rate at [http://www.gsa.gov/Portal/gsa/ep/contentView.do?contentId=17943&contentType=GSA\\_BASIC](http://www.gsa.gov/Portal/gsa/ep/contentView.do?contentId=17943&contentType=GSA_BASIC).

(16) **FAMILY TRAINING.** Family training services include:

(a) Training and counseling services that increase the parent's capability to care for and maintain the child in the family home.

(b) Disability related resource materials including books, DVD, and other media.

(A) To be authorized by SPD, the materials must relate to the child's specific disability.

(B) Resource materials shall not be authorized by SPD when determined by the service coordinator to be available for loan from other available resources such as local, state, or specialty libraries.

(c) Conferences, workshop registrations, and group trainings that offer information, education, training, and materials about the child's disability, medical, and health conditions.

(A) SPD shall authorize conference, workshop, or group training that:

(i) Directly relates to the child's disability; and

(ii) Increase the knowledge and skills of the parent to care for and maintain the child in the family home.

(B) SPD shall not authorize conference, workshop, or group trainings costs for:

(i) Travel and lodging expenses;

(ii) Meals not included in the registration cost;

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(iii) Services otherwise provided under OHP or available through other resources; or

(iv) Individual family members who are employed to care for the child.

(d) Counseling services that assist the parent with the stresses of having a child with a disability.

(A) To be authorized by SPD, the counseling services must:

(i) Be provided by licensed providers;

(ii) Directly relate to the child's disability and the ability of the parent to care for the child;

(iii) Be short term; and

(iv) Have treatment goals prior approved by the service coordinator.

(B) Counseling services are excluded for:

(i) Therapy that could be obtained through OHP or other payment mechanisms;

(ii) Marriage therapy;

(iii) Therapy to address parent or other family members' psychopathology; and

(iv) Counseling that addresses stressors not directly attributed to the child eligible for the MICP.

(17) SPECIALIZED DIET. A specialized diet is in addition to meals a parent would provide and specific to a child's medical condition or diagnosis. A specialized diet includes specially prepared food, or purchase of particular types of food, needed to sustain a child in the family home. Specialized diet services include the purchase of registered dietician services.

(a) In order for a specialized diet to be authorized by SPD:

(A) The diet must be ordered by a physician licensed by the Oregon Board of Medical Examiners;

(B) The diet must be periodically monitored by a dietician; and

(C) The foods must be on the approved list developed by SPD;

(b) The maximum monthly purchase for specialized diet supplies must not exceed \$100 per month.

(c) SPD shall not authorize:

(A) Special diets and dietician services otherwise available under OHP or other sources;

(B) Restaurant and prepared foods;

(C) Vitamins; and

(D) Food that constitutes a full nutritional regime.

(18) TRANSLATION.

(a) Translation service includes the services of a translator or interpreter required for a monolingual provider. Translation service is provided solely for the purpose of safely implementing the plan of care between parent, child, and provider for those MICP services delivered within the family home. The purpose of translation services is to establish and maintain the same understanding of the child's care requirements between the private providers and the families who must work together to implement the plan of care.

(b) SPD shall not authorize translation services for administrative purposes or services available through Medicaid.

(19) NURSING DELEGATION. Nursing delegation is the purchase of individualized consultation from a registered nurse in order to delegate tasks of nursing care in select situations. Tasks of nursing care are those procedures that require nursing education and licensure of a nurse to perform.

(a) SPD requires nursing delegation for unlicensed providers paid by SPD when a child requires tasks of nursing care.

(b) Nursing delegation may only occur after a registered nurse has:

(A) Assessed the child and the ability of the provider to perform a specific task;

(B) Taught the task to the provider;

(C) Documented the task in the nursing care plan; and

(D) Ensured on-going assessment of the child and re-evaluation and supervision of the provider.

(c) Nursing delegation consultation must include:

(A) An assessment of the child that determines the child's condition is stable and predictable.

(B) An assessment of the provider that determines the ability of the provider to understand the task and safely perform the task without direct nursing supervision. The task shall not be delegated if, in the judgment of the registered nurse, the provider is unable to understand or perform the task in a safe and accurate manner.

(C) Provision of initial direction by teaching the task of nursing care to the provider, including:

(i) The proper procedure and technique;

(ii) Why the task of nursing care is necessary;

(iii) The risks associated with the task;

(iv) Anticipated side effects;

(v) The appropriate response to risks or side effects;

(vi) Observation of the child's response;

(vii) Documentation of the task of nursing care; and

(viii) Observation of the provider performing the task to ensure the task is performed safely and accurately.

(D) Written instructions regarding the task including:

(i) A step by step outline of how the task is to be performed;

(ii) Signs and symptoms to be observed;

(iii) Guidelines for what to do if signs and symptoms occur;

(iv) Instruction to the provider that the task is specific to the child and is not transferable to other children nor may it be taught to other providers by the delegated provider; and

(v) Determination and documentation of the need and time frame for the next assessment and supervisory visit that may be frequent until the delegation is complete.

(I) The initial return assessment and supervisory visit must be made within 60 days from the initial date of the delegation.

(II) Subsequent visits must be no greater than every 180 days.

(20) BEHAVIOR CONSULTATION. Behavior consultation is the purchase of individualized consultation provided in the family home, only as needed, to respond to a specific problem or behavior identified by the parent and the service coordinator.

(a) Behavior consultation shall only be authorized to support a parent in their caregiving role, not as an educational service.

(b) Behavior consultants must:

(A) Work with the parent to identify:

(i) Areas of a child's family home life that are of most concern for the parent and child;

(ii) The formal or informal responses the parent or provider has used in those areas; and

(iii) The unique characteristics of the parent that could influence the responses that would work with the child.

(B) Assess the child. The assessment must include:

(i) Specific identification of the behaviors or areas of concern;

(ii) Identification of the settings or events likely to be associated with or to trigger the behavior;

(iii) Identification of early warning signs of the behavior;

(iv) Identification of the probable reasons that are causing the behavior and the needs of the child that are being met by the behavior, including the possibility that the behavior is:

(I) An effort to communicate;

(II) The result of a medical condition;

(III) The result of an environmental cause; or

(IV) The symptom of an emotional or psychiatric disorder.

(v) Evaluation and identification of the impact of disabilities (i.e. autism, blindness, deafness, etc.) that impact the development of strategies and affect the child and the area of concern; and

(vi) An assessment of current communication strategies.

(C) Develop a variety of positive strategies that assist the parent and provider to help the child use acceptable, alternative actions to meet the child's needs in the most cost effective manner. These strategies may include changes in the physical and social environment, developing effective communication, and appropriate responses by a parent and provider to the early warning signs.

(i) Positive, preventive interventions must be emphasized.

(ii) The least intrusive intervention possible must be used.

(iii) Abusive or demeaning interventions must never be used.

(iv) The strategies must be adapted to the specific disabilities of the child and the style or culture of the parent.

(D) Develop emergency and crisis procedures to be used to keep the child, parent, and provider safe. When interventions in the behavior of the child are necessary, positive, preventative, non-adversive interventions must be utilized. SPD shall not pay a provider to use physical restraints on a child receiving MICP services.

(E) Develop a written behavior support plan that includes the following:

(i) Use of clear, concrete language that is understandable to the parent and provider; and

(ii) Describes the assessment, strategies, and procedures to be used.

(F) Teach the provider and parent the strategies and procedures to be used.

(G) Monitor and revise the behavior support plan as needed.

(21) GOODS, SERVICES, AND SUPPLIES.

(a) Goods, services, and supplies paid for by SPD must be documented by receipts. The receipts must be maintained by SPD for five years. If no receipt is available, the parent must submit to SPD in writing, a statement that the parent received the goods, services, or supplies, and the date the goods, services, or supplies were received.

(b) SPD may protect its interest through any legally allowable means for any good, service, or supply.

(c) SPD may expend its funds through contract, purchase order, use of credit card, payment directly to the vendor or any other legal payment mechanism.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 427.007 & 430.215

Hist.: SPD 5-2008(Temp), f. & cert. ef. 4-15-08 thru 10-12-08; SPD 14-2008, f. & cert. ef. 10-9-08; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10

## 411-355-0050

### Standards for Providers Paid with MICP Funds

#### (1) PROVIDER QUALIFICATIONS.

(a) Each provider who is paid as a contractor, a self-employed individual, or an employee of the parent to provide homemaker and chore, in-home daily care, respite, transportation, family training, occupational therapy, phys-

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ical therapy, speech and language therapy, dietician, nursing delegation, or specialized supports must:

- (A) Be at least 18 years of age;
- (B) Maintain a drug-free work place;
- (C) Be legally eligible to work in the United States;
- (D) Not be on the current CMS list of excluded or debarred providers (<http://exclusions.oig.hhs.gov/>);

(E) Not be a parent, step parent, or legal guardian of the child;

(F) Consent to and pass a criminal records check by DHS as described in OAR 407-007-0200 to 407-007-0370 and be free of convictions or founded allegations of abuse or neglect by the appropriate agency, including but not limited to DHS, prior to enrolling as a provider. Criminal records rechecks must be performed bi-annually, or as needed, if a report of criminal activity has been received by DHS. A person may not be authorized as a provider or meet qualifications as described in this rule if the person has been hired on or after January 1, 2010, or is subject to criminal records checks after January 1, 2010 as required by administrative rule, and who has been convicted:

- (i) Of a crime listed in Exhibit 355-1;
- (ii) In the last 10 years, of a crime involving the delivery or manufacture of a controlled substance;
- (iii) Of an attempt, conspiracy, or solicitation to commit a crime described in Exhibit 355-1; or
- (iv) Of a crime in another jurisdiction that is substantially equivalent to a crime described in Exhibit 355-1.

(G) Sign a Medicaid provider agreement and be enrolled as a Medicaid provider prior to delivery of any in-home daily care services; and

(H) Provide evidence satisfactory to SPD that demonstrates, by background, education, references, skills, and abilities, the provider is capable of safely and adequately providing the services authorized. The evidence must be confirmed in writing by the parent and include:

- (i) Ability and sufficient education to follow oral and written instructions and keep any records required;
- (ii) Responsibility, maturity, exercising sound judgment, and reputable character;

(iii) Ability to communicate with the child;

(iv) Training of a nature and type sufficient to ensure that the provider has knowledge of emergency procedures specific to the child being cared for;

(v) Current, valid, and unrestricted appropriate professional license or certification where care and supervision requires specific professional education, training, and skill;

(vi) Understanding requirements of maintaining confidentiality and safeguarding the child's information; and

(vii) If providing transportation, a valid driver's license and proof of insurance, as well as other license or certification that may be required under state and local law depending on the nature and scope of the transportation service.

(b) A provider is not an employee of DHS or the state of Oregon and is not eligible for state benefits and immunities, including but not limited to, Public Employees' Retirement System or other state benefit programs.

(c) If the provider or billing provider is an independent contractor, during the terms of the contract, the provider or billing provider must maintain in force at the providers own expense, professional liability insurance with a combined single limit of not less than \$1,000,000 for each claim, incident, or occurrence. Professional liability insurance is to cover damages caused by error, omission, or negligent acts related to the professional services.

(A) The provider or billing provider must provide written evidence of insurance coverage to SPD prior to beginning work.

(B) There must be no cancellation of insurance coverage without 30 days written notice to SPD.

(d) If the provider is an employee of the parent, the provider must submit to SPD documentation of immigration status required by federal statute. SPD maintains documentation of immigration status required by federal statute, as a service to the parent who is the employer.

(e) A provider must immediately notify the parent and, if appropriate, SPD, of injury, illness, accidents, or any unusual circumstances that may have a serious effect on the health, safety, physical, emotional well being, or level of service required by the child for whom MICP services are being provided.

(f) Providers described in ORS chapter 418 are required to report suspected child abuse to the police or their local DHS office in the manner described in ORS chapter 418.

(2) BEHAVIOR CONSULTANTS. Behavior consultants providing specialized consultations must:

(a) Have education, skills, and abilities necessary to provide behavior consultation services as outlined in OAR 411-355-0040 including knowledge and experience in developing plans based on positive behavioral theory and practice;

(b) Have current certification demonstrating completion of Level II training in Oregon Intervention Systems; and

(c) Submit a resume to SPD indicating at least one of the following:

(A) A bachelor's degree in special education, psychology, speech and communication, occupational therapy, recreation, art or music therapy, or a behavioral science field, and at least one year of experience with people with developmental disabilities who present difficult or dangerous behaviors; or

(B) Three years experience with people with developmental disabilities who present difficult or dangerous behaviors and at least one year of that experience must include providing the services of a behavior consultant as outlined OAR 411-355-0040.

(d) Additional education or experience may be required to safely and adequately provide the services described in OAR 411-355-0040.

(3) NURSES. Nurses providing direct care or delegation services must:

(a) Have a current Oregon nursing license; and

(b) Submit a resume to SPD indicating the education, skills, and abilities necessary to provide nursing services in accordance with state law, including at least one year of experience with people with developmental disabilities.

(4) ENVIRONMENTAL MODIFICATION CONSULTANTS. Environmental modification consultants must be licensed general contractors and have experience evaluating homes, assessing individual needs, and developing cost effective plans that make the home safe and accessible for the child.

(5) ENVIRONMENTAL ACCESSIBILITY ADAPTATION PROVIDERS. Environmental accessibility adaptation providers must be building contractors licensed as applicable under either OAR chapter 812, Construction Contractor's Board, or OAR chapter 808, Landscape Contractors Board.

(6) FAMILY TRAINING PROVIDERS. Providers of family training must be:

(a) Psychologists licensed under ORS 675.030;

(b) Clinical social workers licensed under ORS 675.530;

(c) Licensed professional counselors licensed under ORS 675.715; or

(d) Medical professionals licensed under ORS 677.100.

(7) DIETICIANS. Dietitians providing specialized diets must be licensed according to ORS 691.415 through 691.465.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 427.007 & 430.215

Hist.: SPD 5-2008(Temp), f. & cert. ef. 4-15-08 thru 10-12-08; SPD 14-2008, f. & cert. ef. 10-9-08; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10

## 411-355-0060

### Standards for Provider Organizations Paid by SPD

(1) A provider organization may not require additional certification to provide respite, community inclusion, or emergent services if they are licensed or certified as:

(a) 24-hour residential programs under OAR chapter 411, division 325;

(b) Foster homes for children with developmental disabilities under OAR chapter 411, division 346;

(c) Child care centers under OAR chapter 414, division 300; or

(d) Organizational camps under OAR chapter 333, division 030.

(2) Provider organizations licensed or certified as described in section (1) of this rule may be considered sufficient demonstration of ability to:

(a) Recruit, hire, supervise, and train qualified staff;

(b) Provide services according to individual support plans; and

(c) Develop and implement operating policies and procedures required for managing an organization and delivering services, including provisions for safeguarding individuals receiving services.

(3) A provider organization that wishes to enroll with the MICP must maintain and submit evidence upon initial application and upon request by SPD the following:

(a) Current criminal records checks on each employee who shall be providing services in a family home showing that the employee has no disqualifying criminal convictions, including crimes identified in OAR 411-350-0050(1)(a)(F);

(b) Professional liability insurance that meets the requirements of OAR 411-355-0050; and

(c) Any licensure required of the agency, by the state of Oregon, or federal law or regulation.

(4) Provider organizations must assure that all individuals directed by the provider organization as employees, contractors, or volunteers to provide services paid for with MICP funds meet standards for qualification of providers outlined in OAR 411-355-0050.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 427.007 & 430.215

Hist.: SPD 5-2008(Temp), f. & cert. ef. 4-15-08 thru 10-12-08; SPD 14-2008, f. & cert. ef. 10-9-08; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10

## 411-355-0090

### Payment for MICP Services

(1) SPD shall make payment for MICP services, described in OAR 411-355-0040, after services are delivered as authorized and required documentation is received by the service coordinator.

(2) Payment may not be used to support, in whole or in part, the employment in any capacity of a person who has been hired on or after January 1, 2010, or is subject to criminal records checks after January 1, 2010 as required by administrative rule, and who has been convicted:

(a) Of a crime listed in Exhibit 355-1;

(b) In the last 10 years, of a crime involving the delivery or manufacture of a controlled substance;

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(c) Of an attempt, conspiracy, or solicitation to commit a crime described in Exhibit 355-1; or

(d) Of a crime in another jurisdiction that is substantially equivalent to a crime described in Exhibit 355-1.

(3) Service budgets shall be individually negotiated by SPD, based on the individual needs of the child.

(4) Authorization must be obtained prior to the delivery of any MICP services for those services to be eligible for payment.

(5) Providers must request payment authorization for MICP services provided during an unforeseeable emergency on the first business day following the emergency service. The service coordinator must determine if the service is eligible for payment.

(6) SPD shall make payment to the individual employee of the parent on behalf of the parent. SPD shall pay the employer's share of the Federal Insurance Contributions Act (FICA) and withhold the employee's share of FICA as a service to the parent as the provider's employer.

(7) The delivery of authorized MICP services must occur so that any individual employee of the parent does not exceed 40 hours per work week. SPD shall not authorize services that require the payment of overtime, without prior written authorization by the supervisor of children's intensive in-home services.

(8) SPD shall not pay for any hours of MICP services provided by a provider beyond 16 hours in any 24-hour period unless the hours are part of a 24-hour service budget negotiated by SPD and there is evidence the child may be safely served with a 24-hour service budget. Exceptions require written authorization by the supervisor of children's intensive in-home services.

(9) Holidays are paid at the same rate as non-holidays.

(10) Travel time to reach the job site is not reimbursable.

(11) In order to be eligible for payment, requests for payments must be submitted to SPD within three months of the delivery of MICP services.

(12) Payment by SPD for MICP services is considered full payment for the services rendered under Title XIX. Under no circumstances may the provider or billing provider demand or receive additional payment for these services from the parent or any other source.

(13) Medicaid funds are the payor of last resort. The provider or billing provider must bill all third party resources until all third party resources are exhausted.

(14) SPD reserves the right to make a claim against any third party payer before or after making payment to the provider of MICP services.

(15) SPD may void without cause prior authorizations that have been issued.

(16) Upon submission of the billing form for payment, the provider must comply with:

(a) All rules in OAR chapter 411;

(b) Title V, Section 504 of the Rehabilitation Act of 1973;

(c) Title II and Title III of the Americans with Disabilities Act of 1991; and

(d) Title VI of the Civil Rights Act of 1964.

(17) All billings must be for MICP services provided within the provider's licensure.

(18) The provider must submit true and accurate information on the billing form. Use of a billing provider does not replace the provider's responsibility for the truth and accuracy of submitted information.

(19) No individual shall submit to SPD:

(a) A false billing form for payment;

(b) A billing form for payment that has been or is expected to be paid by another source; or

(c) Any billing form for MICP services that have not been provided.

(20) SPD shall only make payment to the enrolled provider who actually performs the MICP services or the provider's enrolled billing provider. Federal regulations prohibit SPD from making payment to collection agencies.

(21) Payments may be denied if any provisions of these rules are not complied with.

(22) SPD shall recoup all overpayments. The amount to be recovered:

(a) Is the entire amount determined or agreed to by SPD;

(b) Is not limited to the amount determined by criminal or civil proceedings; and

(c) Includes interest to be charged at allowable state rates.

(23) SPD shall deliver to the provider, by registered or certified mail, or in person, a request for repayment of the overpayment or notification of recoupment of future payments.

(24) Payment schedules with the interest may be negotiated at the discretion of SPD.

(25) If recoupment is sought from a parent whose child received MICP services, hearing rights in OAR 411-355-0110 apply.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 427.007 & 430.215

Hist.: SPD 5-2008(Temp), f. & cert. ef. 4-15-08 thru 10-12-08; SPD 14-2008, f. & cert. ef. 10-9-08; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10

## 411-355-0120

### Sanctions for MICP Providers

(1) Sanctions may be imposed on a provider when any of the following conditions is determined by SPD to have occurred:

(a) The provider has been convicted of any crime that would have resulted in an unacceptable criminal records check upon hiring or issuance of a provider number, including crimes as described in OAR 411-355-0050(1)(a)(F);

(b) The provider has been convicted of unlawfully manufacturing, distributing, prescribing, or dispensing a controlled substance;

(c) The provider's license has been suspended, revoked, otherwise limited, or surrendered;

(d) The provider has failed to safely and adequately provide the MICP services authorized as determined by the parent or the service coordinator;

(e) The provider has had a founded report of child abuse or a substantiated abuse allegation;

(f) The provider has failed to cooperate with any investigation or grant access to or furnish, as requested, records or documentation;

(g) The provider has billed excessive or fraudulent charges or has been convicted of fraud;

(h) The provider has made a false statement concerning conviction of crime or substantiation of abuse;

(i) The provider has falsified required documentation;

(j) The provider has not adhered to the provisions of these rules; or

(k) The provider has been suspended or terminated as a provider by another division within DHS.

(2) SPD may impose the following sanctions on a provider:

(a) Termination from participation in the MICP;

(b) Suspension from participation in the MICP for a specified length of time or until specified conditions for reinstatement are met and approved by SPD; or

(c) Payments to the provider may be withheld.

(3) If SPD makes a decision to sanction a provider, the provider must be notified by mail of the intent to sanction.

(a) The provider may appeal a sanction by requesting an administrative review by the Assistant Director of SPD.

(b) For an appeal to be valid, written notice of the appeal must be received by SPD within 45 days of the date the sanction notice was mailed to the provider.

(c) The provider must appeal a sanction separately from any appeal of audit findings and overpayments.

(4) At the discretion of SPD, providers who have previously been terminated or suspended by any division within DHS may not be re-enrolled as providers of Medicaid services.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 427.007 & 430.215

Hist.: SPD 5-2008(Temp), f. & cert. ef. 4-15-08 thru 10-12-08; SPD 14-2008, f. & cert. ef. 10-9-08; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10

## 411-360-0020

### Definitions

(1) "Abuse" means:

(a) Abuse of a child as defined in ORS 419B.005; and

(b) Abuse of an adult as defined in OAR 407-045-0260.

(2) "Abuse Investigation and Protective Services" means an investigation and any subsequent services or supports necessary to prevent further abuse as required by OAR 407-045-0250 through 407-045-0360.

(3) "Activities of Daily Living (ADL)" are those personal functional activities required by an individual for continued well being including eating or nutrition, dressing, personal hygiene, mobility, toileting, and behavior management.

(a) "Independent" means the individual may perform the ADL without help;

(b) "Assistance" means the individual is able to help with an ADL, but cannot do it entirely alone;

(c) "Dependent" means the individual is unable to do any part of an ADL; it must be done entirely by someone else.

(4) "Administrator" means the Assistant Director Department of Human Services and Administrator of Seniors and People with Disabilities, a cluster within the Department, or that person's designee.

(5) "Administration of Medication" means the act by a caregiver, who is responsible for the individual's care, of placing a medication in or on an individual's body.

(6) "Adult Foster Home (AFH)" means any home licensed by the Department in which residential care is provided to five or fewer adults who are not related to the provider by blood or marriage as described in ORS 443.705 through 443.825. For the purpose of these rules, if a family member receives care, he or she shall be included as one of the five allowable individuals. A home or person that advertises to provide room, board, and care and services for adults, including word-of-mouth advertising, is deemed to be an AFH. For the purpose of these rules, an AFH does not include:

(a) Any house, institution, hotel or other similar living situation that supplies room and board only, or room only, or board only, where no individual thereof requires any element of care;

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(b) Any specialized living situation for physically handicapped persons where the Department provides payment for personal care services other than to an AFH provider;

(c) Any residential facility, licensed under authority of ORS 443.400, which serves adults who are mentally or emotionally disturbed, developmentally disabled, elderly or physically disabled.

(7) "Adult Foster Home for Individuals with Developmental Disabilities (AFH-DD)" means an adult foster home licensed by the Department to provide residential care and support to individuals with developmental disabilities.

(8) "Advocate" means a person other than paid staff who has been selected by the individual or by the individual's legal representative to help the individual understand and make choices in matters relating to identification of needs and choices of services, especially when rights are at risk or have been violated.

(9) "Aid to Physical Functioning" means any special equipment prescribed for an individual by a physician, therapist, or dietician that maintains or enhances the individual's physical functioning.

(10) "Appeal" is the process by which a licensed provider may petition the suspension, denial, revocation or civil penalty of their license or application under Chapter 183, Oregon Revised Statutes, by making a written request to the Department.

(11) "Applicant" means any person who completes an application for a license who is also the owner of the business.

(12) "Authorized Department Representative" (ADR) means an employee of the Department who is qualified to have access to the Law Enforcement Data System (LEDS) information.

(13) "Bill of Rights" means civil, legal or human rights afforded to AFH individuals that are in accord with those rights afforded to all other U.S. citizens, including but not limited to those rights delineated in the AFH Bill of Rights as described in OAR 411-360-0170(9).

(14) "Board of Nursing Rules" means the standards for Registered Nurse Teaching and Delegation to Unlicensed Persons according to the Statutes and rules of the Oregon State Board of Nursing, ORS 678.010 to 678.445 Chapter 851, Division 047.

(15) "Care" means the provision of room, board, services and assistance with activities of daily living such as assistance with bathing, dressing, grooming, eating, managing money, recreation and medication management. Care also means services that encourage maximum individual independence and enhance quality of life.

(16) "Caregiver" means any person responsible for providing care and services to individuals including the provider; the resident manager; and any temporary, substitute or supplemental staff or other person designated to provide care and service to individuals.

(17) "Chemical Restraint" means the use of a psychotropic drug or other drugs for punishment, or for behavior modification in place of a meaningful behavior or treatment plan.

(18) "Choice" means the individual's expression of preference, opportunity for, and active role in decision-making related to: the selection of assessments, services, service providers, goals and activities, and verification of satisfaction with these services. Choice may be communicated verbally, through sign language, or other communication method.

(19) "Community Developmental Disability Program or CDDP" means an entity that is responsible for planning and delivery of services for persons with mental retardation or other developmental disabilities in a specific geographic area of the state under a contract with the Department or a local mental health authority.

(20) "Community Mental Health and Developmental Disability Program or CMHDDP" means an entity that operates or contracts for all services for persons with mental or emotional disturbances, drug abuse problems, mental retardation or other developmental disabilities, and alcoholism and alcohol abuse problems under the contract with the Department of Human Services.

(21) "Community Developmental Disability Program Director" means the director of a community mental health and developmental disability program (CMHDDP) that operates or contracts for all services for persons with mental or emotional disturbances, drug abuse problems, mental retardation or other developmental disabilities, and alcoholism and alcohol abuse problems under a contract with the Department of Human Services.

(22) "Compensation" means payments by or on behalf of a individual to a provider in exchange for room and board, care and services as indicated in the Individual Support Plan. Compensation does not include the voluntary sharing of expenses between or among roommates.

(23) "Complaint Investigation" means an investigation of any allegation that a provider has taken action that is contrary to law, rule, or policy that does not meet the criteria for an abuse investigation.

(24) "Condition" means a provision attached to a new or existing license that limits or restricts the scope of the license or imposes additional requirements on the licensee.

(25) "Contract" means an agreement between a provider and the Department to provide room, board, care and services for compensation to a individual of an AFH-DD.

(26) "Controlled Substance" means any drug classified as schedules one through five under the Federal Controlled Substance Act.

(27) "Crisis" means a situation, as determined by a qualified Services Coordinator that could result in civil court commitment under ORS 427 and imminent risk of loss of the community support system for an adult or the imminent risk of loss of home for a child with no appropriate alternative resources available.

(28) "Day Care" means care and services in an AFH-DD for a person who does not stay overnight. Day care persons shall be counted in the total allowable five individuals of the capacity of the AFH-DD.

(29) "Denial" is the refusal of the Department of Human Services to issue a license to operate an AFH-DD because the Department has determined that the home is not in compliance with one or more of these administrative rules.

(30) "Department" means the Department of Human Services, Seniors and People with Disabilities, an organizational unit within the Department that focuses on the planning of services, policy development and regulation of programs for persons that have developmental disabilities.

(31) "Developmental Disability" means a disability attributable to mental retardation, autism, cerebral palsy, epilepsy or other neurological handicapping condition that requires training or support similar to that required by individuals with mental retardation, and the disability:

(a) Originates before the individual attains the age of 22 years, except that in the case of mental retardation the condition must be manifested before the age of 18; and

(b) Has continued, or may be expected to continue, indefinitely; and

(c) Constitutes a substantial handicap to the ability of the person to function in society; or

(d) The condition or impairment must not be otherwise primarily attributed to mental illness, substance abuse, an emotional disorder, Attention Deficit and Hyperactivity Disorder (ADHD), a learning disability, or sensory impairment; or

(e) Results in significant sub-average general intellectual functioning with concurrent deficits in adaptive behavior that are manifested during the developmental period. Individuals of borderline intelligence may be considered to have mental retardation if there is also serious impairment of adaptive behavior. Definitions and classification must be consistent with the "Manual of Terminology and Classification in Mental Retardation" by the American Association on Mental Deficiency, 1977 Revision. Mental retardation is synonymous with mental deficiency.

(32) "Direct Nursing Services" means the provision of individual-specific advice, plans or interventions, based on nursing process as outlined by the Oregon State Board of Nursing, by a nurse at the home. Direct nursing service differs from administrative nursing services. Administrative nursing services include non-individual-specific services, such as quality assurance reviews, authoring health related agency policies and procedures, or providing general training for staff.

(33) "Director" means the Director of the Department of Human Services or that person's designee.

(34) "Domestic Animals" are any of various animals domesticated so as to live and breed in a tame condition. Examples of domestic animals are dogs, cats, and domesticated farm stock.

(35) "Entry" means admission to a Department funded developmental disability service provider. For the purpose of this rule "entry" means admission to an AFH-DD foster home.

(36) "Exempt Area" means a county agency that provides similar programs for licensing and inspection of AFH's that the Director finds equal to or superior to the requirements of ORS 443.705 to 443.825 and that has entered into an agreement with the Department to license, inspect, and collect fees according to the provisions of ORS 443.705 to 443.825.

(37) "Exit" means termination from a Department funded developmental disability services provider.

(38) "Family Member" means a legally responsible relative, including spouses of recipients.

(39) "Founded Reports" means the Department of Human Services, Children, Adults, and Families Division or Law Enforcement Authority (LEA) determination, 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.

(40) "Guardian" means a parent for individuals under 18 years of age or a person or agency appointed by the courts who is authorized by the court to make decisions about services for the individual.

(41) "Health Care Provider" means a person licensed, certified or otherwise authorized or permitted by law of this state to administer health care in the ordinary course of business or practice of a profession, and includes a health care facility.

(42) "Home" means the physical structure in which individuals live, synonymous with AFH-DD.

(43) "Homelike" means an environment that promotes the dignity, security and comfort of individuals through the provision of personalized care and services to encourage independence, choice, and decision making.

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(44) "House Rules" means those written and posted rules governing house activities in the AFH-DD. These rules may not conflict with the AFH Bill of Rights.

(45) "Incident Report" means a written report of any injury, accident, acts of physical aggression, use of physical restraints, or unusual incident involving an individual.

(46) "Individual" means a person age 18 or older residing in an AFH-DD regardless of source of compensation. The terms "individual" and "client" are synonymous.

(47) "Individual Support Plan or ISP" means a written plan of support and training services for an individual with developmental disabilities covering a 12 month period that addresses the individual's support needs.

(48) "Individual Support Plan Team or ISP Team" means a team composed of the individual, representatives of all current service providers including the AFH-DD provider, Services Coordinator, the individual's legal guardian if any, advocate and others determined appropriate by the individual receiving services. If the individual is unable to or does not express a preference, other appropriate team membership shall be determined by the ISP team members.

(49) "License" means a document granted by the Department to applicants who are in compliance with these rules.

(50) "Licensee" means a person or organization to whom a license is granted.

(51) "Limited License" means a license issued to a person who intends to provide care for compensation to a specific individual who is unrelated to the provider but with whom there is an established relationship.

(52) "Majority Agreement" means for purposes of entry, exit, transfer and annual ISP team meetings that no one member of the ISP team shall have the authority to make decisions for the team. Representatives from service provider(s), families, the CDDP, or advocacy agencies shall be considered as one member of the ISP team for the purpose of reaching majority agreement.

(53) "Mandatory Reporter" means any public or private official who, while acting in an official capacity, comes in contact with and has reasonable cause to believe that an individual with disabilities has suffered abuse, or that any person with whom the official comes in contact while acting in an official capacity, has abused the individual with disabilities. Pursuant to ORS 430.765(2) psychiatrists, psychologists, clergy and attorneys are not mandatory reporters with regard to information received through communications that are privileged under ORS 40.225 to 40.295.

(54) "Mechanical Restraint" means any mechanical device, material, object or equipment that is attached or adjacent to an individual's body, that the individual cannot easily remove or easily negotiate around, and restricts freedom of movement, or access to the individual's body.

(55) "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.

(56) "Member of Household" means any adult or children living in the home, including any foster providers, substitute caregivers, or volunteers assisting in the care provided to adults placed in the home, and excluding the service recipient placed in the home.

(57) "Modified Diet" means the texture or consistency of food or drink is altered or limited. Examples include, but are not limited to, no nuts or raw vegetables, thickened fluids, mechanical soft, finely chopped, pureed, bread only soaked in milk.

(58) "Nurse" means a person who holds a valid, current license as a Registered Nurse (RN) or Licensed Practical Nurse (LPN) from the Oregon Board of Nursing.

(59) "Nursing Care" means the practice of nursing by a licensed nurse, including tasks and functions relating to the provision of nursing care that are delegated under specified conditions by a registered nurse to persons other than licensed nursing personnel that is governed by ORS Chapter 678 and rules adopted by the Oregon State Board of Nursing in OAR Chapter 851.

(60) "Nursing Care Plan" means a plan of care developed by a Registered Nurse (RN) that describes the medical, nursing, psychosocial, and other needs of the individual and how those needs shall be met. It includes which tasks shall be taught or delegated to the provider and staff.

(61) "Oregon Intervention System or OIS" means a system of providing training to people who work with designated individuals with developmental disabilities, to provide elements of positive behavior support and non-aversive behavior intervention. The system uses principles of proactive support and describes approved physical intervention techniques that are used to maintain health and safety keeping individuals from harming themselves or others. The system is based on a pro-active approach that includes methods of effective evasion, deflection and escape from holding.

(62) "Over the Counter Topical" means a medication that is purchased without a prescription and is applied to the skin and not in an orifice.

(63) "Physical Intervention" means the use of any physical action or any response to maintain the health and safety of an individual or others during a potentially dangerous situation or event.

(64) "Physical Restraint" means any manual physical holding of or contact with an individual that restricts the individual's freedom of movement.

(65) "Prescription Medication" means any medication that requires a physician prescription before it may be obtained from a pharmacist.

(66) "PRN" means the administration of a medication to an individual on an 'as needed' basis.

(67) "Protection" means necessary actions taken to prevent subsequent abuse or exploitation of the individual, to prevent self-destructive acts, and to safeguard an individual's person, property and funds.

(68) "Protective Services" means necessary actions taken to prevent subsequent abuse or exploitation of the individual, to prevent self-destructive acts, and safeguard an individual's person, property, and funds as soon as possible.

(69) "Provider" means the person licensed to operate an AFH-DD who is responsible for the provision of room, board, and care or services in the daily operation of the AFH-DD. Applicant, provider, licensee, and operator are all synonymous terms.

(70) "Provisional License" means a 60-day license issued to a qualified person in an emergency situation when the licensed provider is no longer overseeing the operation of the adult foster home. The qualified person meets the standards of OAR 411-360-0110 and 411-360-0070 except for completing the training and testing requirements.

(71) "Psychotropic Medication" means a medication whose prescribed intent is to affect or alter thought processes, mood, or behavior. This includes, but is not limited to, anti-psychotic, antidepressant, anti-anxiety and behavior medications. Because a medication may have many different effects, its classification depends upon its stated, intended effect when prescribed.

(72) "Registered Nurse" means an individual licensed and registered to practice nursing in accordance with ORS Chapter 678 and OAR Chapter 851.

(73) "Resident Manager" means an employee of the provider who lives in the AFH-DD and is directly responsible for the care of individuals on a day-to-day basis.

(74) "Residential Care" means the provision of room, board, care, and services that assist the individual with ADL's. Residential care includes 24 hour supervision; being aware of the individuals' general whereabouts; monitoring the activities of the individual while on the premises of the AFH-DD to ensure their health, safety, and welfare; providing social and recreational activities; and assistance with money management as requested.

(75) "Respite Care" means short term care services for a period of 14 days or less provided on behalf of an individual due to absence or need for relief of those persons normally providing care for the individual. Respite services may include both day or overnight care. Respite care individuals must be counted in the total allowable five individuals in the home.

(76) "Restraints" means any physical hold, device, or chemical substance that restricts, or is meant to restrict, the movement or normal functioning of an individual.

(77) "Revocation" is the action taken to rescind an AFH-DD license after the Department has determined that the provider is not in compliance with one or more of these administrative rules.

(78) "Room and Board" means the provision of meals, a place to sleep, laundry and housekeeping.

(79) "Self-Administration of Medication" means the individual manages and takes his or her own medications. The individual identifies his or her medication(s), the times and methods of administration, places the medication internally in, or externally on, his or her own body without caregiver assistance upon the written order of a physician, and safely maintains the medication(s) without supervision.

(80) "Services" means those activities that help the individuals develop appropriate skills to increase or maintain their level of functioning. Services available in the community and arranged for by the provider may include mental health services, habilitation services, rehabilitation services, social services, ADL's, medical, dental, and other health care services, educational services, financial management services, legal services, vocational services, transportation, recreational and leisure activities, and other services required to meet a individual's needs as defined in the ISP.

(81) "Services Coordinator" means an employee of the Community Developmental Disability Program (CDDP) or other agency that contracts with the County or Department, who is selected to plan, procure, coordinate, monitor individual support plan services and to act as a proponent for persons with developmental disabilities. The term case manager is synonymous with services coordinator.

(82) "Special Diet" means that the amount, type of ingredients or selection of food or drink items is limited, restricted, or otherwise regulated under a physician's order. Examples include, but are not limited to, low calorie, high fiber, diabetic, low salt, lactose free, low fat diets. This does not include diets where extra or additional food is offered, but may not be eaten, for example, offer prunes each morning at breakfast and include fresh fruit with each meal.

(83) "Substantiated" means an abuse investigation has been completed by the Department of Human Services or its designee and the preponderance of the evidence establishes the abuse occurred.

(84) "Suspension of License" is an immediate withdrawal of the approval to operate an AFH-DD after the Department determines that there is a threat to the health or safety of individuals.

(85) "Substitute Caregiver" means any person who provides care and services in an adult foster home under the jurisdiction of the Department.

(86) "Transition Plan" means a written plan for the period of time between an individual's entry into a particular service and when the individ-

# ADMINISTRATIVE RULES

ual's ISP is developed and approved by the ISP team. The plan must include a summary of the services necessary to facilitate adjustment to the services offered, the supports necessary to ensure health and safety, and the assessments and consultations necessary for the ISP development.

(87) "Unusual Incident" means those incidents involving acts of physical aggression, serious illnesses or accidents, any injury or illness of a individual requiring a non-routine visit to a health care practitioner, suicide attempts, death of a individual, a fire requiring the services of a fire department, or any incident requiring an abuse investigation.

(88) "Variance" means a temporary exception from a regulation or provision of these rules that may be granted by the Department, upon written application by the provider.

Stat. Auth.: ORS 410.070 & 409.050  
Stats. Implemented: ORS 443.705 - 443.825  
Hist.: SPD 3-2005, f. 1-10-05, cert. ef. 2-1-05; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10

## 411-360-0040

### License Required

(1) Any home that meets the definition of an AFH as defined in OAR 411-360-0020(6) must apply for and obtain a license from the Department or an exempt area county.

(2) A person or entity must not represent themselves as operating an adult foster home or accept placement of an individual without being licensed.

(3) No person may be a provider, resident manager, substitute caregiver, or otherwise be in training, or employed by the provider, or reside in or on the property of an adult foster home who:

(a) Has been convicted:

(A) Of a crime listed in Exhibit 360-1;

(B) In the last 10 years, of a crime involving the delivery or manufacture of a controlled substance;

(C) Of an attempt, conspiracy, or solicitation to commit a crime described in Exhibit 360-1; or

(D) Of a crime in another jurisdiction that is substantially equivalent to a crime described in Exhibit 360-1.

(b) Has not complied with Department rules for review of criminal records checks in accordance with OAR 407-007-0200 to 407-007-0370; or

(c) Has been disapproved to work based on current Department policy and procedures for criminal records checks in accordance with OAR 407-007-0200 to 407-007-0370.

(d) This provision does not apply to individual service recipients of the adult foster home.

(4) Any home that meets the definition of a Limited License AFH-DD as defined in OAR 411-360-0020(50) must have a license from the Department if receiving compensation from the Department. To qualify for this license and for compensation from the Department the applicant or provider must submit a completed application, appropriate licensing fee, physician's statement, obtain a criminal records check, obtain a background check in regards to abuse of children or adults, demonstrate a clear understanding of the individual's care needs, meet minimal fire safety compliance, including the installation of smoke detectors and fire extinguishers, and obtain any training deemed necessary by the Department to provide adequate care for the individual.

(5) Any home that meets the definition of a Limited License AFH-DD, must be licensed by the Department if compensation is received from the Department or is privately paid to the provider. The person requesting a limited license must meet the standards of an adult foster home and acquire any additional training necessary to meet the needs of the individual. The individual receiving care must be named on the license. The license must be limited to the care of the named individual only and may not be transferred to another person.

Stat. Auth.: ORS 410.070 & 409.050  
Stats. Implemented: ORS 443.705 - 443.825  
Hist.: SPD 3-2005, f. 1-10-05, cert. ef. 2-1-05; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10

## 411-360-0050

### License Application and Fees

(1) A written application must be submitted by the provider on forms supplied by the Department. The application is not complete until the required information is submitted to the Department with the required non-refundable fee. Incomplete applications are void after 60 days of the date the application form is received by the Department. Failure to provide accurate information may result in the denial of the application.

(2) A separate application is required for each location where an AFH-DD is to be operated.

(3) An application for a home that has a resident manager must include a completed application for the resident manager on the application form supplied by the Department.

(4) The application must include:

(a) The maximum capacity to be served by the home;

(b) A listing of all persons living in or receiving care in the home. This must include family members needing care, respite care and day care person(s);

(c) A list of any other occupants living in the home or on the property;

(d) A physician's statement on a form supplied by the Department regarding ability to provide care;

(e) A completed Financial Information Sheet on a form supplied by the Department;

(f) A signed Criminal Records Check form and if needed, the Mitigating Information and Fitness Determination form for each person who shall have regular contact with the residents, including the provider, the resident manager, caregivers, and other occupants over the age of 16 (excluding individual service recipients);

(g) A signed consent form for a background check with regards to abuse of children;

(h) Founded reports of child abuse or substantiated abuse allegations, with dates, locations, and resolutions of those reports for all persons living in the home, as well as all applicant or provider employees, independent contractors, and volunteers;

(i) A floor plan for each floor of the house showing the location and size of rooms indicating the rooms that are to be service recipient's bedrooms, caregiver sleeping room(s), rooms of other occupants of home, and the location of windows, fire exit doors, placement of each individual's bed, smoke detectors and fire extinguishers, escape routes and wheelchair ramps;

(j) If requesting a license to operate more than one AFH-DD, a plan covering administrative responsibilities, staffing and caregiver qualifications and evidence of financial responsibility;

(k) A \$20.00 per bed non-refundable fee for each individual service recipient (includes all private pay and publicly funded individuals, but does not include day care and family members);

(l) References from three non-relatives that have current knowledge of the applicant's character and capabilities;

(m) A written plan on the coverage for resident manager absences from the adult foster home that has been provided to the local CDDP and the Department; Written information describing the daily operation of the adult foster home, including the use of substitute caregivers and other staff;

(n) A copy of the AFH-DD's house rules.

(5) After receipt of the completed application materials, including the non-refundable fee, the Department or its designee must investigate the information submitted, inspect the home and conduct an orientation with the applicant. Applicants must attend a local orientation offered by the local CDDP prior to being licensed. Upon submission and completion of the application and the process described, the Department shall determine compliance with the rules.

(6) The provider shall be given a copy of the inspection form identifying any areas of noncompliance and specifying a timeframe for correction, but no later than 60 days from date of inspection.

(7) Deficiencies noted during an inspection of the home must be corrected in the timeframe specified by the Department or its designee. Applicants must be in compliance with these Administrative Rules before a license is issued. If cited deficiencies are not corrected within the timeframes specified by the Department or its designee, the application shall be denied. The application fee is non-refundable.

(8) The applicant may withdraw a new or renewal application at any time during the application process by notifying the Department. The application fee is non-refundable.

(9) An applicant whose license has been revoked or voluntarily surrendered during a revocation or non-renewal process, or whose application has been denied may not be permitted to make a new application for one year from the date the revocation, surrender or denial is final. The time period may be for a longer period of time if specified in the order revoking or denying the license.

Stat. Auth.: ORS 410.070 & 409.050  
Stats. Implemented: ORS 443.705 - 443.825  
Hist.: SPD 3-2005, f. 1-10-05, cert. ef. 2-1-05; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10

## 411-360-0090

### Renewal of a License

(1) The provider must submit a renewal application and fee prior to the expiration date that shall keep the license in effect until a new license is issued or a final order of non-renewal is issued by the Department. If the renewal application and fee are not submitted prior to the expiration date, the AFH-DD shall be treated as an unlicensed home subject to administrative sanctions.

(2) The renewal application must include the same information and fee as required for a new application, except that a physician's statement and financial information sheet are not required if the Department or its designee may reasonably assume this information has not changed.

(3) The Department or its designee may investigate any information in the renewal application and shall conduct an inspection of the AFH-DD.

(4) The provider shall be given a copy of the inspection form citing any deficiencies and a time frame for correction, but no longer than 60 days from the date of inspection.

(5) The Department shall require the AFH-DD to correct deficiencies prior to issuing a license renewal. If cited deficiencies are not corrected with-



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in the time frame specified by the Department or its designee, the renewal application shall be denied.

(6) The Department may not renew a license unless:

(a) The applicant and the AFH-DD are in compliance with ORS 443.705 to 443.825 and the rules of the Department or its designee;

(b) The Department has completed an inspection of the AFH-DD;

(c) The Department has completed a criminal records check as required by ORS 181.536 through 181.537 and 443.735 on the applicant and any occupant, other than a service recipient, 16 years of age or older who shall be residing on the property, in the AFH-DD, or employed by the AFH-DD provider.

(7) In seeking a renewal of a license when an AFH-DD has been licensed for less than 24 months, the burden of proof shall be upon the provider of the AFH-DD to establish compliance with ORS 443.705 to 443.825 and the rules of the department.

(8) In proceedings for renewal of a license when an AFH-DD has been licensed for at least 24 continuous months, the burden of proof shall be upon the Department to establish noncompliance with ORS 443.705 to 443.825 and the rules of the Department.

(9) The Department may not renew a license if the applicant or any occupant, other than a service recipient, 16 years of age or older has been convicted:

(A) Of a crime listed in Exhibit 360-1;

(B) In the last 10 years, of a crime involving the delivery or manufacture of a controlled substance;

(C) Of an attempt, conspiracy, or solicitation to commit a crime described in Exhibit 360-1; or

(D) Of a crime in another jurisdiction that is substantially equivalent to a crime described in Exhibit 360-1.

Stat. Auth.: ORS 410.070 & 409.050

Stats. Implemented: ORS 443.705 - 443.825

Hist.: SPD 3-2005, f. 1-10-05, cert. ef 2-1-05; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-10 thru 6-30-10

## 411-360-0110

### Qualifications for Adult Foster Home Providers, Resident Managers and Other Caregivers

(1) An AFH-DD provider must meet the following qualifications:

(a) Be at least 21 years of age;

(b) Live in the residence that is to be licensed as the AFH-DD or if the provider does not live in the residence there must be a resident manager who lives in the AFH-DD;

(c) Provide evidence satisfactory to the Department regarding experience, training, knowledge, interest and concern in providing care to persons with a developmental disability. Such evidence may include, but not be limited to:

(A) Certified nurse's aide training;

(B) Nursing home, hospital or institutional work experience;

(C) Licensed practical nurse or registered nurse training and experience;

(D) Training approved by the Department;

(E) Experience in caring for persons with a developmental disability and home management skills;

(d) Possess the physical health, mental health, good judgment and good personal character determined necessary by the Department to provide 24 hour care for adults who are developmentally disabled. Applicants must have a statement from a physician, on a form provided by the Department, that they are physically and mentally capable of providing care. Applicants with documented histories or substantiated complaints of substance abuse or mental illness must provide evidence satisfactory to the Department of successful treatment and rehabilitation and references regarding current condition.

(e) Undergo a criminal records check in accordance with OAR chapter 407-007-0020 to 407-007-0370 and under ORS 181.534, and be found suitable for licensure by the Department. The Department shall evaluate and verify information regarding criminal history;

(A) Public funds may not be used to support, in whole or in part, a provider, a resident manager, providers' employees, alternate caregivers, volunteers, or any other subject individual under OAR 407-007-0200 to 407-007-0370, who has been hired on or after January 1, 2010, or is subject to criminal records checks after January 1, 2010 as required by administrative rule, and who has been convicted:

(i) Of a crime listed in Exhibit 360-1;

(ii) In the last 10 years, of a crime involving the delivery or manufacture of a controlled substance;

(iii) Of an attempt, conspiracy, or solicitation to commit a crime described in Exhibit 360-1; or

(iv) Of a crime in another jurisdiction that is substantially equivalent to a crime described in Exhibit 360-1.

(B) A person may not be authorized as a provider or meet qualifications as described in this rule if the person has been hired on or after January 1, 2010, or is subject to criminal records checks after January 1, 2010 as required by administrative rule, and who has been convicted:

(i) Of a crime listed in Exhibit 360-1;

(ii) In the last 10 years, of a crime involving the delivery or manufacture of a controlled substance;

(iii) Of an attempt, conspiracy, or solicitation to commit a crime described in Exhibit 360-1; or

(iv) Of a crime in another jurisdiction that is substantially equivalent to a crime described in Exhibit 360-1.

(f) Have no founded reports of child abuse or a substantiated abuse allegation.

(g) The applicant must have the financial ability and must provide proof that the applicant has sufficient liquid resources to pay the costs of operating the home for two months without solely relying on potential service and room and board payments. The applicant must provide the Department with a list of all unsatisfied judgments, liens and pending lawsuits in which a claim for money or property is made against the applicant, all bankruptcy filings by the applicant, and all unpaid taxes due from the applicant. The Department may require or permit the applicant to provide a current credit report to satisfy this financial requirement. The Department may not issue an initial license to an applicant who has been adjudged bankrupt more than once. If the applicant has any unpaid judgments (other than a current judgment for support), pending lawsuits, liens or unpaid taxes, the Department shall require the applicant to provide proof that the applicant has the amount of resources necessary to pay those claims. If the applicant is unable to demonstrate the financial ability and resources required by this subsection, the Department may require the applicant to furnish a financial guarantee such as a line of credit or guaranteed loan as a condition of initial licensure.

(h) Be literate and capable of understanding written and oral orders and communicating with individuals, physician, case manager and appropriate others, and be able to respond appropriately to emergency situations at all times;

(i) If transporting individuals by motorized conveyance, must have a current driver's license in compliance with Department of Motor Vehicles laws and vehicle insurance as required by the State of Oregon.

(j) Meet the requirements of the licensing classification of the AFH-DD OAR 411-360-0070, Classification of Adult Foster Home for Persons with Developmental Disabilities.

(k) Document annual review of responsibility for reporting abuse or neglect of an individual on forms provided by the Department.

(2) The resident manager must meet the provider qualifications listed in subsections (1)(a) through (k) of this rule.

(3) Substitute caregivers left in charge of individuals for any period of time must have access to individual records and meet the following qualifications:

(a) Be at least 18 years of age;

(b) Have a criminal records check in accordance with OAR 407-007-0200 to 407-007-0370. A person may not be authorized as a substitute caregiver or meet qualifications as described in this rule if the substitute caregiver has been hired on or after January 1, 2010, or is subject to criminal records checks after January 1, 2010 as required by administrative rule, and the substitute caregiver has been convicted of:

(A) Of a crime listed in Exhibit 360-1;

(B) In the last 10 years, of a crime involving the delivery or manufacture of a controlled substance;

(C) Of an attempt, conspiracy, or solicitation to commit a crime described in Exhibit 360-1; or

(D) Of a crime in another jurisdiction that is substantially equivalent to a crime described in Exhibit 360-1.

(c) Be notified annually of the substitute caregiver's responsibility as a mandatory reporter of abuse or neglect and documented on forms provided by the Department;

(d) Be literate and capable of understanding written and oral orders and communicating with individuals, physician, case manager and appropriate others, and be able to respond appropriately to emergency situations at all times;

(e) Know fire safety and emergency procedures;

(f) Have a clear understanding of job responsibilities, have knowledge of ISP's and be able to provide the care specified for each individual's needs;

(g) Be able to meet the requirements of a resident manager when left in charge of an AFH-DD for 30 days or longer;

(h) Not be an individual service recipient of the AFH-DD;

(i) If transporting individuals by motorized conveyance, must have a current driver's license in compliance with Department of Motor Vehicles laws and vehicle insurance as required by the State of Oregon; and

(j) Possess the physical health, mental health, good judgment and good personal character determined necessary by the Department to provide care for adults who are developmentally disabled. Substitute caregivers with documented histories or substantiated complaints of substance abuse or mental illness must provide evidence satisfactory to the Department of successful treatment and rehabilitation and references regarding current condition;

(k) Must meet the training requirements of the licensing classification of the AFH-DD in OAR 411-360-0120.

(4) Providers may not hire or continue to employ a resident manager or substitute caregiver that does not meet the standards stated in this rule.

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(5) A provider is responsible for the supervision and training of resident managers and substitute caregivers and their general conduct when acting within the scope of their employment or duties.

Stat. Auth.: ORS 410.070 & 409.050

Stats. Implemented: ORS 443.705 - 443.825

Hist.: SPD 3-2005, f. 1-10-05, cert. ef 2-1-05; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10

## 411-360-0210

### Inspections

(1) The Department or designee shall conduct an inspection of an AFH-DD:

(a) Prior to issuance of a license;

(b) Upon receipt of an oral or written complaint of violations that threaten the health, safety, or welfare of individuals; or

(c) Anytime the Department has probable cause to believe that an AFH-DD has violated a regulation or provision of these rules or is operating without a license.

(2) The Department may conduct inspections of an AFH-DD:

(a) Anytime such inspections are authorized by these rules and any other time the CDDP or Department considers it necessary to determine if an AFH-DD is in compliance with these rules or with conditions placed upon the license;

(b) To determine if cited deficiencies have been corrected; and

(c) For the purpose of monitoring of the individuals' care.

(3) State or local fire inspectors shall be permitted access to enter and inspect the AFH-DD regarding fire safety upon request of the CDDP or Department.

(4) Department or CDDP staff shall have full access and authority to examine, among other things, facility and individual records and accounts, and the physical premises, including the buildings, grounds, equipment, and any vehicles.

(5) Department or CDDP staff shall have authority to interview the provider, resident manager, caregiver(s), and individuals. Interviews shall be confidential and conducted in private, and shall be confidential except as considered public record under ORS 430.763.

(6) Providers must authorize resident managers and substitute caregivers to permit entrance by Department or CDDP staff for the purpose of inspection and investigation.

(7) The Department or CDDP staff has authority to conduct inspections with or without advance notice to the provider, substitute caregivers, or an individual of the AFH-DD. The Department or CDDP may not give advance notice of any inspection if they believe that notice might obstruct or seriously diminish the effectiveness of the inspection or enforcement of these rules.

(8) If Department or CDDP staff is not permitted access or inspection a search warrant may be obtained.

(9) The inspector shall respect the private possessions and living area of individuals, providers and caregivers while conducting an inspection.

(10) Completed reports on inspections, except for confidential information, shall be available to the public, upon request of the Department or CDDP, during business hours. A copy of the inspection report shall be given to the licensee within ten working days of completion of the final report.

(11) For individuals receiving services authorized or funded by a CDDP, the Department or its designee must investigate allegations of abuse as defined in OAR 407-045-0260.

(12) When abuse is alleged or death of an individual has occurred and a law enforcement agency, or the Department or its designee, has determined to initiate an investigation, the provider may not conduct an internal investigation without prior authorization from the Department or its designee. For the purposes of this section, an internal investigation is defined as conducting interviews of the alleged victim, witness, the accused person or any other persons who may have knowledge of the facts of the abuse allegation or related circumstances; reviewing evidence relevant to the abuse allegation, other than the initial report; or any other actions beyond the initial actions of determining:

(a) If there is reasonable cause to believe that abuse has occurred;

(b) If the alleged victim is in danger or in need of immediate protective services;

(c) If there is reason to believe that a crime has been committed; and

(d) What, if any, immediate personnel actions shall be taken.

(13) The CDDP shall provide notification to the provider according to OAR 407-045-0290 when an abuse investigation has been initiated.

(14) The Department or its designee shall complete an Abuse Investigation and Protective Services Report according to OAR 407-045-0320. The report shall include the findings based upon the abuse investigation.

(15) The CDDP shall provide notification to the provider according to OAR 407-045-0320 upon completion of the abuse investigation.

(16) When the provider receives notification of a substantiated allegation of abuse, the provider must provide written notification:

(a) Immediately to the individual found to have committed abuse;

(b) At minimum annually to the:

(A) Residents of the foster home;

(B) Residents' services coordinators; and

(C) Residents' guardians.

(17) The provider's written notification must include:

(a) The type of abuse as defined in OAR 407-045-0260;

(b) When the allegation was substantiated; and

(c) How to request a copy of the abuse investigation and protective services report.

(18) When the provider has been notified of the completion of the abuse investigation, a provider may conduct an investigation without further Department approval to determine if any other personnel actions are necessary.

(19) Abuse Investigation and Protective Services Report. Upon completion of the investigation report according to OAR 407-045-0320, the sections of the report that are public records and not exempt from disclosure under the public records law shall be provided to the appropriate provider in accordance with OAR 407-045-0330. The provider must implement the actions necessary within the deadlines listed to prevent further abuse as stated in the report.

(20) A provider may not retaliate against any person who reports in good faith suspected abuse, or against the individual with respect to the report. An accused person cannot self-report solely for the purpose of claiming retaliation.

(21) Any provider who retaliates against any person because of a report of suspected abuse or neglect shall be liable according to ORS 430.755, in a private action to that person for actual damages and, in addition, a penalty up to \$1,000, not withstanding any other remedy provided by law.

(22) Any adverse action creates a presumption of retaliation if taken within 90 days of a report of abuse. For purposes of this subsection, "adverse action" means any action taken by a community facility, community program or person involved in a report against the person making the report or against the adult because of the report and includes, but is not limited to:

(a) Discharge or transfer from the AFH-DD, except for clinical reasons;

(b) Discharge from or termination of employment;

(c) Demotion or reduction in remuneration for services; or

(d) Restriction or prohibition of access to the community facility or its individuals.

(23) Adverse action may also be evidence of retaliation after 90 days even though the presumption no longer applies.

Stat. Auth.: ORS 410.070 & 409.050

Stats. Implemented: ORS 443.705 - 443.825

Hist.: SPD 3-2005, f. 1-10-05, cert. ef 2-1-05; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10

## 411-360-0270

### Denial, Revocation or Non-renewal of License

(1) The Department shall deny, revoke, or refuse to renew a license where it finds:

(a) There has been imminent danger to the health or safety of individuals or substantial failure to comply with these rules or where there is substantial non-compliance with local codes and ordinances, or any other state or federal law or rule applicable to the health and safety of individuals in an AFH-DD; or

(b) The applicant or provider has a denied criminal records check from the Department.

(c) The applicant or provider is on the current Centers for Medicare and Medicaid Services list of excluded or debarred providers.

(d) The provider fails to implement a plan of correction or comply with a final order of the Department imposing an administrative sanction, including the imposition of a civil penalty.

(e) The provider refuses to allow access and inspections;

(f) The applicant or provider has had a certificate or license to operate a foster home or residential care facility denied, suspended, revoked or refused to be renewed in this or any other state or county within three years preceding the present action if the denial, suspension, revocation or refusal to renew was due in any part to abuse of an adult or child, creating a threat to the individuals or failure to possess physical health, mental health or good personal character;

(g) If the denial, suspension, revocation or refusal to renew occurred more than three years from the present action, the applicant or provider is required to establish to the Department by clear and convincing evidence his or her ability and fitness to operate an AFH-DD. If the applicant or provider does not meet this burden, then the Department shall deny, revoke, or refuse to renew the license;

(h) The applicant or provider is associated with a person whose license for a foster home or residential care facility was denied, suspended, revoked or refused to be renewed due to abuse of an adult, or failure to possess physical health, mental health or good personal character within three years preceding the present action, unless the applicant or provider may demonstrate to the Department by clear and convincing evidence that the person does not pose a threat to the individuals;

(A) For purposes of this subsection, an applicant or provider is "associated with" a person as described above, if the applicant or provider:

(i) Resides with the person;

(ii) Employs the person in the AFH-DD;

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(iii) Receives financial backing from the person for the benefit of the AFH-DD;

(iv) Receives managerial assistance from the person for the benefit of the AFH-DD; or

(v) Allows the person to have access to the AFH-DD.

(B) For purposes of this section only, "present action", means the date of the notice of denial, suspension, revocation or refusal to renew.

(2) The Department may deny, revoke, or refuse to renew an AFH-DD license if the applicant or provider:

(a) Has a history of, or demonstrates financial insolvency, such as filing for bankruptcy, foreclosure, eviction due to failure to pay rent, or disruption of utility services due to failure to pay bill(s);

(b) Has threatened the health, safety, or welfare of any individual;

(c) Has a substantiated finding of abuse of an adult;

(d) Has a medical or psychiatric problem that interferes with the ability to provide care; or

(e) Has been convicted:

(A) Of a crime listed in Exhibit 360-1;

(B) In the last 10 years, of a crime involving the delivery or manufacture of a controlled substance;

(C) Of an attempt, conspiracy, or solicitation to commit a crime described in Exhibit 360-1; or

(D) Of a crime in another jurisdiction that is substantially equivalent to a crime described in Exhibit 360-1.

(3) Failure to disclose requested information on the application; provision of incomplete or incorrect information on the application; or failure to renew their license shall constitute grounds for denial or revocation of the license.

(4) Any administrative sanction imposed under this section shall receive a notice in writing from the Department. The notice shall be sent by registered or certified mail and shall include:

(a) A reference to the particular sections of the statute, rule, standard, or order involved;

(b) A short and plain statement of the matter asserted or charged;

(c) A statement of the amount of the administrative sanction imposed; and

(d) A statement of the right to request a hearing.

(5) Timeline to make written application for a hearing. The provider to whom the notice is addressed, shall have 60 days from the date of service of the notice in which to make a written application for a hearing before the Department when the administrative sanction is a denial of a license. The provider shall have 90 days when the administrative sanction is a non-renewal of a license.

(6) Conduct of hearing. All hearings shall be conducted pursuant to the applicable provisions or ORS chapter 183.

(7) Failure to request a hearing. If the provider notified fails to request a hearing within the time period specified in the notice an order may be entered by the Department assessing a civil penalty.

Stat. Auth.: ORS 410.070 & 409.050

Stats. Implemented: ORS 443.705 - 443.825

Hist.: SPD 3-2005, f. 1-10-05, cert. ef 2-1-05; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10

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## Department of Justice Chapter 137

**Rule Caption:** Child support enforcement, medical support, house-keeping and legislative changes to child support processes.

**Adm. Order No.:** DOJ 1-2010

**Filed with Sec. of State:** 1-4-2010

**Certified to be Effective:** 1-4-10

**Notice Publication Date:** 11-1-2009

**Rules Adopted:** 137-055-3435, 137-055-4210

**Rules Amended:** 137-055-1020, 137-055-1090, 137-055-1120, 137-055-1140, 137-055-1145, 137-055-2360, 137-055-2380, 137-055-3020, 137-055-3080, 137-055-3220, 137-055-3260, 137-055-3300, 137-055-3400, 137-055-3420, 137-055-3660, 137-055-4420, 137-055-4450, 137-055-4455, 137-055-4620, 137-055-4640, 137-055-5110, 137-055-5220, 137-055-6022, 137-055-6024, 137-055-6260

**Subject:** OAR 137-055-1020 is amended to add the Oregon Health Authority (OHA) in definitions, as well as "medicaid." Additionally, minor language clean-up is proposed.

OAR 137-055-1090 is amended to add a reference to OHA, and minor language clean-ups are proposed.

OAR 137-055-1120 in addition to minor language clean-ups, clarification is added to provided that if other state agencies make a determination that proceeding with support services on a case is not in the best interest of a child, that determination is sufficient for the

administrator (or an authorized representative) to make the same determination.

OAR 137-055-1140 is amended to remove a reference to "address of record," a term which was eliminated when the rule (OAR 137-055-1180) was repealed.

OAR 137-055-1145 is amended to remove a reference to "address of record," a term which was eliminated when the rule (OAR 137-055-1180) was repealed.

OAR 137-055-2360 is amended to add a new action (changing a money award when custody flip flops) to the list of actions which may be taken without a relief from stay in a chapter 7 or 11 bankruptcy.

OAR 137-055-2380 is amended to add a new action (changing a money award when custody flip flops) to the list of actions which may be taken without a relief from stay in a chapter 12 or 13 bankruptcy.

OAR 137-055-3020 is amended to add a reference to OHA.

OAR 137-055-3080 is amended to remove a reference to "address of record," a term which was eliminated when the rule (OAR 137-055-1180) was repealed.

OAR 137-055-3220 is amended to correct a citation and reference to the child support guidelines.

OAR 137-055-3260 is amended to remove a reference to "address of record," a term which was eliminated when the rule (OAR 137-055-1180) was repealed. Additionally, minor language clean-up is proposed, and a citation is updated.

OAR 137-055-3300 is amended to correct a reference to the child support guidelines and to simplify the title of the rule.

OAR 137-055-3400 is amended to correct citations to the case assignment rule.

OAR 137-055-3420 is amended to correct a reference to the child support guidelines.

OAR 137-055-3435 is adopted to set out how the Child Support Program will handle changes in physical custody under new provisions in Oregon law.

OAR 137-055-3660 is amended to make minor language clarifications, by changing "monetary" support to "non-medical" support, and "health care coverage" to "medical" support.

OAR 137-055-4210 is adopted to set out how the Child Support Program will handle requests from parties to pursue withholders who fail to properly withhold.

OAR 137-055-4420 is amended to reflect legislation that allows suspension on arrears only cases, and to streamline the suspension process.

OAR 137-055-4450 is amended to include a citation to statute.

OAR 137-055-4455 is amended to update the 25-year expiration to 35 years, as the result of legislative changes, and to remove superfluous language.

OAR 137-055-4620 is amended to correct a reference to the child support guidelines and include a reference to contingent medical support.

OAR 137-055-4640 is amended to update citations and correct references to the child support guidelines.

OAR 137-055-5110 is amended to remove a reference to "address of record," a term which was eliminated when the rule (OAR 137-055-1180) was repealed.

OAR 137-055-5220 is amended to remove a reference to "address of record," a term which was eliminated when the rule (OAR 137-055-1180) was repealed.

OAR 137-055-6022 is amended to clarify the priority of disbursement of arrears payments to state accounts.

OAR 137-055-6024 is amended to clarify the priority of disbursement of arrears payment to state accounts when there are multiple cases with the same obligor.

OAR 137-055-6260 is amended to allow the obligor to consent verbally, rather than in writing, to apply a credit balance to future child support, genetic test fees or arrears.

**Rules Coordinator:** Vicki Tungate—(503) 986-6086

# ADMINISTRATIVE RULES

## 137-055-1020

### Child Support Program Definitions

The following definitions apply to OAR 137-055-1040 through 137-055-7190:

(1) Unless otherwise stated, “administrator” means either the Administrator of the Division of Child Support of the Department of Justice or a district attorney, or the administrator’s or a district attorney’s authorized representative.

(2) “Assignee” means the Department of Human Services (DHS), the Oregon Health Authority (OHA), the Division of Child Support, Oregon Youth Authority (OYA) or equivalent agencies in any other state or Tribe to which support rights for a person are assigned.

(3) “Assignment” or “Assigned” means all or a portion of support payments owed to a person will be kept by the state if the person or a beneficiary of the person is receiving Temporary Assistance for Needy Families (TANF) cash assistance, foster care, or OYA services. Support payments will be distributed as provided in OAR 137-055-6022. Additionally, if a person receives Title XIX medical assistance, medical support rights are assigned.

(4) “Beneficiary” means any child, spouse or former spouse for whom an obligor has been ordered (or has agreed) to pay support, under a court or administrative order, or a voluntary agreement.

(5) “Child Support Award” means a money award or administrative order that requires the payment of child support.

(6) “Child Support Program” or “CSP” is the program authorized under title IV-D of the Social Security Act to provide child support enforcement services required by federal and state law. The CSP director in Oregon is the Administrator of the Division of Child Support. The CSP includes the Division of Child Support and those district attorneys that contract to provide services described in ORS 25.080.

(7) “Class Order” means a support order for multiple children that does not specify an amount of support per child and requires the payment of the entire amount until the last child attains majority or until the order is prospectively modified.

(8) “Court Order” means any judgment or order of the court requiring an obligor to provide child or spousal and/or health care coverage, for specified beneficiaries.

(9) “Court ordered Amount”, or “COA”, means the periodic payment amount, usually monthly, ordered by the administrator, an administrative law judge or by a court for support. The COA can be either the amount for each beneficiary on a support case, or the total amount for all beneficiaries in a single support case.

(10) “Department of Human Services”, or “DHS”, is the state’s health and human services agency. DHS is responsible for public assistance programs such as: TANF, Food Stamps, child-protective services, and foster care and adoption programs.

(11) “Disbursement” means dispensing or paying out collected support.

(12) “Distribution” means allocating or apportioning collected support.

(13) “District Attorney”, or “DA”, means the district attorney for an Oregon county responsible for providing services under ORS 25.080.

(14) “Division of Child Support”, or “DCS”, is the Division of Oregon’s Department of Justice that is responsible for providing services under ORS 25.080.

(15) “Guidelines” refers to the guidelines, the formula, and related provisions established by DCS, in OAR 137-050-0705 through 137-050-0765.

(16) “Income Withholding” means a judicial or administrative process under which an obligor’s employer, trustee, or other provider of income is ordered to withhold a specified percentage, or a specified amount, from each and every paycheck or benefit payment of an obligor, for the purpose of paying current and past due support. Income withholding is distinguished from garnishment as follows: income withholding will occur continuously under a single order and is not subject to claim of exemption; a garnishment occurs for only a limited duration under a single writ and is subject to certain property exemptions provided by law.

(17) “Judgment Lien” means the effect of a judgment on real property for the county in which the judgment is entered, or such other county where the lien is recorded, and includes any support arrearage lien attaching to real property.

(18) “Judgment Remedy” means the ability of a judgment creditor to enforce a judgment, including enforcement through a judgment lien.

(19) “Legal proceeding” means any action related to the support order that requires service of documents on the parties. For the purposes of OAR 137-055-1140 and 137-055-1160, “legal proceeding” means a proceeding initiated by the administrator.

(20) “Medicaid” refers to Title XIX of the Social Security Act (see the definition under “Title XIX”).

(21) “Money Award” means a judgment or portion of a judgment that requires the payment of money. A money award will always refer to a sum certain and will not require a payment in installments.

(22) “Oregon Health Authority” or “OHA” is the State of Oregon agency acting as the state Medicaid agency for administration of funds from Title XIX and XXI of the Social Security Act and to administer medical assistance under ORS Chapter 414.

(23) “Oregon Youth Authority”, or “OYA”, is the State of Oregon agency responsible for the supervision, management, and administration of state parole and probation services, community out-of-home placements, and youth correction facilities for youth offenders, and other functions related to state programs for youth corrections.

(24) “Party” means an obligor, obligee, a child attending school under ORS 107.108 and OAR 137-055-5110, and includes any person who has been joined to the proceeding.

(25) “Subsequent child” means a child whose paternity or support has not been established and who is born to the same parents of another child, or who has not been included in a support order for another child with the same parties.

(26) “Support” means monetary payments, health care coverage payments or premiums, cash medical payments or other benefits or payments that a person has been ordered by a court or by administrative process, or has voluntarily agreed, to provide for the benefit and maintenance of another person.

(27) “Support Arrearage Lien” means a lien that attaches to real property when an installment becomes due under the terms of a support award and is not paid.

(28) “Support Award” means a money award or administrative order that requires the payment of child or spousal support.

(29) “Support Order” means a judgment or order, whether temporary, final or subject to modification, which reflects an obligation to contribute to the support of a child, a spouse or a former spouse, and requires an obligor to provide monetary support, health care, arrears or reimbursement. A support order may include related costs and fees, interest, income withholding, attorney fees and other relief.

(30) “TANF” means “Temporary Assistance for Needy Families”, a public assistance program which provides case management and cash assistance to low income families with minor children. It is designed to promote personal responsibility and accountability for parents. The goal of the program is to reduce the number of families living in poverty through employment services and community resources. Title IV-A of the Social Security Act is the specific provision that gives grants to states and Tribes for aid and services to needy families with dependent children.

(31) “Tiered” order means an order which includes an amount of support to be paid if an adult child becomes a child attending school under ORS 107.108 and OAR 137-055-5110.

(32) “Title IV-A” refers to Title IV-A of the Social Security Act, which is the specific provision that gives grants to states and Tribes for aid and services to needy families with dependent children (see “TANF”). Applicants for assistance from IV-A programs are automatically referred to their state IV-D agency in order to identify and locate the non-custodial parent, establish paternity or a child support order, and obtain child support payments.

(33) “Title IV-D” refers to Title IV-D of the Social Security Act, which requires each state to create a program to locate noncustodial parents, establish paternity, establish and enforce child support obligations, and collect, distribute and disburse support payments. Recipients of IV-A (TANF), IV-E (foster care), XIX (Medicaid), and Oregon Youth Authority (OYA) assistance are referred to their state’s IV-D child support program. States must also accept applications from families who do not receive assistance, if requested, to assist in collection of child support. Title IV-D also established the federal Office of Child Support Enforcement.

(34) “Title IV-E” refers to Title IV-E of the Social Security Act which established a federal-state program known as Foster Care that provides financial support to a person, family, or institution that is raising a child or children that is not their own. The funding for IV-E foster care programs is primarily from federal sources.

(35) “Title XIX”, known as Medicaid, refers to Title XIX of the Social Security Act which mandates health care coverage by states for TANF recipients and certain other means-tested categories of persons. Within broad national guidelines which the federal government provides, each state: establishes its own eligibility standards; determines the type, amount, duration, and scope of services; sets the rate of payment for services; and administers its own program. In Oregon, the program is administered by OHA.

Stat. Auth.: ORS 18.005, 180.345

Stats. Implemented: ORS 25.080

Hist.: AFS 10-1990, f. 3-14-90, cert. ef. 4-1-90; AFS 14-1990, f. & cert. ef. 6-7-90; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0001; AFS 28-2001, f. 12-28-01, cert. ef. 1-1-02; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-1020; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-1020; DOJ 2-2004, f. 1-2-04 cert. ef. 1-5-04; DOJ 1-2006, f. & cert. ef. 1-3-06; DOJ 5-2006, f. 6-29-06, cert. ef. 7-3-06; DOJ 1-2007, f. & cert. ef. 1-2-07; DOJ 5-2007, f. & cert. ef. 7-2-07; DOJ 8-2007, f. 9-28-07, cert. ef. 10-1-07; DOJ 1-2010, f. & cert. ef. 1-4-10

## 137-055-1090

### Good Cause

(1) For the purposes of OAR chapter 137, division 055, “good cause” means the Child Support Program (CSP) is exempt from providing services as defined in ORS 25.080. Specifically excluded from this definition is good cause for not withholding as defined in ORS 25.396 and OAR 137-055-4060 and good cause found for not disbursing support to a child attending school under ORS 107.108 and OAR 137-055-5110.

(2) If an obligee believes that physical or emotional harm to the family may result if services under ORS 25.080 are provided, the obligee may

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request, either verbally or in writing, that the administrator discontinue all activity against the obligor. Upon such a request by an obligee, the administrator will:

(a) On an open TANF or Medicaid case, immediately suspend all activity on the case, notify DHS or OHA to add good cause coding, and send a safety packet to the obligee requesting a response be sent to DHS; or

(b) On any other case, immediately suspend all activity on the case, add good cause coding pending a final determination, and send a Client Safety Packet on Good Cause to the obligee requesting a response within 30 days.

(3) Good cause must be determined by:

(a) The Department of Human Services (DHS), pursuant to OAR 413-100-0830, 461-120-0350, 461-120-0360, 461-135-1200 or 461-135-1205, if TANF or Title IV-E benefits are being provided;

(b) The Oregon Health Authority (OHA) if Medicaid benefits are being provided;

(c) The Oregon Youth Authority (OYA), pursuant to OAR 416-100-0020 and Policy Statement II-E-1.5, if the child is in OYA's custody;

(d) The Director of the CSP when the provisions of OAR 137-055-3080 apply; or

(e) The administrator when the provisions of subsections (a) through (d) of this section do not apply.

(4) When the provisions of subsection (3)(e) apply and the obligee makes a written claim that the provision of services may result in emotional or physical harm to the child or obligee or completes and returns the good cause form, the administrator will:

(a) Make a finding and determination that it is in the best interests of the child not to provide services;

(b) Proceed with case closure pursuant to OAR 137-055-1120; and

(c) Except for arrears permanently assigned to the Oregon Youth Authority, satisfy any and all permanently assigned arrears as defined in OAR 137-055-6010.

(5) In determining whether providing services is in the best interest of the child under section (3)(d), the CSP Director will consider:

(a) The likelihood that provision of services will result in physical or emotional harm to the child or obligee, taking into consideration:

(A) Information received from the obligee; or

(B) Records or corroborative statements of past physical or emotional harm to the child or obligee, if any.

(b) The likelihood that failure to provide services will result in physical or emotional harm to the child or obligee;

(c) The degree of cooperation needed to complete the service;

(d) The availability and viability of other protections, such as a finding of risk and order for non-disclosure pursuant to OAR 137-055-1160; and

(e) The extent of involvement of the child in the services sought.

(6) A finding and determination by the CSP Director that good cause does not apply, may be appealed as provided in ORS 183.484.

(7) A finding and determination of good cause applies to any case which involves the same obligee and child, or any case in which a child is no longer in the physical custody of the obligee, but there is a support order for the child in favor of the obligee.

(8) When an application for services is received from an obligee and TANF, Title IV-E or Medicaid benefits are not being provided, the child is not in OYA's custody, and there has been a previous finding and determination of good cause, the administrator will:

(a) Notify the obligee of the previous finding and determination of good cause and provide a Client Safety Packet;

(b) Allow the obligee 30 days to retract the application for services or return appropriate documents from the Client Safety Packet; and

(c) If no objection to proceeding or good cause form is received from the obligee, document CSEAS, remove the good cause designation and, if the case has been closed, reopen the case.

(9) When an application for services is received from a physical custodian of a child, the physical custodian is not the obligee who originally claimed good cause and TANF, Title IV-E or Medicaid benefits are not being provided, the child is not in OYA's custody and there is no previous support award, the administrator will open a new case without good cause coding with the physical custodian as the obligee.

(10)(a) When an application for services is received from a physical custodian of a child, the physical custodian is not the obligee who originally claimed good cause and TANF, Title IV-E or Medicaid benefits are not being provided, the child is not in OYA's custody, and the case in which there has been a finding and determination of good cause has a support award in favor of the obligee who originally claimed good cause, the administrator will:

(A) Notify the obligee who originally claimed good cause that an application has been received and provide a Client Safety Packet; and

(B) Advise the obligee who originally claimed good cause that the previous good cause finding and determination will be treated as a claim of risk as provided in OAR 137-055-1160; and

(C) Allow the obligee 30 days to provide a contact address as provided in OAR 137-055-1160.

(b) If an objection or good cause form is received from the obligee who originally claimed good cause, or if the location of the obligee who original-

ly claimed good cause is unknown, the administrator will forward the objection, form or case to the Director of the CSP for a determination of whether to proceed;

(c) If no objection or good cause form is received from the obligee who originally claimed good cause, the administrator will document CSEAS, make a finding of risk and order for non-disclosure pursuant to OAR 137-055-1160 for that obligee, remove the good cause designation, and, if the case has been closed, reopen the case.

(11)(a) If a request for services under ORS Chapter 110 is received from another state and TANF, Title IV-E or Medicaid benefits are not being provided by the State of Oregon, the child is not in OYA's custody and there has been a finding and determination of good cause, the administrator will:

(A) Notify the referring state of the finding and determination of good cause and request that the state consult with the obligee to determine whether good cause should still apply; and

(B) If the location of the obligee is known, notify the obligee that the referral has been received, provide a Client Safety Packet and ask the obligee to contact both the referring state and the administrator if there is an objection to proceeding; and

(C) Advise the obligee who originally claimed good cause that the previous good cause finding and determination will be treated as a claim of risk as provided in OAR 137-055-1160; and

(D) Allow the obligee 30 days to provide a contact address as provided in OAR 137-055-1160.

(b) If an objection or good cause form is received from the obligee, the administrator will forward the objection, form or case to the Director of the CSP for a determination of whether to proceed.

(c) If there is no objection or good cause form received from the obligee, or if the obligee's address is unknown, and the referring state advises that the finding and determination of good cause no longer applies, the administrator will document CSEAS, remove the good cause designation and, if the case has been closed, reopen the case.

(12) If a referral for services under ORS 25.080 is received because TANF, Title IV-E or Medicaid benefits are being provided or the child is in OYA's custody, and there has been a previous finding and determination of good cause, the administrator will notify the appropriate state agency of the previous finding and determination of good cause and:

(a) If TANF, Title IV-E or Medicaid benefits are being provided, DHS will, in consultation with the office which made the good cause finding and determination and as provided in DHS policy SS-PT-05-005, decide whether good cause still applies pursuant to OAR 413-100-0830, 461-135-1200, 461-135-1205, 461-120-0350 or 461-120-0360; or

(b) If the child is in OYA's custody, OYA will, in consultation with the office which made the good cause finding and determination and as provided in OYA Policy II-E-1.5, determine if the circumstances that created the good cause still exist and, if they do not, request that the agency which determined good cause remove the coding.

(13) When the provisions of section (12) apply, the administrator will not provide services unless and until good cause coding is removed by the agency who made the good cause finding and determination.

(14) Notwithstanding any other provision of this rule, when a case has not previously had a good cause finding and determination and TANF, Title IV-E or Medicaid benefits are being provided or the child is in OYA's custody, and DHS, OHA or OYA makes a current good cause finding and determination on a related case, the administrator will not provide services on the case or related cases unless and until good cause coding is removed by DHS, OHA or OYA.

(15) In any case in which a good cause finding and determination has been made and subsequently removed, past support under ORS 416.422 and OAR 137-055-3220 may not be sought for any periods prior to the determination that good cause no longer applies.

(16) In any case in which a good cause finding and determination has been made, and a child attending school as defined in ORS 107.108 and OAR 137-055-5110 is a party to the case, the child attending school may file an application for services pursuant to OAR 137-055-1060, 137-055-1070 and 137-055-5110.

Stat. Auth.: ORS 180.345

Stat. Implemented: ORS 25.080

Hist.: DOJ 4-2005, f. & cert. ef. 4-1-05; DOJ 1-2006, f. & cert. ef. 1-3-06; DOJ 6-2006, f. & cert. ef. 10-2-06; DOJ 12-2009, f. & cert. ef. 10-1-09; DOJ 1-2010, f. & cert. ef. 1-4-10

## 137-055-1120

### Case Closure

(1) The administrator may close a child support case, whenever the case meets at least one of the following criteria for case closure:

(a) There is no longer a current support order, and arrears are under \$500 and there are no reasonable expectations for collection or the arrears are uncollectible under state law. For the purposes of this subsection, "no longer a current support order" means the support order is not currently accruing or there never was a support order. This subsection specifically includes but is not limited to cases in which:

(A) Action to establish support has not been initiated and the child is at least 18 years old;

(B) The child has been adopted;

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(C) The child is deceased; or  
(D) Parental rights for the child have been terminated;  
(b) The non-custodial parent or putative father is deceased and no further action, including a levy against the estate, can be taken;  
(c) Paternity cannot be established because:  
(A) A parentage test, or a court or administrative process, has excluded the putative father and no other putative father can be identified;  
(B) The identity of the biological father is unknown and cannot be identified after diligent efforts, including at least one interview by the administrator with the recipient of services;  
(C) Action to establish paternity has not been initiated and the child is at least 18 years old; or  
(D) In a case involving incest or forcible rape, or where legal proceedings for adoption are pending, the administrator has determined that it would not be in the best interests of the child to establish paternity. For the purposes of this paragraph, a determination by the Department of Human Services (DHS) or the Oregon Youth Authority (OYA) that paternity establishment is not in the best interests of the child is sufficient for the administrator to make the same finding.  
(d) The location of the non-custodial parent is unknown, and the state parent locator service has made regular attempts using multiple sources, all of which have been unsuccessful, to locate the non-custodial parent:  
(A) Over a three-year period when there is sufficient information to initiate an automated locate effort; or  
(B) Over a one-year period when there is not sufficient information to initiate an automated locate effort;  
(e) When paternity is not at issue and the non-custodial parent cannot pay support for the duration of the child's minority because the parent is both:  
(A) Institutionalized in a psychiatric facility, is incarcerated with no chance for parole, or has a medically verified total and permanent disability with no evidence of support potential; and  
(B) Without available income or assets which could be levied or attached for support;  
(f) The non-custodial parent:  
(A) Is a citizen of, and lives in, a foreign country;  
(B) Does not work for the Federal government or for a company or state with headquarters in or offices in the United States;  
(C) Has no reachable income or assets in the United States; and  
(D) Oregon has been unable to establish reciprocity with the country;  
(g) The state parent locator service has provided location-only services based upon a request under 45 CFR 302.35(c)(3);  
(h) The custodial parent or recipient of services requests closure, and:  
(A) There is no assignment to the state of medical support; and  
(B) There is no assignment of arrears that have accrued on the case;  
(i) Another state requests closure and:  
(A) The state requesting closure is currently providing child support services; or  
(B) Oregon is providing child support services at the request of that state.  
(j) The custodial parent or recipient of services is deceased and no trustee or personal representative has requested services to collect arrears;  
(k) DHS, OYA, the Oregon Health Authority or the administrator pursuant to OAR 137-055-1090, has made a finding of good cause or other exceptions to cooperation and has determined that support enforcement may not proceed without risk or harm to the child or caretaker;  
(l) In a non-TANF case (excluding a Medicaid case), the administrator is unable to contact the custodial parent, or recipient of services, within 60 calendar days, despite an attempt of at least one letter sent by first class mail to the last known address;  
(m) In a non-TANF case, the administrator documents the circumstances of non-cooperation by the custodial parent, or recipient of services, and an action by the custodial parent, or applicant for services, is essential for the next step in providing enforcement services; or  
(n) The administrator documents failure by the initiating state to take an action which is essential for the next step in providing services.  
(2)(a)(A) Except as otherwise provided in this section, if the administrator elects to close a case pursuant to subsection (1)(a), (1)(e), (1)(f), (1)(j) or (1)(l) through (1)(n) of this rule, the administrator will notify all parties to the case in writing at least 60 calendar days prior to closure of the case of the intent to close the case.  
(B) If the administrator elects to close a case pursuant to subsection (1)(b) through (1)(d) of this rule, the administrator:  
(i) Will notify the obligee and any child attending school in writing at least 60 days prior to closure of the case of the intent to close the case;  
(ii) Is not required to notify the obligor of the intent to close the case; and  
(iii) If the provisions of paragraph (1)(c)(D) apply, is not required to notify any other party.  
(C) If the administrator elects to close a case pursuant to subsection (1)(g) or (1)(i) of this rule, the administrator is not required to notify any party of the intent to close the case. However, if the case is closed pursuant to paragraph (1)(i)(A), the administrator will send a courtesy notice to the parties advising:

(i) The reason for closure is that another state is providing services; and  
(ii) The state that is providing services, along with a contact address for that state, if known.  
(D) If the administrator elects to close a case pursuant to subsection (1)(h) of this rule, the administrator will notify all parties to the case in writing at least 60 calendar days prior to closure of the case of the intent to close the case, except:  
(i) When the case is a Child Welfare or Oregon Youth Authority case in which the child has left state care, an order under OAR 137-055-3290 is not appropriate, and a notice and finding has not been initiated, the case will be closed immediately; and  
(ii) No closure notice will be sent to the parents unless a parent had contact with the Child Support Program, Child Welfare or the Oregon Youth Authority regarding the child support case.  
(E) If the administrator elects to close a case pursuant to subsection (1)(k) of this rule, the administrator will:  
(i) Notify the obligee and any child attending school in writing at least 60 days prior to closure of the case of the intent to close the case; and  
(ii) Not notify the obligor of the intent to close the case.  
(b) The 60-day time frame in paragraph (2)(a)(A) is independent of the 60-day calendar time frame in subsection (1)(l).  
(c) The administrator will document the notice of case closure by entering a narrative line, or lines, on the child support computer system and will include the date of the notice.  
(d) The content of the notice in paragraph (2)(a)(A) must include, but is not limited to, the specific reason for closure, actions a party can take to prevent closure, and a statement that an individual may reapply for services at any time.  
(3) Notwithstanding paragraph (2)(a)(A) of this rule, a case may be closed immediately if:  
(a) All parties agree to waive the notice of intent to close and the 60-day objection period when the notice of intent to close has not yet been sent; or  
(b) All parties agree to waive the remainder of the 60-day objection period when the notice of intent to close has already been sent.  
(4) The administrator will keep a case open if, in response to the notice sent pursuant to paragraph (2)(a)(A) of this rule:  
(a) The applicant or recipient of services:  
(A) Supplies information which could lead to the establishment of paternity or of a support order, or enforcement of an order; or  
(B) Reestablishes contact with the administrator, in cases where the administrator proposed to close the case under subsection (1)(l) of this rule; or  
(b) The party who is not the applicant or recipient of services completes an application for services.  
(5) A party may request at a later date that the case be reopened if there is a change in circumstances that could lead to the establishment of paternity or a support order, or enforcement of an order, by completing a new application for services.  
(6) The administrator will document the justification for case closure by entering a narrative line or lines on the child support computer system in sufficient detail to communicate the basis for the case closure.  
Stat. Auth.: ORS 25.080 & 180.345  
Stats. Implemented: ORS 25.020 & 25.080  
Hist.: AFS 35-1986(Temp), f. & ef. 4-14-86; AFS 66-1986, f. & ef. 9-19-86; AFS 27-1988, f. & cert. ef. 4-5-88; AFS 66-1989, f. 11-28-89, cert. ef. 12-1-89, Renumbered from 461-035-0055; AFS 15-1993, f. 8-13-93, cert. ef. 8-15-93; AFS 13-1999, f. 10-29-99, cert. ef. 11-1-99; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0050; AFS 2-2001, f. 1-31-01, cert. ef. 2-1-01; AFS 28-2001, f. 12-28-01, cert. ef. 1-1-02; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-1120; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-1120; DOJ 4-2005, f. & cert. ef. 4-1-05; DOJ 8-2005(Temp), f. & cert. ef. 9-1-05 thru 2-17-06; DOJ 1-2006, f. & cert. ef. 1-3-06; DOJ 6-2006, f. & cert. ef. 10-2-06; DOJ 1-2007, f. & cert. ef. 1-2-07; DOJ 1-2010, f. & cert. ef. 1-4-10

**137-055-1140**  
**Confidentiality of Records in the Child Support Program**  
(1)(a) As used in this rule, "employee" means a person employed by the Department of Justice (DOJ) or a district attorney office that provides Child Support Program (CSP) services;  
(b) "Party" has the meaning given in OAR 137-055-1020, or a party's attorney.  
(2) For purposes of this rule, and subject to the limitations set forth in section (3) of this rule, the contents of a case record include, but are not limited to:  
(a) The names of the obligor, beneficiary and obligee or other payee;  
(b) The addresses of the obligor, beneficiary and obligee or other payee;  
(c) The contact address and address of service of the obligee, beneficiary or obligor;  
(d) The name and address of the obligor's employer;  
(e) The social security numbers of the obligor, the obligee and beneficiaries;  
(f) The record of all legal and collection actions taken on the case;  
(g) The record of all accrual and billings, payments, distribution and disbursement of payments;  
(h) The narrative record; and

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(i) The contents of any paper file maintained for purposes of establishment and/or enforcement of a child support order or for accounting purposes.

(3) Any data listed in section (2) of this rule or any other data that resides on the Child Support Enforcement Automated System (CSEAS) that is extracted from computer interfaces with other agencies' computer systems is not considered to be child support information until or unless the data is used for child support purposes. Until such data is used for child support purposes it is not subject to any exceptions to confidentiality and it may not be released to any other person or agency in any circumstance, except as provided in ORS 25.260(5) and as may be provided in other agency rule.

(4) Child support case related records, files, papers and communications are confidential and may not be disclosed or used for purposes other than those directly connected to the administration of the CSP except:

(a) Information may be shared as provided in ORS 25.260(5), OAR 137-055-1320 and 137-055-1360 and as may be provided in other agency rule;

(b) Information may be shared for purposes of any investigation, prosecution or criminal or civil proceeding conducted in connection with the administration of:

(A) Title IV-D of the Social Security Act, child support programs in Oregon and other states;

(B) Title IV-A of the Social Security Act, Temporary Assistance to Needy Families; or

(C) Title XIX of the Social Security Act, Medicaid programs;

(c) Information may be shared as required by state or federal statute or rule;

(d)(A) Elected federal and state legislators and the Governor are considered to be within the chain of oversight of the CSP. Information about a child support case may be shared with these elected officials and their staff in response to issues brought by constituents who are parties to the case;

(B) County commissioners exercise a constituent representative function in county government for county administered programs. District attorney offices that operate child support programs may respond to constituent issues brought by county commissioners of the same county if the constituent is a party in a case administered by that office. District attorneys are DOJ sub-recipients. CSP Administration may also respond to constituent issues brought by county commissioners on district attorney administered child support cases where the constituent is a party;

(C) Information disclosed under paragraphs (A) and (B) of this subsection is subject to the restrictions in subsections (6)(a) and (b) of this rule;

(e) When a party requires the use of an interpreter in communicating with the administrator, information given to such an interpreter is not a violation of any provision of this rule; and

(f) A person who is the executor of the estate or personal representative of a deceased party is entitled to receive any information that the deceased party would have been entitled to receive.

(5)(a) The CSP may release information to a private industry council as provided in 42 USC 654a(f)(5).

(b) The information released under subsection (a) of this section may be provided to a private industry council only for the purpose of identifying and contacting noncustodial parents regarding participation of the noncustodial parents in welfare-to-work grants under 42 USC 603(a)(5).

(c) For the purposes of this section, "private industry council" means, with respect to a service delivery area, the private industry council or local workforce investment board established for the service delivery area pursuant to Title I of the Workforce Investment Act (29 USC 2801, et seq.). "Private industry council" includes workforce centers and one-stop career centers.

(6)(a) Information from a case record may be disclosed to a party in that case outside a legal proceeding, except for the following personal information about the other party:

(A) The residence or mailing address of the other party if that other party is not the state;

(B) The social security number of the other party;

(C) The name, address and telephone number of the other party's employers;

(D) The telephone number of the other party;

(E) Financial institution account information of the other party;

(F) The driver's license number of the other party; and

(G) Any other information which may identify the location of the minor child or other party, such as day care provider's name and address.

(b) Except for personal information described in subsection (a) of this section, information from a case record may be provided to a party via the CSP web page if appropriate personal identifiers, such as social security number, case number or date of birth are required to be provided in order to access such information.

(7) Notwithstanding the provisions of subsections (6)(a) and (b) of this rule, a party's personal information may be released to a state agency when the state agency is the other party or obligee and the state agency complies with the provisions of OAR 137-055-1145(3) and (4).

(8) Notwithstanding the provisions of subsection (6)(a), an employee may disclose personal information described in paragraphs (6)(a)(A) through (6)(a)(G) to a party, if disclosure of the information is otherwise required by rule or statute.

(9) Any information from the case record, including any information derived from another agency, that was used for any calculations or determinations relevant to the legal action may be disclosed to a party. Where there is a finding of risk and order for nondisclosure of information pursuant to OAR 137-055-1160, all nondisclosable information must be redacted before documents are released.

(10) Requestors may be required to pay for the actual costs of staff time and materials to produce copies of case records before documents are released.

(11)(a) Information from case records may be disclosed to persons not a party to the child support case who are making contact with the CSP on behalf of a party, if the following conditions are met:

(A) The person who is not a party to the case provides the social security number of the party for whom they are making the inquiry or the child support case number;

(B) The person who is not a party to the case making the contact on behalf of the party is the current spouse or domestic partner of the party and residing with the party or a parent or legal guardian of the party; and

(C) The CSP determines that the person is making case inquiries on behalf of the party and disclosure of such information would normally be made to the party in reply to such an inquiry.

(b) Disclosure of information is limited to the specific inquiries made on behalf of the party and is subject to the restrictions in subsections (6)(a) and (b) of this rule.

(12) Except as provided in subsections (11)(a) and (b) of this rule, information from a case record may not be disclosed to a person who is not a party to the case unless:

(a) The party has granted written consent to release the information to the person; or

(b) The person has power of attorney for the party, the duration and scope of which authorizes release of information from a case record at the time that the person requests such information. The power of attorney remains in effect until a written request to withdraw the power of attorney is submitted by the party or by the person, unless otherwise noted on the power of attorney.

(13) A child support case account balance is derived from the child support judgment, which is public information, and from the record of payments, which is not. Therefore, the case balance is not public information, is confidential and may not be released to persons not a party except as otherwise provided in this rule.

(14) Information obtained from the Internal Revenue Service and/or the Oregon Department of Revenue is subject to confidentiality rules imposed by those agencies even if those rules are more restrictive than the standards set in this rule, and may not be released for purposes other than those specified by those agencies.

(15) Criminal record information obtained from the Law Enforcement Data System or any other law enforcement source may be used for child support purposes only and may not be disclosed to parties or any other person or agency outside of the CSP. Information about the prosecution of child support related crimes initiated by the administrator may be released to parties in the child support case.

(16) Employees with access to computer records or records of any other nature available to them as employees may not access such records that pertain to their own child support case or the child support case of any relative or other person with whom the employee has a personal friendship or business association. No employee may perform casework on their own child support case or the case of any relative or other person with whom the employee has a personal friendship or business association.

(17) When an employee receives information that gives reasonable cause to believe that a child has suffered abuse as defined in ORS 419B.005(1)(a) the employee must make a report to the Department of Human Services as the agency that provides child welfare services and, if appropriate, to a law enforcement agency if abuse is discovered while providing program services.

(18) Employees who are subject to the Disciplinary Rules of the Oregon Code of Professional Responsibility must comply with those rules regarding mandatory reporting of child abuse. To the extent that those rules mandate a stricter standard than required by this rule, the Disciplinary Rules also apply.

(19) If an employee discloses or uses the contents of any child support records, files, papers or communications in violation of this rule, the employee is subject to progressive discipline, up to and including dismissal from employment.

(20) To ensure knowledge of the requirements of this rule, employees with access to computer records, or records of any other nature available to them as employees, are required annually to:

(a) Review this rule and the CSP Director's automated tutorial on confidentiality;

(b) Complete with 100 percent success the CSP Director's automated examination on confidentiality; and

(c) Sign a certificate acknowledging confidentiality requirements. The certificate must be in the form prescribed by the CSP Director.

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(21)(a) For DOJ employees, each signed certificate must be forwarded to DOJ Human Resources, with a copy kept in the employee's local office drop file;

(b) For district attorney employees, each signed certificate must be kept in accordance with county personnel practices.

(22) Notwithstanding any other provision of this rule, an employee may release a party's name and address to a local law enforcement agency when necessary to prevent a criminal act that is likely to result in death or substantial bodily harm.

Stat. Auth.: ORS 25.260, 180.345  
Stats. Implemented: ORS 25.260, 127.005, 411.320  
Hist.: AFS 23-1997, f. 12-29-97, cert. ef. 1-1-98; AFS 19-1998, f. 10-5-98, cert. ef. 10-7-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0291; SSP 4-2003, f. 2-25-03, cert. ef. 3-1-03; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-1160; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-1160; DOJ 2-2004, f. 1-2-04 cert. ef. 1-5-04; DOJ 12-2004, f. & cert. ef. 10-1-04; DOJ 8-2005(Temp), f. & cert. ef. 9-1-05 thru 2-17-06; DOJ 1-2006, f. & cert. ef. 10-1-06; DOJ 5-2006, f. 6-29-06, cert. ef. 7-3-06; DOJ 8-2007, f. 9-28-07, cert. ef. 10-1-07; DOJ 1-2010, f. & cert. ef. 1-4-10

## 137-055-1145

### Access to Child Support Records

(1) When information may be shared pursuant to ORS 25.260, this rule clarifies the type of information which may be accessed through automation or contact and who is authorized to access the information.

(2)(a) Information which may be accessed from the Child Support Enforcement Automated System (CSEAS) records by an agency administering programs under Title IV-A of the Social Security Act may include:

(A) Obligor name, social security number, date of birth, address and phone number;

(B) Obligee name, social security number, date of birth and address;

(C) Title IV-A case number;

(D) Whether the case carries identifiers indicating:

(i) There is a finding or determination of good cause under OAR 137-055-1090, 413-100-0830, 461-120-0350, 461-120-0360, 461-135-1200 or 461-135-1205;

(ii) There is an order for nondisclosure of information pursuant to OAR 137-055-1160; or

(iii) There is a contact address;

(E) Obligor employer name, address, federal identification number and wages;

(F) Obligor unemployment compensation benefits;

(G) Obligor's gross quarterly compensation;

(H) The name(s) of any state(s) with a child support case or order;

(I) Child's name, date of birth and social security number;

(J) The date(s) and amount(s) of any support payment distributed and to whom or where it was distributed; and

(K) Any information which is not considered confidential, including but not limited to the child support case number, caseload assignment and Child Support Program (CSP) employee roster.

(b) Information which may be accessed from CSEAS records by an agency administering programs under Title XIX of the Social Security Act may include:

(A) Obligor name, social security number, date of birth, address and phone number;

(B) Obligee name, social security number, date of birth and address;

(C) Title IV-A case number;

(D) Whether the case carries identifiers indicating:

(i) There is a finding or determination of good cause under OAR 137-055-1090, 413-100-0830, 461-120-0350, 461-120-0360, 461-135-1200 or 461-135-1205;

(ii) There is an order for nondisclosure of information pursuant to OAR 137-055-1160; or

(iii) There is a contact address;

(E) Obligor's employer name, address, federal identification number and wages;

(F) Obligor's unemployment compensation benefits;

(G) Obligor's gross quarterly compensation;

(H) The name(s) of any state(s) with a child support case or order;

(I) Child's name, date of birth and social security number;

(J) Whether health care coverage is ordered;

(K) Whether health care coverage is provided;

(L) Insurer name, address and health insurance policy number;

(M) The date(s) and amount(s) of any support payment made to the obligee; and

(N) Any information which is not considered confidential, including but not limited to the child support case number, caseload assignment and CSP employee roster.

(c) Information which may be accessed from CSEAS records by an agency administering programs under Title I, X, XIV or XVI of the Social Security Act, an agency administering the Food Stamp program, the State Employment Services Agency (including agencies which administer the unemployment compensation program), and agencies administering workers' compensation programs is limited to obligor name, social security number and address and employer name, address and federal identification number.

(A) Notwithstanding the provisions of subsection (2)(c), if an agency identified in that subsection receives a written consent to release information as provided in OAR 137-055-1140(12), the agency may have access to information that may be released to a party.

(B) In addition to the information listed in subsection (2)(c), the State Employment Services Agency (including agencies which administer the unemployment compensation program) may have access to the history of the obligor's employers' names, addresses and federal identification numbers.

(d) Information which may be accessed from CSEAS records by a private industry council, as defined in OAR 137-055-1140, is limited to obligor name, address, phone number and Title IV-A case number.

(3) An agency administering a program identified in section (2) of this rule may obtain access for its employees to CSEAS records by entering into an interagency agreement with the Child Support Program (CSP). Any agreement must include provisions under which the agency seeking access agrees to put into place a process that ensures:

(a) Each employee given access has read and understands the CSP rules and Division of Child Support conflict of interest policy;

(b) Each employee given access agrees to abide by the terms of the CSP rules and policy;

(c) Each employee given access agrees to access and use information only for the purposes for which access is allowed as described in this rule;

(d) Employees can identify and be screened from conflict of interest cases;

(e) The agency, on a regular basis, audits access by employees, including verification of the purpose for which information is accessed and provides the CSP with the results of the audit;

(f) Violations are reported to the CSP, including the steps taken by the agency to prevent future violation;

(g) Access is revoked as provided in section (4) of this rule; and

(h) Access rights are updated, including notifying the CSP when an employee terminates or is transferred.

(4) If an employee of an agency described in section (2) of this rule discloses or inappropriately uses the information covered by this rule:

(a) The CSP Director, after consulting with the employee's agency, will determine whether the disclosure or usage occurred or likely occurred; and

(b) The employee's access to information from CSEAS records will be revoked:

(A) Temporarily, if a determination by the CSP Director is pending; or  
(B) Permanently, if a determination by the CSP Director is made that disclosure or usage occurred or likely occurred.

(c) The provisions of this section are in addition to any other penalty for disclosure or usage of confidential information imposed by the employee's agency or by any other provision of law.

(5) CSP staff may disclose case information to an employee of an agency described in subsection (2)(a) when:

(a) That agency's employee requests specific information from a branch office;

(b) The employee's agency has entered into an agreement as provided in section (3) of this rule; and

(c) The source of the information is not the Internal Revenue Service.

(6) CSP staff may disclose information to an employee of an agency described in subsection (2)(b) when:

(a) That agency's employee requests specific information from a branch office;

(b) The employee's agency has entered into an agreement as provided in section (3) of this rule; and

(c) The source of the information is not:

(A) The Internal Revenue Service;

(B) The National Directory of New Hires; or

(C) The Federal Case Registry.

(7) Information for which disclosure is allowed under section (5) or (6) of this rule may be accessed from CSEAS records if feasible.

Stat. Auth.: ORS 25.260, 180.345 & 180.380

Stats. Implemented: ORS 25.260

Hist.: DOJ 12-2004, f. & cert. ef. 10-1-04; DOJ 1-2006, f. & cert. ef. 1-3-06; DOJ 5-2006, f. 6-29-06, cert. ef. 7-3-06; DOJ 1-2010, f. & cert. ef. 1-4-10

## 137-055-2360

### Obligor Chapter 7 and Chapter 11 Bankruptcy Situations

This rule details the Child Support Program's responsibilities in situations of obligor bankruptcy and applies to Chapter 7 and Chapter 11 bankruptcies filed on or after October 17, 2005. For bankruptcies filed prior to October 17, 2005, the Bankruptcy Code in effect at the time the bankruptcy was filed applies, as does the prior version of OAR 137-055-2360 in effect at the time the bankruptcy was filed.

(1) Upon receiving notification of bankruptcy, the administrator will:

(a) Stop any legal action that is pending, except:

(A) Initiating or proceeding with the establishment of paternity;

(B) Initiating or proceeding with the establishment or modification of a child support order; or

(C) Changing the support award based on a change in the child's physical custody as authorized by ORS Ch 416 (2009 HB 2277).



# ADMINISTRATIVE RULES

(b) Not file any document in circuit court in a county in which the debtor owns real property which creates a lien by its terms or by operation of law without first obtaining relief from the automatic stay.

(c) Leave any existing income, unemployment, or workers' compensation withholding orders in place, if the order is not in violation of the stay. In a Chapter 7 bankruptcy, withholding may continue against post-petition earnings for both current support and for both pre-petition and post-petition arrears. In a Chapter 11 bankruptcy, collections may continue for current support and post-petition arrears, unless otherwise provided in the debtor's plan. If no withholding order is in place, the administrator will obtain a withholding order, as appropriate, upon receipt of obligor's employment information.

(d) Determine if there are any other enforcement actions in process which may need to be stopped due to the stay or which may involve property of the bankruptcy estate, such as a writ of garnishment or contempt of court action; and

(e) Terminate any action that involves property of the bankruptcy estate and is not excepted from the automatic stay and send any such property of the estate that has not been distributed to the bankruptcy trustee.

(2) The administrator will not file a Proof of Claim if no assets are involved in a Chapter 7 bankruptcy.

(3) If there are assets available for distribution to creditors in a Chapter 7 bankruptcy, the administrator will file a Proof of Claim, if applicable, even if the time period for filing a Proof of Claim has passed.

(4) In a Chapter 11 bankruptcy, the administrator will file a Proof of Claim for current support and arrears owed at the time the petition was filed, if any.

(5) The administrator will respond to any objections filed to the Proof of Claim.

(6) If the automatic stay prevents a support enforcement action that is otherwise appropriate under applicable bankruptcy and nonbankruptcy law, unless there is evidence that the bankruptcy will close or the Plan will be confirmed before the relief from stay can be granted, the administrator will petition the bankruptcy court for a Relief from Stay.

(7) If in a Chapter 11 bankruptcy, the debtor proposes a bankruptcy Plan that does not provide for the payment of current or past child support, the administrator may request the bankruptcy court reject the Plan.

(8) The administrator will continue to certify a case for federal and state tax refund intercept unless otherwise provided by the bankruptcy Plan. However, if it is determined that an intercepted tax refund is the property of the estate and the bankruptcy trustee requests the money, the administrator will forward the money to the bankruptcy trustee and notify the parties.

Stat. Auth.: ORS 180.345  
Stats. Implemented: ORS 25.080  
Hist.: AFS 2-1995, f. 1-10-95, cert. ef. 1-11-95; AFS 15-1995, f. 7-7-95, cert. ef. 7-10-95; AFS 13-1999, f. 10-29-99, cert. ef. 11-1-99; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0286; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-2360; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-2360; DOJ 8-2007, f. 9-28-07, cert. ef. 10-1-07; DOJ 1-2010, f. & cert. ef. 1-4-10

## 137-055-2380

### Obligor Chapter 12 and Chapter 13 Bankruptcy Situations

This rule details the Child Support Program's responsibilities in situations of obligor bankruptcy and applies to Chapter 12 and Chapter 13 bankruptcies filed on or after October 17, 2005. For bankruptcies filed prior to October 17, 2005, the Bankruptcy Code in effect at the time the bankruptcy was filed applies, as does the prior version of OAR 137-055-2380 in effect at the time the bankruptcy was filed.

(1) Upon receiving notification of bankruptcy, the administrator will:

(a) Stop any legal action that is pending, except:

(A) Initiating or proceeding with the establishment of paternity;

(B) Initiating or proceeding with the establishment or modification of a child support order; or

(C) Changing the support award based on a change in the child's physical custody as authorized by ORS ch 416 (2009 HB 2277).

(b) Not file any document in circuit court in a county in which the debtor owns real property that creates a lien by its terms or by operation of law without first obtaining relief from the automatic stay.

(c) Leave any existing income, unemployment, or workers' compensation withholding orders for current support only in place. If there is an ongoing support obligation and income withholding is in place that includes arrears, the administrator will send an amended withholding order for current support only. When the bankruptcy plan is confirmed, the administrator may issue a withholding order for current support and arrears to the extent authorized in the bankruptcy plan.

(d) Determine if there are any other enforcement actions in process that may need to be stopped due to the stay or which may involve property of the bankruptcy estate, such as a writ of garnishment or contempt of court action; and

(e) Terminate any action that involves property of the bankruptcy estate and is not excepted from the automatic stay and send any such property of the estate that has not been distributed to the bankruptcy trustee.

(2) The administrator will file a Proof of Claim for current support and arrears owed at the time the petition was filed, in any, if the time period for

filing a Proof of Claim has not passed. However, if it will not be feasible for the debtor to pay the entire support obligation during the duration of the bankruptcy plan, the administrator may negotiate with the debtor a stipulation in the bankruptcy plan to collect a lesser amount of support through the plan. Any such stipulation will specify that the remaining debt will be paid outside the plan and the support is nondischargeable.

(3) The administrator will respond to any objections filed to the Proof of Claim.

(4) The administrator will review the Summary of Plan or proposed Plan and the Debtor's Schedule J, if available, for the repayment of arrears and for payment of ongoing support; and

(a) If the time period for filing objections has not passed, the administrator may file an objection to a Plan if the Plan is not feasible.

(b) If the Plan does not provide for pre-petition arrears, the administrator may file an objection to have the pre-petition arrears included in the plan if the time period for filing an objection has not passed.

(5) After confirmation, if the property of the estate has reverted in the debtor, the administrator will resume collection on current support and post-petition arrears. If the Plan provides for the pre-petition arrears, collection of the pre-petition arrears will be governed by the terms of the Plan.

(6) If the debtor fails to make timely support payments after filing the bankruptcy petition, the administrator may petition the bankruptcy court for relief from the automatic stay or move for dismissal of the bankruptcy.

(7) The administrator will continue to certify a case for federal and state tax refund intercept unless otherwise provided by the bankruptcy plan. However, if it is determined that an intercepted tax refund is the property of the estate and the bankruptcy trustee requests the money, the administrator will forward the money to the bankruptcy trustee and notify the parties.

Stat. Auth.: ORS 180.345

Stats. Implemented: ORS 25.080

Hist.: AFS 2-1995, f. 1-10-95, cert. ef. 1-11-95; AFS 13-1999, f. 10-29-99, cert. ef. 11-1-99; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0288; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-2380; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-2380; DOJ 8-2007, f. 9-28-07, cert. ef. 10-1-07; DOJ 1-2010, f. & cert. ef. 1-4-10

## 137-055-3020

### Paternity Establishment Procedures

(1) When a case involves a child who is not yet born, the administrator will take no action to establish paternity or to provide locate services until such time as the child is born.

(2)(a) When initiating legal proceedings to establish paternity for a child conceived in Oregon, the administrator will use ORS Chapter 109 or ORS Chapter 416.

(b) Except for proceedings filed under ORS Chapter 109, past support will be established as provided by ORS Chapter 416 and OAR 137-055-3220.

(3) When the administrator initiates legal proceedings to establish paternity, if the child was born in this state, the administrator will file the Notification of Filing of Petition in Filiation Proceedings with the Center for Health Statistics.

(4) The administrator will seek to establish paternity against the man named by the mother to be the most likely alleged father except as provided in sections (5) and (6).

(5) If the husband and mother are still married and the husband is on the child's birth record:

(a) If only one party disputes paternity, the administrator will give notice to the parties that:

(A) The parties have the right to challenge paternity under ORS 109.070 by filing a petition in the circuit court;

(B) The administrator will delay any initiated support action for 30 days;

(C) If a party provides proof within 30 days that he or she filed a petition, the administrator will suspend the support action pending the outcome of the court's decision.

(D) If no proof is received within 30 days that a party has filed a petition, the administrator will proceed with the legal action to establish support.

(b) If both the husband and mother dispute the child's paternity, the administrator will order the husband, mother and child to appear for parentage testing.

(6) If the husband and mother are still married, no father is listed on the birth record, and the mother names another man as the father of the child, the administrator will provide notice and an opportunity to object to the husband.

(a) If a written objection is received from the husband within 30 days of the date of the notice, an action to establish paternity will be initiated against the husband.

(b) If no written objection is received from the husband within 30 days of the date of the notice, an action to establish paternity will be initiated against the most likely alleged father named in the mother's paternity affidavit.

(7) In all cases in which the mother states that more than one man could be the biological father of the child and parentage tests have excluded a man as the father of the child, the following provisions apply:

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(a) If there is only one remaining untested possible biological father, that man is constructively included as the father by virtue of the other man's exclusion as the father.

(b) If there are more than one remaining untested possible biological fathers, the administrator will initiate action against each man, either simultaneously or one at a time, to attempt to obtain parentage tests which either exclude or include the man.

(8) In all cases in which the mother states that more than one man could be the biological father of the child and parentage tests have included a man as the father of the child at a cumulative paternity index of at least 99, any other untested possible father(s) will be considered to be constructively excluded by virtue of the first man's inclusion.

(9)(a) The Child Support Program may initially pay the costs of parentage tests, and will seek reimbursement of those costs, but may agree to waive the costs.

(b) If an alleged father fails to appear as ordered for parentage tests, but the mother and child have appeared, reimbursement will be sought from the alleged father for the costs incurred.

(c) The maximum amount allowed to be entered as a parentage test judgment against a party is the amount the Child Support Program agrees to pay a parentage testing laboratory used to perform the tests.

(d) A judgment for parentage test costs reimbursement will not be sought:

(A) Against a person who has been excluded as a possible father of a subject child;

(B) If the mother stated that more than one man could be the father of the child, and has been unable to name a most likely alleged father, and the man tested has not objected to the entry of an order establishing paternity;

(C) If the alleged father has applied for services under ORS 25.080 and requested paternity establishment in accordance with OAR 137-055-3080; or

(D) Except as provided in section (11) of this rule, against any individual who is a recipient of Temporary Assistance to Needy Families (TANF) benefits or Medicaid assistance.

(10) A judgment for parentage test costs reimbursement will not be sought against any person found to be the legal father for costs attributable to testing other alleged fathers in any case in which the mother stated that more than one man could be the father of the child.

(11) When a party requests additional parentage testing as provided in ORS 109.252(2), the following provisions apply:

(a) The laboratory selected for additional testing must be a laboratory approved by accreditation bodies designated by the Oregon Health Authority; and

(b) The party making the request must advance the costs of the additional tests to the accredited laboratory.

(12) Upon receipt of a party's request for additional parentage testing and proof that payment has been advanced to an accredited laboratory, the administrator or the court will order additional testing.

(13) If a non-requesting party fails to appear for the additional parentage testing, the administrator will take appropriate steps to compel obedience to the order for additional testing.

(14) If a requesting party fails to appear for the additional parentage testing, the administrator may enter an order in accordance with OAR 137-055-3100.

(15) The administrator may dismiss or terminate a proceeding to establish paternity after sending written notice to the parties that the case is being considered for dismissal or termination and that any comments or objections must be made within 10 days.

Stat. Auth.: ORS 180.345

Stats. Implemented: ORS 109.070 & 416.430

Hist.: AFS 7-1998, f. 3-30-98, cert. ef. 4-1-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-1020; SSP 15-2003, f. 6-25-03, cert. ef. 6-30-03; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-3020; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-3020; DOJ 2-2006(Temp), f. & cert. ef. 1-3-06 thru 6-30-06; DOJ 5-2006, f. 6-29-06, cert. ef. 7-3-06; 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

## 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 (5) of this rule.

(3) For purposes of this rule, legal proceedings for adoption of the child are pending if either of the following provisions is true:

(a) The mother or legal guardian of the child has released or surrendered the child to the adoptive parent(s) for adoption, and such release or surrender has become irrevocable because the child has been placed in the physical custody of the adoptive parent(s) and the other conditions of ORS 109.312 have been met;

(b) The mother or legal guardian of the child has released or surrendered the child to the Department of Human Services (DHS) or an incorporated child-caring agency for adoption, and such release or surrender has become irrevocable because the child has been placed by the agency in the physical custody of a person or persons for the purpose of adoption, in accordance with ORS 418.270(4).

(4)(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 (8) 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 (5) 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 (D) or (E) 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.

(5) 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:

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(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 (4)(a) through (4)(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 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.

(6) Absent judicial review, the decision of the CSP Director is final with regard to any responsibility of the administrator to pursue establishment of paternity.

(7) No provision of this rule prohibits the self-alleged father from pursuing establishing paternity on his own, without the assistance of the administrator.

(8) 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.

(9) 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(a)(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

## 137-055-3220

### Establishment of Past Support Orders

(1) For purposes of this rule the following definitions apply:

(a) "Past support" means the amount of child support that could have been ordered based on the Oregon Child Support Guidelines (OAR 137-050-0700 through 137-050-0765, referred to hereafter as "guidelines") and accumulated as arrears against a parent for the benefit of a child for any period of time during which the child was not supported by the parent and for which period no support order was in effect.

(b) "Supported by the parent" in subsection (1)(a) means payments in cash or in kind in amounts or in-kind value equal to the amount that would have accrued under the guidelines from the non-custodial parent to the custodial parent or other custodial adult for purposes of support of the child(ren).

(2) The administrator may establish past support when establishing a child support order under ORS 416.400 through 416.470.

(3) When a non-custodial parent has made payments in cash or in kind to a custodial parent or other custodial adult for the support of the child(ren) during the period for which a judgment for past support is sought, and providing that those payments were in amounts equal to or exceeding the amount of support that would have been presumed correct under the guidelines, no past support will be ordered.

(4) When such payments as described in section (3) were made in amounts less than the amount of support presumed correct under the guidelines, the amount of the past support judgment will be the correct amount presumed under the guidelines minus any amounts of support paid.

(5) The non-custodial parent must provide evidence of such payments as described in sections (3) and (4) by furnishing copies of:

(a) Canceled checks;

(b) Cash or money order receipts;

(c) Any other type of funds transfer records;

(d) Merchandise receipts;

(e) Verification of payments from the custodial parent or other custodial adult;

(f) Any other record of payment deemed acceptable by the administrator.

(6) It will be within the discretion of the administrator to determine whether to accept evidence of such cash or in-kind support payments for purposes of giving credit for them. If any party disagrees with this determination, the support determination may be appealed to an administrative law judge per ORS 416.427.

(7) Past support may not be ordered for any period of time prior to the later of:

(a) October 1, 1995; or

(b) The date of the initiation of IV-D services from any state by application for services; or in case of a mandatory referral based on the receipt of TANF cash assistance, Medicaid, foster care or Oregon Youth Authority services, the date of the referral to the Child Support Program (CSP).

(8) If the support case was initiated from another state, the date of application for services will be considered to be either:

# ADMINISTRATIVE RULES

(a) The date the initiating state requests past support to begin but not before October 1, 1995; or

(b) If the initiating state requests that past support be established for multiple periods of time, the beginning date of the most recent period but not before October 1, 1995; or

(c) If the initiating state does not specify a beginning date for past support, the date of the initiating petition but not before October 1, 1995.

(9) Where CSP services did not produce a support order and CSP services were terminated by the applicant or by the CSP agency per state and federal regulations and subsequently CSP services were initiated again, the administrator will not establish past support prior to the date of the most recent initiation of CSP services. If an initiating state requests that past support be established for two or more periods of time, past support will be established only for the most recent period.

(10) If there is or was a child support judgment in existence in any state for the non-custodial parent to pay support to the obligee for the same child(ren), no order for past support will be entered for a period of time before entry of the child support judgment already or previously existing except as provided in OAR 137-055-3200.

(11) Where the order to be entered is for past support only and does not include current support and the past support would be owed only to the State of Oregon or another state, the administrator will not enter an order for past support for a period of less than four months.

(12) Past support will be calculated per the guidelines and will use current income for the parties in calculating past support monthly amounts. Parties may rebut use of current income by presenting evidence of income in differing amounts for the months for which past support is being ordered.

Stat. Auth.: ORS 180.345

Stats. Implemented: ORS 416.422

Hist.: AFS 28-1995, f. 11-2-95, cert. ef. 11-3-95; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-1010; AFS 28-2001, f. 12-28-01, cert. ef. 1-1-02; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-3220; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-3220; DOJ 2-2004, f. 1-2-04 cert. ef. 1-5-04; DOJ 1-2006, f. & cert. ef. 1-3-06; DOJ 1-2010, f. & cert. ef. 1-4-10

## 137-055-3260

### Correction of Mistakes in Orders

(1) Clerical mistakes in final orders issued by the administrator pursuant to ORS 416.400 to 416.470 and errors therein arising from oversight or omission may be corrected by the administrator at any time within 60 days of the issuance of the order. The corrected order must be clearly marked "Corrected Order" and must contain notice to the parties of appeal rights as provided by ORS 416.427.

(2) The corrected order must be served on the parties by regular mail at the parties' contact addresses.

Stat. Auth.: ORS 416.455 & 180.345

Stats. Implemented: ORS 416.400 - 416.470

Hist.: AFS 7-1998, f. 3-30-98, cert. ef. 4-1-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-1050; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-3260; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-3260; DOJ 1-2010, f. & cert. ef. 1-4-10

## 137-055-3300

### Incarcerated Obligor

(1) For purposes of establishing or modifying a support order, the following definitions apply:

(a) "Correctional facility" means any place used for the confinement of persons charged with or convicted of a crime or otherwise confined under a court order, and includes but is not limited to a youth correction facility.

(A) "Correctional facility" applies to a state hospital only as to persons detained therein charged with or convicted of a crime, or detained therein after acquittal of a crime by reason of mental defect;

(B) "Correctional facility" includes alternative forms of confinement, such as house arrest or confinement, where an obligor is not permitted to seek or hold regular employment.

(b) "Incarcerated obligor" means a person who:

(A) Is or may become subject to an order establishing or modifying child support; and

(B) Is, or is expected to be, confined in a correctional facility for at least six consecutive months from the date of initiation of action to establish a support order, or from the date of a request to modify an existing order pursuant to this rule.

(2) For purposes of computing a monthly support obligation for an incarcerated obligor, all provisions of the Oregon child support guidelines, as set forth in OAR 137-050-0700 through 137-050-0765, will apply except as otherwise specified in this rule.

(3) The incarcerated obligor's income and assets are presumed available to the obligor, unless such income or assets are specifically restricted, assigned, or otherwise inaccessible pursuant to state or federal laws or rules regarding the income and assets of incarcerated obligors.

(4) If the incarcerated obligor has gross income less than \$200 per month, the administrator shall presume that the obligor has zero ability to pay support.

(5) If the provisions of section (4) of this rule apply, the administrator will not initiate an action to establish a support obligation if the obligor is an

incarcerated obligor, as defined in subsection (1)(b) of this rule, until 61 days after the obligor's release from incarceration.

(6) The administrator will not initiate an action to modify a support obligation because of incarceration unless the obligor is an incarcerated obligor, as defined in subsection (1)(b) of this rule, and a party to the current order has requested a modification due to incarceration.

(7) An order entered pursuant to ORS 416.425 and this rule, that modifies a support order because of the incarceration of the obligor, is effective only during the period of the obligor's incarceration and for 60 days after the obligor's release from incarceration. The previous support order is reinstated by operation of law on the 61st day after the obligor's release from incarceration.

(a) An order that modifies a support order because of the obligor's incarceration must contain a notice that the previous order will be reinstated on the 61st day after the obligor's release from incarceration;

(b) Nothing in this rule precludes an obligor from requesting a modification based on a change of circumstances, pursuant to OAR 137-055-3420.

(8) The provisions of this rule do not apply to an obligor who is incarcerated because of nonpayment of support.

Stat. Auth.: ORS 416.455 & 180.345

Stats. Implemented: ORS 416.425

Hist.: AFS 21-2000, f. & cert. ef. 8-1-00; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0078; 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 461-200-3300; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03; DOJ 7-2004, f. 3-30-04, cert. ef. 4-1-04; DOJ 12-2004, f. & cert. ef. 10-1-04; DOJ 1-2010, f. & cert. ef. 1-4-10

## 137-055-3400

### District Attorney Case Assignment for Modification or Suspension of Support

(1)(a) The purpose of this rule is to provide criteria for determining which Oregon District Attorney will have responsibility for initiating action to review and modify an Oregon judgment, or administrative order, that requires payment of child support. This rule applies only when both of the following conditions exist:

(A) An Oregon District Attorney has responsibility for providing support enforcement services under ORS 25.080; and

(B) Either of the following is true:

(i) A party to the case has requested a review and modification, as provided in OAR 137-055-3420, for purposes of changing the amount of the monthly support obligation; or

(ii) The obligor is presumed entitled to a suspension of the support obligation as a recipient of certain cash assistance, as provided in ORS 25.245.

(b) This rule does not apply to a Division of Child Support (DCS) office that is performing district attorney functions.

(2) For purposes of this rule, the following definitions apply:

(a) "Requesting party" means the party requesting the district attorney to review and modify the support obligation;

(A) The requesting party may be the obligor, the obligee, or the child attending school;

(B) An obligor deemed presumptively eligible for a suspension under ORS 25.245 will be considered the "requesting party";

(b) "Non-requesting party" means any party that is not the party as defined in subsection (2)(a), above.

(3) In any case where there are arrears, the district attorney responsible under OAR 137-055-2020 for enforcing the case will, if the support order is in another Oregon county, transfer in the order for review and modification under ORS 25.100.

(4) In any case where there are no arrears:

(a) If all the parties reside in the same Oregon county, but the support order is in another county:

(A) The district attorney for the county of residence of the parties will be responsible for review and modification action;

(B) The district attorney for the county of residence may transfer in the support order for review and modification under ORS 25.100, as the county of residence for the non-requesting party.

(b) If any of the parties reside in the same Oregon county that is the county of the support order, the district attorney for that county will be responsible for review and modification action;

(c) If the support order, the requesting party, and the non-requesting party(ies) are all in different counties:

(A) If the district attorney for the county of the requesting party has previously transferred the support order to the requesting party's county for enforcement, the district attorney for the enforcing county will be responsible for review and modification action;

(B) If the case is not currently open as an enforcement case under ORS 25.080, or if the district attorney for the requesting party's county has never transferred the support order for enforcement:

(i) That district attorney will refer the requesting party to the district attorney for the county of the support order;

(ii) The district attorney for the county of the support order will then be responsible for review and modification action;

(C) If the case is currently open as an enforcement case under ORS 25.080:

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(i) The district attorney for the enforcing county will transfer the enforcement case to the district attorney for the county of the support order;

(ii) The district attorney for the county of the support order will then be responsible for review and modification action;

(iii) Once the review and modification is completed, the district attorney for the county of the support order will transfer the enforcement case back to the proper enforcement county under OAR 137-055-2020.

(5) If the requesting party does not reside in Oregon, and regardless of whether the case has arrears or not:

(a) If the requesting party's case is already being enforced, the administrator will advise the requesting party to direct the request to the child support program in that other state. The other state's child support program may then ask the administrator to pursue action under appropriate state and federal statutes;

(b) If the requesting party's support case is not being enforced under the child support program in another state, the administrator will handle the request under sections (3) and (4) of this rule.

(6) If the non-requesting party(ies) does not reside in Oregon, the district attorney will handle the request under sections (3) and (4) of this rule.

(7) The matrix set out in **Table I**, is included in this rule as an aid, and incorporates preceding sections of this rule: [Table not included. See Ed. Note.]

(8) Notwithstanding subsection (1)(b), all functions and responsibilities assigned to Oregon District Attorneys under this rule will also be considered assigned to DCS, for those counties where DCS has assumed responsibility from the district attorney for providing support enforcement services.

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

Stat. Auth.: ORS 180.345

Stats. Implemented: ORS 25.080 & 25.287

Hist.: AFS 33-1992, f. 11-17-92, cert. ef. 12-1-92; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0074; AFS 28-2001, f. 12-28-01, cert. ef. 1-1-02; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-3400; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-3400; DOJ 2-2004, f. 1-2-04 cert. ef. 1-5-04; DOJ 5-2005, f. & cert. ef. 7-15-05; DOJ 1-2006, f. & cert. ef. 1-3-06; DOJ 1-2010, f. & cert. ef. 1-4-10

## 137-055-3420

### Periodic Review and Modification of Child Support Order Amounts

(1) In addition to the definitions found in ORS 25.321 and OAR 137-050-0750, for the purposes of this rule, the following definitions apply:

(a) "Determination" means an order resulting from a periodic review, which finds that the current order of support is in "substantial compliance" with the Oregon guidelines (OAR 137-050-0700 through 137-050-0765) and appropriate health care coverage or cash medical support is ordered against one or both parties.

(b) "Periodic Review" means proceedings initiated under ORS 25.287.

(c) "Review" means an objective evaluation by the administrator of the information necessary for application of the guidelines to determine:

(A) The presumptively correct child support amount; and

(B) The need to provide in the order for the child's health care needs through appropriate health care coverage or cash medical support regardless of whether an adjustment in the amount of child support is necessary.

(d) "Substantial compliance" means that the current support order is within at least 15 percent or \$50, whichever is less, of the presumptively correct child support amount as calculated using the guidelines. When making this determination, the 15 percent or \$50 formula will be applied to the currently ordered support amount.

(2) For all child support cases receiving support enforcement services under ORS 25.080, the Child Support Program (CSP) will annually notify the parties:

(a) Of their right to request a periodic review of the amount of support ordered; and

(b) That the CSP will perform a mandatory periodic review and adjustment if the family is currently receiving TANF.

(3) The purpose of a periodic review is to determine, based on information from the parties and other sources as appropriate, whether the current child support order should be modified to ensure substantial compliance with Oregon's child support guidelines, or to order appropriate health care coverage or cash medical support for the child(ren).

(4) The administrator will initiate a periodic review if a written request is received from any party and 35 months have passed since the date the most recent support order took effect, or the date of a determination that the most recent support order should not be adjusted. For purposes of calculating the 35-month time period, a suspension and temporary modification order entered pursuant to ORS 416.425(13)(2009 HB 2275) will not be considered.

(5) The administrator will initiate a periodic review when 35 months have passed since the date the most recent support order took effect, or the date of a determination that the most recent support order should not be adjusted, and the family is currently receiving TANF. For purposes of calculating the 35-month time period, any suspension and temporary modification order entered pursuant to ORS 416.425(13)(2009 HB 2275) will not be considered.

(6) The administrator must complete the determination that the order is in substantial compliance with the guidelines and appropriate health care coverage or cash medical support is ordered, or complete the modification of the

existing order within 180 days of receiving a written request for a periodic review, initiating the mandatory review, or locating the non-requesting party(ies), if necessary, whichever occurs later.

(7) The administrator is responsible for conducting a periodic review in this state or for requesting that another state conduct a review pursuant to OAR 137-055-7190. As provided in ORS 110.429 and 110.432, the law of the state reviewing the order applies in determining if a basis for modification exists.

(8) Upon receipt of a written request for a periodic review or when a mandatory periodic review is required, the administrator will notify the parties of the review in writing, allowing the parties 30 days to provide information which may affect the support calculation.

(9) The administrator will notify the parties in writing of the presumed correct support amount under the child support guidelines and the need to order appropriate health care coverage or cash medical support. Notification may be by motion for modification or a proposed determination that the existing order is in substantial compliance and appropriate health care coverage or cash medical support is already ordered, and will include a request for hearing form.

(10) If the administrator determines that the support order should be modified and there is an adult child on the case, the proposed modification will be a tiered order as defined in OAR 137-055-1020.

Stat. Auth.: ORS 180.345 & 416.455

Stats. Implemented: ORS 25.080, 25.287, 25.321 - 25.343, 107.135 & 416.425

Hist.: AFS 65-1989, f. 10-31-89, cert. ef. 11-1-89; AFS 11-1992(Temp), f. & cert. ef. 4-30-92; AFS 26-1992, f. & cert. ef. 9-30-92; AFS 20-1993, f. 10-11-93, cert. ef. 10-13-93; AFS 21-1994, f. 9-13-94, cert. ef. 12-1-94; AFS 17-1997(Temp), f. & cert. ef. 9-16-97; AFS 17-1997(Temp) Repealed by AFS 23-1997, f. 12-29-97, cert. ef. 1-1-98; AFS 23-1997, f. 12-29-97, cert. ef. 1-1-98; AFS 75-1998, f. 9-11-98, cert. ef. 9-15-98; AFS 13-1999, f. 10-29-99, cert. ef. 11-1-99; AFS 9-2000, f. 3-13-00, cert. ef. 4-1-00; AFS 21-2000, f. & cert. ef. 8-1-00; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0072; AFS 23-2001, f. 10-2-01, cert. ef. 10-6-01; AFS 28-2001, f. 12-28-01, cert. ef. 1-1-02; SSP 4-2003, f. 2-25-03, cert. ef. 3-1-03; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-3420; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-3420; DOJ 2-2004, f. 1-2-04 cert. ef. 1-5-04; DOJ 10-2004, f. & cert. ef. 7-1-04; DOJ 4-2005, f. & cert. ef. 4-1-05; DOJ 8-2005(Temp), f. & cert. ef. 9-1-05 thru 2-17-06; DOJ 1-2006, f. & cert. ef. 1-3-06; DOJ 5-2006, f. 6-29-06, cert. ef. 7-3-06; DOJ 8-2007, f. 9-28-07, cert. ef. 10-1-07; DOJ 11-2008(Temp), f. & cert. ef. 7-15-08 thru 9-30-08; DOJ 12-2008(Temp), f. & cert. ef. 10-1-08 thru 3-29-09; DOJ 14-2008(Temp), f. & cert. ef. 10-7-08 thru 3-29-09; DOJ 1-2009, f. & cert. ef. 1-2-09; DOJ 4-2009(Temp), f. 5-6-09, cert. ef. 5-7-09 thru 11-1-09; DOJ 13-2009, f. & cert. ef. 10-30-09; DOJ 1-2010, f. & cert. ef. 1-4-10

## 137-055-3435

### Physical Custody Changes: Adjusting Orders

(1) This rule applies when physical custody of a child changes as described in ORS ch 416 (Oregon Laws 2009, chapter 353). For purposes of this rule, "non-custodial" party means the party without physical custody of the minor child.

(2) The provisions of this rule apply only when all of the children in the support order change physical custody from one parent to another, and the change is not for the purpose of exercising parenting time or visitation.

(3) Specifically excluded from adjustments for physical custody are an adult child as defined in OAR 137-055-5110 and a child attending school, as defined in OAR 137-055-5110, because neither are considered to be in the physical custody of anyone.

(4) When a support order has language sufficient to change the support award when a change in physical custody occurs, a party may submit a sworn affidavit or court order to the administrator which includes the date the party obtained physical custody. The administrator will notify the parties that support will be changed 14 days from the date of mailing to the parties' last known addresses. The notice must include:

(a) A copy of the affidavit or court order;

(b) The amount of support the non-custodial party will be ordered to pay, as previously determined in the support order;

(c) A statement that a hearing may be requested under ORS 416.427; and

(d) A statement that the only issue to be considered in a hearing is whether there has been a change in physical custody.

(5) If an objection is received, the administrator will forward it, along with the requesting party's affidavit, to the Office of Administrative Hearings for a final determination about physical custody.

(6) If no objection is received, the administrator will file a money award to provide notice of the ending of the obligation of the former non-custodial parent, and of beginning the obligation of the new non-custodial parent.

(7) Nothing in this rule prohibits a party from requesting a review and adjustment of a support order under OAR 137-055-3420, or a change of circumstances modification under OAR 137-055-3430.

Stat. Auth.: ORS 180.345

Stats. Implemented: ORS 416 (2009 OL Ch 353)

Hist.: DOJ 1-2010, f. & cert. ef. 1-4-10

## 137-055-3660

### Multiple Child Support Judgments

(1) When the administrator finds that two or more child support judgments exist involving the same obligor and child for the same time period and each judgment was issued in this state, the administrator may:

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(a) Issue a proposed governing child support order, as defined in ORS 25.010;

(b) Petition the court in the county where a child who is subject to the judgment resides for a governing child support judgment; or

(c) Move to set aside any one of the support judgments if the judgment was entered in error.

(2) For purposes of a governing child support proceeding, there is a presumption that the terms of the last-issued child support judgment are the controlling terms and supersede contrary terms of each earlier-issued child support judgment, except that:

(a) When the last-issued child support judgment is silent about non-medical child support, the non-medical child support terms of an earlier-issued child support judgment continue; and

(b) When the last-issued child support judgment is silent about medical support, the medical support terms of an earlier-issued child support judgment continue.

(3) The presumption may be rebutted if the last issued child support judgment:

(a) Should be set aside under the provisions of ORCP 71;

(b) Was issued without prior notice to the issuing court, administrative law judge or administrator that another support proceeding involving the child was pending or another support judgment involving the child already existed;

(c) Was issued after an earlier child support judgment and did not enforce, modify or set aside the earlier child support judgment; or

(d) Was issued without service on the administrator as required in ORS 107.087, 107.135, 107.431, 108.110, 109.103 and 109.125, when support rights are assigned to the state and the state's interests were not adequately protected.

(4) The administrator may issue a proposed governing child support order as provided in subsection (1)(a), only if the presumption in section (2) is applied.

(5) When determining which support judgment was the "last-issued" for purposes of determining a governing child support judgment, the issue date for any support judgment will be:

(a) The date the support judgment was entered into the circuit court register; or

(b) If the support judgment is an administrative modification of a court judgment the date the order approving the modification was entered into the circuit court register.

(6) When the court issues a governing child support judgment or when an administrative governing child support order is approved by the court, the noncontrolling terms of each earlier child support judgment regarding non-medical child support or medical support are terminated. However, the issuance of the governing child support judgment does not affect any support payment arrearage or any liability related to medical support that has accrued under a child support judgment before the governing child support judgment is issued.

(7) A proposed governing child support order or petition for governing child support judgment will include:

(a) A reconciliation of any child support arrears or credits for overpayments under all of the child support judgments; or

(b) An order or motion to reconcile any child support arrears or credits for overpayments under all of the child support judgments in a separate proceeding under ORS 25.167 or 416.429.

(8) When reconciling any child support arrears or credits for overpayments under all of the child support judgments included in the governing child support proceeding for time periods prior to entry of a governing child support judgment:

(a) The obligor is expected to pay the total amount of current support due under the highest judgment; and

(b) Payment made toward any one of the judgments must be credited against the obligation owed under the others.

(9) This rule does not apply if the later-issued child support judgment was entered in circuit court before January 1, 2004, the administrator was providing services under ORS 25.080, and the administrator treated a later-in-time court judgment as superseding an earlier entered administrative order.

(10) For purposes of this rule, "Support Judgment" means an administrative order for child support that has been entered into the circuit court register under ORS 416.440 or a judgment of the court for child support.

Stat. Auth.: ORS 180.345

Stats. Implemented: ORS 25.164, 25.167 & 416.422

Hist.: DOJ 2-2004, f. 1-2-04 cert. ef. 1-5-04; DOJ 1-2006, f & cert. ef. 1-3-06; DOJ 1-2010, f. & cert. ef. 1-4-10

## 137-055-4210

### Withholder Penalties

(1) Notwithstanding the provisions of ORS 25.424, the provisions of this rule apply to a party's request to bring an action to recover amounts pursuant to ORS 25.424, when a withholder has failed to properly withhold or pay.

(2) A party's request may be verbal, but prior to commencing legal action, the party must provide the administrator with documentation of the withholder's failure, which must include at least:

(a) A check stub or other pay document showing the amount not properly withheld or not paid, if the act alleged is improper withholding; or

(b) An affidavit or other sworn or affirmed statement describing the action taken by or omission of the withholder.

(3) Upon receipt of the document required by section (2) of this rule, the administrator may initiate legal action to recover amounts not withheld or paid under ORS 25.424, and, if appropriate, penalties.

(4) The administrator acts only as a facilitator to bring the action, and does not represent the party for whom the action is initiated.

(5) Nothing in this rule precludes a party from seeking damages, penalties and attorney fees as provided in ORS 25.424.

Stat. Auth.: ORS 180.345

Stats Implemented: ORS 25.424

Hist.: DOJ 1-2010, f. & cert. ef. 1-4-10

## 137-055-4420

### License Suspension for Child Support

(1) For the purposes of this rule, "license" means any of the licenses, certificates, permits or registrations that a person is required by state law to possess in order to engage in an occupation or profession, all annual licenses issued to individuals by the Oregon Liquor Control Commission, all driver licenses and permits issued by the Department of Transportation under ORS Chapter 807, and all permanent and fee-based annual hunting and fishing licenses issued by the Oregon Department of Fish and Wildlife.

(2) The administrator may begin the process to suspend an obligor's licenses if:

(a) The obligor has an order or judgment to pay child support, regardless of whether that order or judgment is currently accruing support;

(b) The administrator is providing services on the case pursuant to ORS 25.080;

(c) The obligor owes arrears in an amount equal to the greater of three months of support or \$2500;

(d) The obligor and administrator have not entered into an agreement as described in section (10), or there is an agreement but the obligor is not in compliance with the agreement; and

(e) The obligor has not made voluntary payments, or payments by income withholding, in each of the last three months greater than the current support amount, or if there is no longer an order or judgment for current support, equal to the amount of the most recent order for current support. This criterion does not apply to payments resulting from garnishment, tax offset, or any other enforcement action other than income withholding;

(3) The administrator will consider the obligor's employment and payment history, the obligor's current ability to pay, the likely benefit to the child, and any other pertinent factor in determining whether to initiate or continue the license suspension process.

(4) The administrator will begin the license suspension process by giving written notice to the obligor by regular mail. The administrator will notify any other parties that the action has begun. If the issuing agency or agencies have addresses listed for the obligor other than the address in the administrator's records, the administrator will send copies of the notice to the address in the administrator's records and to each address in the records of the agencies holding licenses. The notice to the obligor will specify:

(a) The obligor's name, Social Security number, if available, and date of birth, if known;

(b) The license(s) subject to suspension, and a statement that any license not specified in the notice will also be subject to suspension without a separate notice;

(c) The obligor's child support case number(s);

(d) The basis for the suspension, including amount of the arrears and the amount of the monthly support obligation(s), if any;

(e) The procedure and grounds for contesting the suspension;

(f) A statement that the obligor can prevent suspension of the license(s) by entering into and complying with an agreement with the administrator; and

(g) A statement that unless the obligor contacts the administrator within 30 days of the date of the notice and contests the license suspension or enters into an agreement, the administrator may notify the issuing agency or agencies to suspend the license(s) without further notice.

(5) The obligor may contest the suspension within 30 days of the notice described in section (4) of this rule only on the grounds that:

(a) The obligor owes arrears less than or equal to the greater of three months of support or \$2,500; or

(b) There is a mistake in the obligor's identity.

(6) Any of the following events ends the license suspension process. The administrator will stop all license suspension action and notify the issuing agency to release any license already suspended, subject to that agency's requirements, if, on timely receipt of a contest from the obligor under section (5), on the obligor's subsequent request for a review of the case, or at any time upon review of the case, the administrator determines that:

(a) The administrator is no longer providing services under ORS 25.080;

(b) The obligor owes arrears less than or equal to the greater of three months of support or \$2,500;

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(c) The individual whose license(s) are to be suspended is not the obligor or who owes the support arrears that are the basis for the suspension;

(7) If the obligor contests license suspension under section (5), the administrator will make a determination based on the criteria in section (6) and notify the parties in writing of the determination. If the administrator determines that the suspension process will continue, the obligor may object within 30 days of the date of the administrator's determination by requesting an administrative hearing. Upon receipt of the hearing request, the administrator will take no further action to suspend pending receipt of the hearing order.

(8) Not less than thirty days after issuing the notice that the obligor's license is subject to suspension, as described in section (4), the administrator will review the case. If the case continues to qualify for suspension, and no contest has been received from the obligor, the administrator may notify the issuing agency to suspend the obligor's license(s).

(9) If an obligor holds more than one license, any determination regarding suspension of one license is sufficient to suspend any other license.

(10) The administrator may enter into an agreement with the obligor, the obligor's compliance with which will preclude suspension of the obligor's license.

(a) The standard monthly payment amount for a compliance agreement is the amount that could be obtained through income withholding under ORS 25.414. In determining this amount, the obligor's actual earnings will be used, but no less than the equivalent of full-time work at Oregon minimum wage. An agreement under this subsection may be for any period of time agreed to by the administrator and obligor.

(b) If the obligor demonstrates inability to pay the full amount described in subsection (10)(a), the administrator may agree to a temporary hardship exception for a lesser amount, including, where appropriate, no amount. The administrator may condition the hardship exception on receipt of a modification request from the obligor, including any evidence needed to substantiate the request. A hardship exception may also require that the obligor take specific steps to enhance the obligor's ability to pay, such as job search, job training or substance abuse treatment. A hardship exception under this subsection may be for no longer than six months. At the end of the hardship period, the agreement must automatically change to a standard payment amount under subsection (10)(a). However, at the end of the hardship period, the administrator may agree to a subsequent hardship exception under this subsection if the administrator determines such an exception remains appropriate.

(11) Any agreement entered into under section (10) must include:

(a) The amount and due date of the payment. The due date in the payment agreement is solely for the purposes of the license suspension process and does not affect the monthly due date in the support order;

(b) If the agreement is based on a hardship exception under subsection (10)(b), a standard payment amount determined under subsection (10)(a) that will automatically go into effect at the end of the specified hardship exception period;

(c) The duration of the agreement, including the duration of the subsequent payment agreement if the initial agreement is based on a hardship exception under subsection (10)(b) of this rule;

(d) A statement that payments may be made through income withholding;

(e) A statement that failure to comply with the agreement may result in immediate notification to the issuing agency to suspend the license(s) without further notice to the obligor;

(f) A statement that the agreement may be terminated if the support order or judgment is modified;

(g) A statement that the administrator may terminate the agreement and suspend the license at any time if the obligor fails to comply with the agreement, if the obligor's income changes, or if the obligor has under-reported income;

(h) A statement that the obligor's compliance with the agreement does not preclude any enforcement action by the administrator other than license suspension, and that other collection actions will continue to occur;

(i) A statement that the obligor is required to inform the administrator within 10 days of any change in employment;

(j) A statement that information provided by the obligor may be used for other enforcement actions, including contempt actions; and

(k) The signatures of the obligor and the administrator.

(12) When the administrator enters into an agreement with the obligor, the administrator will send courtesy copies of the agreement to the parties on the case.

(13) If the obligor complies with the agreement, the administrator will not notify the issuing agency to suspend the obligor's license(s), or, if the license has already been suspended, the administrator will notify the issuing agency to reinstate the license.

(14) If the obligor fails to comply with an agreement, the administrator may notify the issuing agency to suspend the obligor's license(s). The administrator will notify the parties to the case that the action has been taken. If the obligor has complied with the agreement for at least one year and then stops complying, the administrator will send the obligor written notice 30 days

prior to issuing the notice to suspend to provide the opportunity for the obligor to comply.

(15) If an obligor has more than one child support case, the Child Support Program Director or designee will determine and assign a single branch office that will be responsible for services relating to that obligor under this rule. Any enforcement services other than license suspension will be provided by the office(s) otherwise assigned to the obligor's case(s).

Stat. Auth.: ORS 25.750 - 25.785 & 180.345

Stats. Implemented: ORS 25.750 - 25.783

Hist.: AFS 11-1994, f. & cert. ef. 6-3-94; AFS 22-1994, f. 9-27-94, cert. ef. 10-1-94; AFS 26-1995, f. 10-20-95, cert. ef. 10-23-95; AFS 18-1996, f. & cert. ef. 5-10-96; AFS 37-1996, f. & cert. ef. 11-20-96; AFS 21-1997, f. & cert. ef. 11-7-97; AFS 13-1998, f. 8-21-98, cert. ef. 8-24-98; AFS 2-2000, f. 1-28-00, cert. ef. 2-1-00; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0233; AFS 2-2001, f. 1-31-01, cert. ef. 2-1-01; AFS 1-2002, f. 1-25-02, cert. ef. 2-1-02; AFS 9-2002, f. 6-26-02, cert. ef. 7-1-02; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-4420; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-4420; DOJ 1-2006, f. & cert. ef. 1-3-06; DOJ 1-2010, f. & cert. ef. 1-4-10

## 137-055-4450

### Expiration and Release of Judgment Liens

(1) When a judgment of the court or administrative order containing a money or support award is filed with the court administrator, it creates a judgment lien on all property owned by the obligor in the county where it is filed.

(a) A money award for past support or any lump sum support award will attach to all real property of the judgment debtor immediately upon entry of the judgment.

(b) A support award will not attach until it becomes an unpaid installment pursuant to section (2) of this rule.

(2) When an installment becomes due under the terms of a support award and is not paid a support arrearage lien attaches:

(a) to all real property of the judgment debtor in the county where the judgment is filed; and

(b) to any property acquired in that county by the judgment debtor after that date.

(3) A support arrearage lien remains attached to real property until:

(a) The judgment lien expires; or

(b) The judgment lien is released for a single piece of real property or all real property of the judgment debtor in that county; or

(c) Satisfaction is made for the unpaid installment(s).

(4) A judgment lien created as a result of a child support or money award for unpaid child support installments expires as provided in ORS 18.180.

(5) A judgment lien created as a result of a support award for spousal support expires as provided in ORS 18.180.

(6) Notwithstanding the provisions of sections (4) and (5), judgment remedies which expired before January 4, 2010, remain expired.

(7) An obligee may authorize the State of Oregon to release a lien against real property of an obligor when the obligee has submitted a signed and notarized lien release form to the administrator.

(8) If a release of lien is filed for all real property of the judgment debtor in a county, a judgment lien may be reinstated as provided in ORS Chapter 18.

Stat. Auth.: ORS 180.345

Stats. Implemented: ORS 18.005 - 18.845

Hist.: DOJ 2-2004, f. 1-2-04 cert. ef. 1-5-04; DOJ 1-2006, f. & cert. ef. 1-3-06; DOJ 1-2010, f. & cert. ef. 1-4-10

## 137-055-4455

### Expiration of Support Judgment Remedies

(1) Judgment remedies for the child support award portion of a judgment, and any lump sum money award for unpaid child support installments, expire 35 years after the entry of the judgment that first establishes the support obligation.

(2) Notwithstanding any other provisions of this rule, when the child support judgment being enforced was issued by another state, the expiration of judgment under the laws of this state or of the issuing state, whichever is longer, applies.

(3) Spousal support judgments entered on or after January 1, 2004: Judgment remedies for any unpaid installment under the spousal support award portion of a judgment, expire the later of:

(a) 25 years after entry of the judgment that first establishes the support obligation; or

(b) 10 years after an installment comes due under the judgment and is not paid.

(4) Spousal support judgments entered prior to January 1, 2004: Judgment remedies for any unpaid installment under the spousal support award portion of a judgment, expire the later of:

(a) 25 years after entry of the judgment that first establishes the support obligation; or

(b) 10 years after an installment comes due under the judgment and is not paid; or

(c) 10 years from the date of a judgment renewal.

(5) The judgment remedies for a money award for child or spousal support expire by operation of law.

# ADMINISTRATIVE RULES

(6) The Department of Justice, Division of Child Support (DCS) is responsible for completing expiration of judgment audits on cases receiving support enforcement services under ORS 25.080.

(7) If an audit result is that the expired judgment amount is greater than the current arrears on the case, DCS will reduce the case arrears to zero.

(8) When an expiration of judgment audit is completed, DCS will notify the parties if there is any change to the arrears as a result of the audit. The notice must include:

(a) The current balance or zero, as appropriate, per section (7) of this rule;

(b) Information that a party may make a written request for an administrative review within 30 days of the notice.

(9) If a party requests an administrative review, DCS will:

(a) Conduct the administrative review within 45 days from the date of receiving the objection to verify the case was adjusted correctly and make any necessary corrections or adjustments as determined in the review;

(b) Notify both the obligee and the obligor, in writing, of the results of the review and of the right to appeal pursuant to ORS 183.484

Stat. Auth.: ORS 180.345

Stats. Implemented: ORS 18.180 - 18.194

Hist.: AFS 15-2001, f. 7-31-01, cert. ef. 8-1-01; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-6110; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-6110; DOJ 2-2004, f. 1-2-04 cert. ef. 1-5-04; Renumbered from 137-055-6110, DOJ 5-2005, f. & cert. ef. 7-15-05; DOJ 1-2010, f. & cert. ef. 1-4-10

## 137-055-4620

### Enforcing Health Care Coverage and Cash Medical Support

(1) If services are being provided pursuant to ORS 25.080 and private health care coverage is ordered the administrator will issue a medical support notice to enforce orders for health care coverage within two business days of receiving information that an employer has hired or rehired a providing party, as defined in ORS 25.321, or at any time when the administrator determines it is necessary; and

(a) An obligor or obligee is ordered to provide appropriate health care coverage for a child as required by ORS 25.321, OAR 137-050-0750;

(b) The providing party has failed to provide appropriate health care coverage, either personally or through a spouse's or domestic partner's coverage; and

(c) The employer offers or may offer a health benefit plan to its employees.

(2) Notwithstanding the provisions of section (1), if the party ordered to provide appropriate health care coverage is an active duty or retired member of the military, the administrator will not issue a medical support notice to the military.

(3) If the conditions in section (2) apply:

(a) The administrator will inform the obligee, if the obligee is not the providing party, of the process to initiate military health care coverage enrollment for the dependent child; and

(b) If the medical child support rights for the dependent child are currently assigned to the state, the administrator will require either party to make all reasonable efforts to enroll the child in military health care coverage.

(4) When a medical support notice has been served and the providing party is not enrolled in a health benefit plan or is not enrolled in a plan that offers dependent coverage that is and available pursuant to ORS 25.323, and if more than one plan is offered, the administrator will select a plan in accordance with OAR 137-055-4640.

(5) A party can contest the medical support notice as set out in ORS 25.333.

(6) When the administrator is notified by the employer that the amount to be withheld for premiums is greater than is permissible under ORS 25.331 the administrator will review the circumstances and, if appropriate, modify the order to provide for cash medical support pursuant to OAR 137-050-0750, or activate contingent provisions, if any, as provided in OAR 137-055-3340.

(7) When an employer notifies the administrator that the amount to be withheld for the health care coverage premium is greater than permissible under ORS 25.331:

(a) An obligee who is a recipient of TANF cash assistance may not elect to receive health care coverage over monetary child support. In these cases, the administrator will select monetary child support over health care coverage unless health care coverage would be in the best interests of the child.

(b)(A) Except as provided in section (7)(b)(B), an obligee, who is not a recipient of TANF cash assistance and who selects health care coverage over monetary child support, may change the selection:

(i) No more than once per year;

(ii) In conjunction with a medical support notice being issued to a new employer; or

(iii) When a child becomes seriously ill and health care coverage is needed.

(B) An obligee who is not a recipient of TANF cash assistance may not select health care coverage over monetary child support if such a selection conflicts with the requirements of any bankruptcy plan.

(8) A request to select health care coverage over monetary child support may be made verbally or in writing.

(9) When multiple cases for an obligor are being enforced and the employer receives notice that one or more cases have selected health care coverage over monetary child support, the employer must withhold in the following manner:

(a) First withhold the full amount listed on withholdings issued on the cases that have not selected health care coverage over monetary child support;

(b) Withhold the premium for health care coverage, up to the maximum allowed by law;

(c) If the maximum is not reached, withhold support for the case(s) requesting health care coverage, up to the full amount of the withholding order or the maximum allowed by law, whichever is less;

(d) Identify which payment goes with which case and submit the monetary support payments to the Division of Child Support as directed in the withholding orders.

(10) A providing party may select a different health benefit plan during any applicable open enrollment period, providing the health benefit plan provides appropriate health care coverage, or other coverage if the order so requires.

(11) If the providing party changes to a health benefit plan that does not meet the criteria in section (10) of this rule, the administrator will issue a medical support notice as provided in section (1) of this rule and may pursue modification of the support order for an amount towards cash medical support pursuant to OAR 137-050-0750, or activate contingent provisions, if any, as provided in OAR 137-055-3340.

Stat. Auth.: ORS 25.321, 25.325, 180.345

Stats. Implemented: ORS 25.325

Hist.: AFS 10-1990, f. 3-14-90, cert. ef. 4-1-90; AFS 25-1995, f. 10-12-95, cert. ef. 10-15-95; AFS 23-1997, f. 12-29-97, cert. ef. 1-1-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0060; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-4620; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-4620; DOJ 8-2007, f. 9-28-07, cert. ef. 10-1-07; DOJ 7-2007(Temp), f. 9-28-07, cert. ef. 10-1-07 thru 1-2-08; DOJ 2-2008, f. & cert. ef. 1-2-08; DOJ 1-2010, f. & cert. ef. 1-4-10

## 137-055-4640

### Medical Support Notice — Plan Selection

For the purposes of this rule, the definitions found in ORS 25.321 and OAR 137-050-0750 apply.

(1) When a medical support notice has been served and the providing party as defined in ORS 25.321, is not enrolled in a health benefit plan or is not enrolled in a plan that offers and available dependent coverage as defined in ORS 25.323, and if more than one plan with appropriate dependent coverage is offered, the plan administrator will notify the enforcing agency and the enforcing agency will forward the health benefit plan information to the obligee, if the obligee is not the providing party.

(2) The notice sent by the enforcing agency with the health benefit plan descriptions and documents will advise the obligee that:

(a) If the obligee identifies a plan and contacts the enforcing agency within 10 calendar days of the date the plan information was mailed, except as provided in section (4) of this rule, the enforcing agency will notify the plan administrator of the selection made.

(b) If the obligee fails to notify the enforcing agency of a plan selection within 10 calendar days of the date the plan information was mailed, except as provided in section (4) of this rule, the enforcing agency will select the default plan if the plan administrator has indicated there is such a plan or, if there is not a default plan indicated by the plan administrator, the least costly plan available that provides appropriate health care coverage.

(3) Notwithstanding any other provisions of this rule, and except as provided in section (4) of this rule, if the providing party has more than one case with an order to provide appropriate health care coverage, the enforcing agency will select a plan using the following criteria:

(a) If there is only one health benefit plan that provides appropriate health care coverage on all cases, that plan will be selected;

(b) If there is more than one health benefit plan that provides appropriate health care coverage on all cases, the least costly plan will be selected;

(c) If there is a health benefit plan that provides appropriate health care coverage for some but not all of the children on the cases, then:

(A) If the medical support notices were issued on all cases on or about the same date, such as would occur when the providing party has a new employer, the least costly plan that is appropriate to the child(ren) on at least one of the cases will be selected; or

(B) If the medical support notices were issued at different times, such as would occur when there is an existing order with a provision for appropriate health care coverage on one case and a new order with a provision for appropriate health care coverage is established on a second case, the existing plan or the least costly plan that is appropriate to the child(ren) on the case in which the first medical support notice was issued will be selected.

(4) If a providing party's current family is covered by a health benefit plan, the enforcing agency may not select a plan that eliminates the current family's coverage.

(5) The enforcing agency will notify the plan administrator of the selection within 20 business days of the date the plan administrator forwarded the health plan descriptions and documents to the enforcing agency.

Stat. Auth.: ORS 25.080 & 180.345

Stats. Implemented: ORS 25.325, 25.327, 25.329, 25.331, 25.333, 25.337, 25.341



# ADMINISTRATIVE RULES

Hist.: AFS 38-1995, f. 12-4-95, cert. ef. 12-15-95; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0063; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-4640; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-4640; DOJ 8-2007, f. 9-28-07, cert. ef. 10-1-07; DOJ 1-2010, f. & cert. ef. 1-4-10

## 137-055-5110

### Child Attending School

The purpose of this rule is to provide additional information as to how the Child Support Program (CSP) will apply the provisions of ORS 107.108 when the order or modification provides for support until the child is age 21, so long as the child is a child attending school in accordance with ORS 107.108.

(1) In addition to the definitions found in ORS 107.108, as used in OAR 137-055, the following terms have the meanings given below:

(a) "Active member of the military" means:

(A) A member of the Army, Navy, Air Force, Marine Corps, or Coast Guard (collectively known as the "armed forces"), who is serving on active duty; or

(B) A member of the National Guard who is serving full-time National Guard state or federal active duty; or

(C) A cadet at a federal service academy.

(b) "Adult child" means a child over the age of 18 and under the age of 21, who is not married or otherwise emancipated, and is not currently a child attending school.

(c) "Child attending school" has the meaning given in ORS 107.108, except a child attending school does not include an active member of the military.

(d) "Satisfactory academic progress" means:

(A) For a child attending high school who is over age 18 but under age 21, enrollment in school and meeting attendance requirements or as defined by the school; or

(B) For a child attending post high school classes, as defined by the higher educational institution.

(2) If the obligor has not provided the child attending school with an address to send the documents required by ORS 107.108 to, the administrator, pursuant to OAR 137-055-1140(8), may release the contact address of the obligor to the child attending school. If the obligor does not provide an address to the CSP or to the child, the obligor's failure to receive required documents is not a basis for objecting that a child does not qualify as a child attending school.

(3) If there has been a finding and order of nondisclosure on behalf of the child attending school pursuant to ORS 25.020;

(a) The child may send the obligor's copy of the initial notice of intent to attend or continue to attend school to the administrator for the administrator to forward to the obligor. The child must submit a copy of the documents to the administrator within the time periods set out in ORS 107.108. The administrator will redact the following information prior to sending a copy of the documents otherwise required to be provided to the obligor:

(A) Residence, mailing or contact address including the school name and address;

(B) Social security number;

(C) Telephone number including the school telephone number;

(D) Driver's license number;

(E) Employer's name, address and telephone number; and

(F) Name of registrar or school official.

(b) The child attending school must contact the school each term or semester and submit to the administrator the information that the obligor could obtain from the school if there wasn't a finding and order of nondisclosure on the case. The administrator will redact the information set out in subsection (a) of this section prior to sending a copy of the documents to the obligor.

(4) If a child attending school is in the care of the Oregon Youth Authority (OYA), any and all reporting duties of the child attending school will be the duty of OYA.

(5) The Department of Justice will distribute and disburse support directly to the child attending school, unless good cause is found to distribute and disburse support in some other manner. For purposes of this section "good cause" may include:

(a) The child is in the care of OYA;

(b) The child provides written notarized authorization for distribution and disbursement to the obligee;

(c) The court, administrative law judge or administrator orders otherwise; or

(d) The administrator is enforcing the Oregon order at the request of another state and that state has indicated they are unable to distribute and disburse support directly to the child.

(6)(a) If the administrator makes a finding that the support payment should be distributed and disbursed to the obligee under subsection (5)(b), the administrator will send a notice of redirection of support to the parties.

(b) A party may contest the administrator's finding as provided in ORS 183.484.

(7) An objection based on the requirements of ORS 107.108 may be made by any party to the support order.

(a) Unless new supporting documentation can be provided, an objection can only be made once per semester or term as defined by the school, or three months from the date of a previous objection if the school does not have semesters or terms.

(b) A party may contest the administrator's finding from the objection as provided in ORS 183.484.

(8) When support has been suspended under ORS 107.108, if the case has been closed pursuant to OAR 137-055-1120 and the adult child subsequently complies with the requirements for reinstatement, the adult child must submit the written confirmation of compliance, proof of written consent and an application for services as described in OAR 137-055-1060. The written confirmation and application for services may be combined as one document.

(9) When the administrator has suspended or reinstated a support obligation pursuant to ORS 107.108, a party may request an administrative review of the action within 30 days after the date of the notice of suspension or reinstatement.

(a) The only issues which may be considered in the review are whether:

(A) The child meets the requirements of a child attending school;

(B) The written notice of the child's intent to attend or continue to attend school was sent to the parent ordered to pay support;

(C) The written consent was sent or proof of written consent was received.

(b) The burden of proof for the administrative review is on the requesting party to provide documentation supporting the allegation(s).

(10) When support has been suspended under ORS 107.108, the adult child may request to receive notice of future modifications and may request to be a party to the modification as outlined in ORS 107.108 and OAR 137-055-3430. The adult child does not have any party status on the case until the request has been received by the administrator.

(11) In addition to the rights afforded under ORS 107.108, if the obligee claims good cause under OAR 137-055-1090, the child attending school may apply for services to enforce the existing support obligation on behalf of the child attending school only.

(a) The application will be handled in the same manner as outlined in OAR 137-055-1090(10)(a)-(c).

(b) If the child attending school applies for services, and services are provided under ORS 25.080, all arrears for that child will accrue to the child attending school as provided for in OAR 137-055-6021, until the child's 21st birthday or is otherwise emancipated and then will be file credited off the case.

(12) If a court orders payment from a higher education savings plan in lieu of support under ORS 107.108;

(a) The administrator will cease collection and billing actions on behalf of that child at age 18. If the support order is for a single or last remaining child the department will close the case unless there are arrears on the case.

(b) If payments are ordered from a higher education savings plan and the court has not provided for a modification of the support amount for any remaining children of the order, this is a substantial change of circumstances for purposes of modifying the support order.

(c) If payment from a higher education savings plan has been ordered, the administrator will not take action to subsequently modify the support order to include child attending school support provisions for that child.

(13) Except for support orders originally issued by a state other than Oregon and being enforced under the provisions of ORS 110.303 to 110.452, if the most recent order or modification for support cites ORS 107.108 or otherwise provides for support of a "child attending school," the administrator will follow the provisions of ORS 107.108 and this rule, regardless of other child attending school provisions that may be in the support order.

Stat. Auth.: ORS 25.020, 107.108 & 180.345

Stats. Implemented: ORS 25.020, 25.080, 107.108 & 416.407

Hist.: AFS 23-2001, f. 10-2-01, cert. 10-6-01; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-5110; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-5110; DOJ 2-2004, f. 1-2-04 cert. ef. 1-5-04; DOJ 10-2004, f. & cert. ef. 7-1-04; DOJ 5-2005, f. & cert. ef. 7-15-05; DOJ 8-2005(Temp), f. & cert. ef. 9-1-05 thru 2-17-06; DOJ 1-2006, f. & cert. ef. 1-3-06; DOJ 5-2006, f. 6-29-06, cert. ef. 7-3-06; DOJ 6-2006, f. & cert. ef. 10-2-06; DOJ 8-2007, f. 9-28-07, cert. ef. 10-1-07; DOJ 10-2008, f. & cert. ef. 7-1-08; DOJ 1-2010, f. & cert. ef. 1-4-10

## 137-055-5220

### Satisfaction of Support Awards

The purpose of this rule is to define how the Division of Child Support (DCS) will credit "satisfactions of support award" in certain circumstances. This rule must not be construed as limiting the authority of DCS to approve or credit a satisfaction of support award in other lawful circumstances not specified in this rule.

(1) When support payment records are kept by the Department of Justice, an obligee may satisfy amounts indicated on the case records as past due by filing a properly-completed "satisfaction of support award" form with the administrator, subject to approval by DCS under the provisions of this rule; or in accordance with OAR 137-055-5240.

(2) When current support or arrears are assigned to the State of Oregon or to another state, and the obligor is seeking credit for support payments not made through DCS:

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(a) DCS and its attorneys have authority to approve and sign satisfactions.

(b) This authority may be exercised only when the obligee has signed a satisfaction of support award form which acknowledges that the support payment was received.

(3) DCS and its attorneys have authority to sign and approve satisfactions of support award for money paid through DCS as payment of assigned support.

(4) DCS will record, on the case record, all properly-completed satisfactions of support award not assigned, and all satisfactions ordered by a court or a hearing order, and all satisfactions for assigned support that are approved in accordance with this rule. DCS will also promptly forward the satisfaction form to the appropriate court administrator, together with a certificate stating the amount of support satisfaction entered on the case record.

(5) Except when satisfied and approved by DCS and its attorneys or by a court or hearing order, DCS will not enter a satisfaction on a case record for support that has been assigned to the State of Oregon or another state.

(6) When DCS rejects a satisfaction in part or in full as provided in section (5) above, DCS will send written notice to the obligor and obligee, by regular mail to the most recent address. Such notice will indicate the reason for the rejection.

(7) All satisfactions must contain the following:

(a) The full names of both the obligor and the obligee;

(b) The name of the Oregon county where the support award was entered;

(c) The Oregon Child Support Program support case number, or the circuit court case number;

(d) Either:

(A) The total dollar amount to be satisfied; or

(B) The period of time for which past due support is satisfied;

(e) A statement that the satisfaction is only for child support or spousal support;

(f) The signature of the obligee, except for those satisfactions approved under sections (2) and (3) of this rule, where the obligee's signature is not required; and

(g) The date the form is signed.

(8) All signatures on "satisfactions of support award" must be notarized, except on court orders.

(9) Notwithstanding any other provision of this rule, DCS has the authority to file and execute a satisfaction, without the need to notarize such satisfaction, when all of the following are true:

(a) The obligor provides a sworn affidavit that the support award has been paid in full, and

(b) DCS certifies that it has a complete payment record for the support award and that the payment records shows no arrears. DCS will be considered to have a complete pay record if DCS has kept the pay record for the support judgment from the date of the first support payment required under the award, or if the obligee or the administrator established arrears for the time period when DCS did not keep the pay record on the case.

(10) When DCS receives a sworn affidavit under the provisions of subsection (9)(a) of this rule, DCS will examine its support records and determine if it has the authority under section (9) of this rule to execute and file a satisfaction of support award. DCS will promptly notify the obligor if DCS determines that it does not have authority to execute and file a satisfaction of support award. DCS will also determine if any amounts due for support were not assigned to the state. If DCS determines that any amounts were not assigned to the state, DCS will give notice to the obligee in the manner provided by ORS 25.085. The notice must inform the obligee that DCS will execute and file the satisfaction of support award unless DCS receives an objection and request for hearing within 30 days after the date of mailing the notice.

(11) If the obligee requests a hearing under section (10) of this rule, a contested case hearing will be conducted under ORS 183.310 to 183.502 before an administrative law judge.

(12) If support is owed to a child attending school the obligee may only satisfy arrears as defined in OAR 137-055-5120.

Stat. Auth.: ORS 18.225 & 180.345

Stats. Implemented: ORS 18.225 - 238 & 25.020

Hist.: AFS 21-1978, f. & ef. 5-30-78; AFS 26-1979(Temp), f. & ef. 8-16-79; AFS 22-1980, f. & ef. 4-3-80; AFS 66-1989, f. 11-28-89, cert. ef. 12-1-89, Renumbered from 461-035-0005; AFS 17-1991, f. & cert. ef. 8-29-91; AFS 9-1992, f. & cert. ef. 4-1-92; AFS 19-1995, f. 8-30-95, cert. ef. 9-9-95; AFS 14-1996, f. 4-24-96, cert. ef. 5-1-96; AFS 28-1996, f. & cert. ef. 7-1-96; AFS 23-1997, f. 12-29-97, cert. ef. 1-1-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0155; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-5220; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-5220; DOJ 2-2004, f. 1-2-04 cert. ef. 1-5-04; DOJ 12-2004, f. & cert. ef. 10-1-04; DOJ 9-2005, f. & cert. ef. 10-3-05; DOJ 5-2006, f. 6-29-06, cert. ef. 7-3-06; DOJ 1-2010, f. & cert. ef. 1-4-10

## 137-055-6022

### Distribution and Disbursement When Support Assigned

The terms used in this rule have the meanings set out in OAR 137-055-1020 and 137-055-6010.

(1) Except as provided in OAR 137-055-6021, 137-055-6023, 137-055-6024 and section (4) of this rule, the Department of Justice (DOJ) will dis-

tribute and, as appropriate, disburse support payments received on behalf of a family receiving Temporary Assistance for Needy Families (TANF) cash payments in the following sequence:

(a) Current support to the state, not to exceed the amount of unreimbursed assistance;

(b) State's permanently-assigned arrears, excluding advance payment (AVP) amounts owed to the state under OAR 137-055-6210, not to exceed the amount of unreimbursed assistance;

(c) State's temporarily-assigned arrears, not to exceed the amount of unreimbursed assistance;

(d) AVP amounts;

(e) Family's unassigned arrears during assistance period;

(f) Family's unassigned arrears;

(g) Family's conditionally-assigned arrears;

(h) If the total amount received is sufficient to pay the arrears in full, any remaining funds may be disbursed to a parentage testing fee if the support payment is from a state tax refund intercept, or if the payment meets the provisions in OAR 137-055-6023 (1) & (2).

(2) Except as provided in OAR 137-055-6021, 137-055-6023, 137-055-6024 and section (4) of this rule, the Department of Justice (DOJ) will distribute and, as appropriate, disburse support payments received on behalf of a family with a child(ren) in foster care or in Oregon Youth Authority (OYA) custody in the following sequence:

(a) Current support to the state;

(b) State's permanently-assigned arrears, excluding AVP amounts;

(c) State's temporarily-assigned arrears;

(d) AVP amounts;

(e) Family's unassigned arrears during assistance period;

(f) If the total amount received is sufficient to pay the arrears in full, any remaining funds may be disbursed to a parentage testing fee if the support payment is from a state tax refund intercept, or if the payment meets the provisions in OAR 137-055-6023(1) & (2).

(g) If the state is making foster care maintenance payments on behalf of the child(ren), support payments in excess of the maintenance payments, up to the total support obligation owed, will be reported as excess and be paid to Department of Human Services (DHS) to be used in the manner it determines will serve the best interests of the child(ren).

(h) If the child is in OYA custody, support payments in excess of unreimbursed assistance, up to the total support obligation owed, will be reported as excess and be paid to OYA.

(3) Except as provided in section (4) of this rule, DOJ will distribute and, as appropriate, disburse support payments received on behalf of a family who formerly received assistance in the following sequence:

(a) Current support to the family;

(b) Family's unassigned arrears;

(c) Family's conditionally-assigned arrears;

(d) State's permanently-assigned arrears, not to exceed the amount of unreimbursed assistance;

(e) Family's unassigned arrears during assistance period.

(f) If the total amount received is sufficient to pay the arrears in full, any remaining funds may be disbursed to a parentage testing fee if the support payment is from a state tax refund intercept, or if the payment meets the provisions in OAR 137-055-6023(1) & (2).

(4) DOJ will distribute and, as appropriate, disburse support payments received from federal tax refund intercepts in the following sequence:

(a) State's permanently-assigned arrears, excluding AVP amounts, not to exceed the amount of unreimbursed assistance;

(b) State's temporarily-assigned arrears, not to exceed the amount of unreimbursed assistance;

(c) Family's conditionally-assigned arrears not to exceed the amount of unreimbursed assistance;

(d) AVP amounts;

(e) Family's unassigned arrears.

(5) Whenever support payments are assigned to the state, the state share of the payments will be either:

(a) Disbursed to DHS if funds were expended to provide foster care assistance to the family;

(b) Disbursed to OYA if funds were expended by OYA to provide assistance to a member of the family; or

(c) Retained by DOJ if funds were expended to provide TANF cash assistance to the family, except:

(A) As payments are received each month, DOJ will pass through to the obligee no more than \$50 for each dependent child, up to a maximum of \$200 per month, not to exceed the current support due that month.

(B) Current support collected from each obligor may only be passed through for the child(ren) of that obligor, even if the maximum pass-through has not been met.

(6) Whenever support payments are assigned to a Tribe, the Tribe's share of the payments will be disbursed to the Tribe as provided in 42 USC 657.

Stat. Auth.: ORS 25.020 & 180.345

Stats. Implemented: ORS 25.020 & 25.150

# ADMINISTRATIVE RULES

Hist.: DOJ 9-2005, f. & cert. ef. 10-3-05; DOJ 1-2007, f. & cert. ef. 1-2-07; DOJ 8-2007, f. 9-28-07, cert. ef. 10-1-07; DOJ 13-2008, f. & cert. ef. 10-1-08; DOJ 1-2010, f. & cert. ef. 1-4-10

## 137-055-6024

### Distribution and Disbursement on Multiple Cases

The terms used in this rule have the meanings set out in OAR 137-055-1020 and 137-055-6010.

(1) When an obligor has multiple support cases, the distribution and, as appropriate, disbursement sequence for each case will be as provided in OAR 137-055-6022, but DOJ will distribute and, as appropriate, disburse support payments to each of the multiple cases as follows:

(2) When withholder remits a single payment that is a combined payment intended to comply with more than one income withholding order against the obligor, and the obligor's income is sufficient for the withholder to fully comply with each order to withhold income issued pursuant to ORS Chapter 25, DOJ will ensure that the amount distributed and, as appropriate, disbursed to each case is consistent with the withholding order's limitations. However, when the obligor is paid on a weekly basis, for those months in which there is an extra pay period due to the manner in which weeks fall during the year, the weekly amount may be distributed and, as appropriate, disbursed to each case when it is received, even if the monthly withholding limitation has already been reached.

(3) When withholder remits a single payment that is a combined payment intended to comply with more than one income withholding order against the obligor, but the obligor's income is not sufficient for the withholder to fully comply with each order to withhold income issued pursuant to ORS Chapter 25, DOJ will distribute and, as appropriate, disburse the amount received as follows:

(a) If the amount is not sufficient to pay the current support due on all of the obligor's support cases for which an order to withhold is in effect, each withholding case will receive a proportionate share of the total amount withheld. For each case, DOJ will determine this amount by dividing the amount ordered as current monthly support on the case by the total combined amount ordered as current support on all of the obligor's support cases for which an order to withhold is in effect, and then multiplying the resulting percentage by the total amount withheld.

(b) If the amount withheld from the obligor's income is sufficient to pay the current support due on all cases, but is not enough to fully comply with the order to withhold on all cases where arrears are owed, the amount received will be distributed and, as appropriate, disbursed as follows:

(A) Current support to each withholding case;

(B) Equally to each withholding case where arrears are owed. However, no case may receive more than the maximum allowable withholding amount for that case pursuant to ORS 25.414 or, as appropriate, under an expanded income withholding pursuant to ORS 25.387. Any remaining funds will be equally distributed and, as appropriate, disbursed to the obligor's other cases. No case may receive more than the total amount of current support and arrears owed on that case at the time this distribution and disbursement is made.

(4) When support payments are received from federal tax refund intercepts the payment will first be processed under OAR 137-055-6021(9). If the payment is not sufficient to pay the full arrears amount on each case certified for federal offset, DOJ will distribute and, as appropriate, disburse the amount received as follows:

(a) If the total amount received is not sufficient to pay the state's permanently-assigned arrears on all of the obligor's certified cases, each certified case will receive an equal share. However, no case may receive more than the state's permanently-assigned arrears on that case.

(b) If the total amount is sufficient to pay the state's permanently-assigned arrears on all certified cases, but is not enough to pay in full all the state's temporarily-assigned or the family's conditionally-assigned arrears on all of the obligor's certified cases, the amount received will be distributed and, as appropriate, disbursed as follows:

(A) State's permanently-assigned arrears to each certified case;

(B) An equal share of the remaining funds for each certified case. However, no case may receive more than the state's temporarily-assigned or the family's conditionally-assigned arrears on that case.

(c) If the total amount is sufficient to pay the state's permanently assigned arrears and the state's temporarily-assigned or the family's conditionally-assigned arrears on all certified cases, but is not enough to pay in full the family's unassigned arrears on all of the obligor's certified cases, the amount received will be distributed and, as appropriate, disbursed as follows:

(A) State's permanently-assigned arrears to each certified case;

(B) State's temporarily-assigned or the family's conditionally-assigned arrears to each certified case;

(C) An equal share of the remaining funds for each certified case. However, no case may receive more than the total amount of arrears owed on that case at the time this distribution or disbursement is made.

(5) When a single writ of garnishment is issued for two or more cases as provided in ORS 18.645, DOJ will distribute and, as appropriate, disburse support payments only among the cases listed in the writ of garnishment and in the manner provided in section (6) of this rule.

(6) Except as provided in OAR 137-055-6023, DOJ will distribute and, as appropriate, disburse all other support payments received, including support payments received from state tax refund intercepts, as follows:

(a) When support payments are received from state tax refund intercepts, the payment will first be processed under OAR 137-055-6021(10).

(b) If the total amount is not sufficient to pay the current support due on all of the obligor's support cases, each case will receive a proportionate share of the total amount received. For each case, DOJ will determine this amount by dividing the amount ordered as current monthly support on the case by the total combined amount ordered as current support on all of the obligor's support cases, and then multiplying the resulting percentage by the total amount received.

(c) If the amount received is sufficient to pay the current support due on all cases, but is not enough to pay in full all cases where arrears are owed, the amount received will be distributed and, as appropriate, disbursed as follows:

(A) Current support to each case;

(B) Equally to each case where arrears are owed. However, no case may receive more than the total amount of current support and arrears owed on that case at the time this distribution and disbursement is made. Any remaining funds will be equally distributed and disbursed to the obligor's other cases.

(d) If the total amount received is sufficient to pay the arrears in full on all cases, any remaining funds may be distributed to parentage testing fees if the support payment is from a state tax refund intercept, or if the payment meets the provisions in OAR 137-055-6023(1) & (2).

Stat. Auth.: ORS 25.020 & 180.345

Stats. Implemented: ORS 18.645, 25.020, 25.387, 25.414 & 25.610

Hist.: DOJ 9-2005, f. & cert. ef. 10-3-05; DOJ 1-2007, f. & cert. ef. 1-2-07; DOJ 8-2007, f. 9-28-07, cert. ef. 10-1-07; DOJ 1-2010, f. & cert. ef. 1-4-10

## 137-055-6260

### Return of Overcollected Support Amounts

(1) When the Division of Child Support (DCS) receives a support payment on an account for which no current order exists for ongoing support, DCS will apply the payment to any arrears the obligor may owe on the account. If any excess funds remain from the payment after any arrears are paid in full, and DCS has not forwarded the excess amount to the payee, DCS will return the excess amount to the obligor within 30 days of discovering the overcollection.

(2) On any account for which an ongoing support obligation exists, and DCS receives a payment that exceeds the total amount due for current support and arrears and has not forwarded the excess amount to the payee, DCS will return the excess amount to the obligor under the following circumstances:

(a) When an income withholding order exists and the withholder does not receive or implement a notice from the administrator to reduce withholding to the amount of the current ongoing support obligation in a timely manner, such as may occur after all arrears are collected or after the ongoing support obligation is modified downward;

(b) When a state or federal tax refund is intercepted in an amount exceeding the amount owed for arrears; or

(c) When TANF cash assistance is being granted to the obligee or children on the support case, unless the obligor and the administrator agree otherwise.

(3) Notwithstanding section (1), on any account for which no current order exists for ongoing support, when a withholder sends a payment that exceeds the total amount that should have been withheld under ORS 25.414(1)(d), there is no order for expanded withholding under ORS 25.387, and DCS has not forwarded the excess amount to the obligee, DCS will return the excess amount to the obligor.

(4) When DCS receives a payment that exceeds the total amount due for current support and arrears and has forwarded the excess amount to the payee, DCS will notify the parties in writing within 30 days of discovering the overcollection that:

(a) A credit balance in the obligor's favor has resulted from the overcollection; and

(b) The obligee or child attending school under ORS 107.108 and OAR 137-055-5110 may, within 14 days of the date of the notice from DCS, submit a written request to DCS for an administrative review to determine if DCS's record-keeping and accounting related to calculation of the credit balance is correct.

(5) DCS will conduct the administrative review within 30 days of receiving the party's written request, and will send written notification to the parties of the results of the review.

(6) In any case where DCS is required to return overcollected funds to an obligor under section (2) of this rule, the obligor may elect to forego the return of some or all of the overcollected funds and to instead use any credit balance amount thus established under this rule to offset the obligor's future ongoing support obligation, genetic test fees or arrears. An obligor wishing to elect this option must notify DCS before DCS has returned such funds to the obligor.

Stat. Auth.: ORS 25.020, 25.125, 180.345

Stats. Implemented: ORS 25.020 & 25.125

Hist.: AFS 26-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0272; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-

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03, Renumbered from 461-200-6260; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-6260; DOJ 1-2006, f. & cert. ef. 1-3-06; DOJ 5-2006, f. 6-29-06, cert. ef. 7-3-06; DOJ 6-2006, f. & cert. ef. 10-2-06; DOJ 1-2010, f. & cert. ef. 1-4-10

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**Rule Caption:** Paternity only services, time frames for mailing and establishing medical support.

**Adm. Order No.:** DOJ 2-2010(Temp)

**Filed with Sec. of State:** 1-4-2010

**Certified to be Effective:** 1-4-10 thru 7-1-10

**Notice Publication Date:**

**Rules Amended:** 137-055-1070, 137-055-2160, 137-055-3340

**Subject:** OAR 137-055-1070 is amended to provide criteria under which the program may provide services sufficient to establish paternity, without seeking a cash child support or medical support order.

OAR 137-055-2160 is amended to clarify time frames when service is made by mail.

OAR 137-055-3340 is amended to clarify how the program will establish medical support and administer contingent medical provisions in orders.

**Rules Coordinator:** Vicki Tungate—(503) 986-6086

## 137-055-1070

### Provision of Services

(1) For the purposes of this rule, the following definitions apply:

(a) "Full services case" means a case in which the full range of support enforcement services required under ORS 25.080(4) are provided;

(b) "Limited services case" means a case in which the provisions of ORS 25.080 do not apply and one or more collection, accounting, distribution and disbursement or enforcement services are provided pursuant to state or federal law;

(c) An "establishing paternity only" case means a case in which the only service requested under ORS 25.080 by a party is the establishment of paternity for a minor child.

(2) When any Oregon judgment or support order for child and/or spousal support is received, the administrator will:

(a) If the order requires payment of child support or child and spousal support and seeks collection, accounting, distribution, disbursement and enforcement services:

(A) Create a full services case on the Child Support Enforcement Automated System (CSEAS) if one does not already exist;

(B) Initiate appropriate enforcement action;

(C) Unless the order contains the signed request of a party, send the parties a standardized application form; and

(D) Send the parties the information required in OAR 137-055-1060(3);

(b) If the order requires payment of spousal support only and seeks collection, accounting, distribution, disbursement and enforcement services, process the order pursuant to OAR 137-055-2045.

(c) If the order is silent, unclear or contradictory on the services to be provided and no application or other written request for support enforcement services has been received:

(A) Create an information only case on the CSEAS for the state case registry if one does not already exist; and

(B) Send the parties a letter explaining that no services will be provided and why. The letter must include a statement that the parties may apply for support enforcement services at any time if the order includes a provision for child support.

(d) If the order seeks only payment through the Department of Justice and no application or other written request for support enforcement services has been received:

(A) Create an information only case on the CSEAS for the state case registry, if one does not already exist, to receive and disburse payments in accordance with OAR 137-055- 6021; and

(B) Send the parties a letter explaining that the program will only provide disbursement of support payments and why. The letter must include a statement that a party may apply for support enforcement services at any time if the order includes a provision for child support.

(e) If the order seeks only services sufficient to permit establishment of income withholding for child support or child and spousal support as provided in ORS 25.381(2)(a):

(A) Create a limited services case on the CSEAS if one does not already exist;

(B) Establish income withholding under ORS 25.378; and

(C) Receive and disburse payments in accordance with OAR 137-055-6021.

(f) If the provisions of subsection (c) or subsection (d) apply and a party subsequently completes an application or other written request for support enforcement services, the administrator will process the application or request in accordance with OAR 137-055-1060.

(3) When a person applies for services under OAR 137-055-1060 for establishment or enforcement of a child support order, the case is a full services case.

(a) The administrator will perform all mandated services under state and federal law; and

(b) The administrator will determine which non-mandated services will be provided, but may consider input from the applicant in making that determination.

(4)(a) When a person applies for services under OAR 137-055-1060 and there is more than one parent who may be obligated to pay support, the applicant may apply for services:

(A) To establish and collect support from only one parent; or

(B) To establish and collect support from more than one parent.

(b) A separate application under OAR 137-055-1060 is required for each parent the applicant wishes to pursue.

(5) When a parent or alleged parent applies for "establishing paternity only" services as defined in subsection (1)(c), the program will accept the case and provide only paternity establishment services if:

(a) The child was born in Oregon;

(b) The administrator has jurisdiction to establish paternity;

(c) There is no legal presumption of paternity under ORS 109.070, or if there is, the husband and wife are seeking to add the husband to the birth record;

(d) Paternity is not already established;

(e) The child does not receive public assistance; and

(f) The program is not already providing full services.

Stat. Auth.: ORS 180.345

Stats. Implemented: ORS 25.020, 25.080, 25.140, 25.164, 25.381 & 107.108

Hist.: AFS 20-2002, f. 12-20-02 cert. ef. 1-1-03; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-1070; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-1070; DOJ 10-2004, f. & cert. ef. 7-1-04; DOJ 8-2005(Temp), f. & cert. ef. 9-1-05 thru 2-17-06; DOJ 1-2006, f. & cert. ef. 1-3-06; DOJ 8-2007, f. 9-28-07, cert. ef. 10-1-07; DOJ 10-2008, f. & cert. ef. 7-1-08; DOJ 2-2010(Temp), f. & cert. ef. 1-4-10 thru 7-1-10

## 137-055-2160

### Requests for Hearing

(1) A request for hearing must be in writing and signed by the party, the party's authorized representative, or the administrator.

(2) A request for hearing may be made on a form provided by the Child Support Program (CSP) and must contain the party's residence, mailing or contact address, a telephone number where the party can be contacted and the reasons for objection to the contested case notice.

(3) A request for hearing must be received by the CSP office which issued the action within the time provided by law or notice in order to be considered timely.

(4) A new or amended request for hearing is not required from the requesting party to obtain a hearing if the administrator amends the order being appealed, unless the administrator notifies the requesting party that an additional request is required.

(5) When a party requests a hearing after the time specified by the administrator, the administrator will handle the request pursuant to OAR 137-003-0528, except that the administrator may accept the late request only if:

(a) The request is received before or within 60 days after entry of a final order by default;

(b) The circuit court has not approved the final order or there is no appeal of the final order pending with the circuit court, and

(c) The cause for failure to timely request the hearing was beyond the reasonable control of the party, unless other applicable statutes or Oregon Child Support Program administrative rules provide a different time frame or standard.

(6) Notwithstanding the provisions of section (5) of this rule, a request for hearing is not considered a late hearing request when:

(a) Parentage testing has been conducted pursuant to ORS 109.252 and 416.430 which includes the man as the biological father of the child, and a request for hearing has been received from a party within 30 days from the date of service of the Notice of Intent to Enter Order/Judgment establishing paternity and the notice of parentage testing results; or

(b) A party has denied paternity and failed to appear for parentage tests, an order establishing paternity has been entered, and a request for hearing has been received from a party within 14 days from the date the order establishing paternity was mailed to the parties.

(7) For the purpose of computing any period of time under this rule, except as otherwise provided, any response period begins to run on the following date:

(a) If service is by certified mail, on the date the party signs a receipt for the mailing;

(b) If service is by regular mail:

(A) Three days after the mailing date if mailed to an address in Oregon;

(B) Seven days after the mailing date if mailed to an address outside Oregon; or

(c) The date evidence shows the party received the mailing.

(8) The dates in section (7) are computed based on calendar days, not business days.

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(9) The provisions of subsection (7)(b) do not apply to service on a party by regular mail to complete substitute service. For substitute service, the service date is the date the document is postmarked.

Stat. Auth.: ORS 180.345

Stats. Implemented: ORS 183.415

Hist.: AFS 5-1995, f. & ef. 2-6-95; AFS 26-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 21-2000, f. & cert. ef. 8-1-00; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0830; AFS 28-2001, f. 12-28-01, cert. ef. 1-1-02; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-2160; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-2160; DOJ 2-2006(Temp), f. & cert. ef. 1-3-06 thru 6-30-06; DOJ 5-2006, f. 6-29-06, cert. ef. 7-3-06; DOJ 6-2006, f. & cert. ef. 10-2-06; DOJ 10-2008, f. & cert. ef. 7-1-08; DOJ 2-2010(Temp), f. & cert. ef. 1-4-10 thru 7-1-10

## 137-055-3340

### Establishment or Modification of Medical Support

(1) For the purposes of establishing or modifying medical support, the definitions in ORS 25.321, OAR 137-050-0750 and 137-055-1020 apply.

(2) In any action to establish or modify an Oregon child support order when services are being provided under ORS 25.080, if both parents have appropriate and available health care coverage, the administrator will seek an order requiring both parties to provide coverage.

(3) When medical support is contingent, as described in OAR 137-050-0750(10), unless otherwise specified in the order, the following provisions apply:

(a) For cases in which the providing party's appropriate private health care coverage is no longer available, the administrator will notify the parties that coverage has stopped and that cash medical support provisions in the order, if any, will begin the month following the month in which the coverage stopped; and

(b) For cases in which appropriate health care coverage becomes available, after notice from a party or other source, the administrator will notify the parties that coverage is now available and that cash medical support will stop effective the month after the child is enrolled or the administrator receives notice, whichever is later.

(4) When ordering cash medical support under OAR 137-050-0750, the administrator will not order an obligee to pay cash medical support.

Stat. Auth.: ORS 25.080, 180.345

Stats. Implemented: ORS 25.080, 25.270 - 25.343

Hist.: AFS 25-1993, f. 10-27-93, cert. ef. 11-4-93; AFS 28-1994, f. & cert. ef. 12-14-94; AFS 25-1995, f. 10-12-95, cert. ef. 10-15-95; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0062; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-3340; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-3340; DOJ 8-2007, f. 9-28-07, cert. ef. 10-1-07; DOJ 2-2010(Temp), f. & cert. ef. 1-4-10 thru 7-1-10

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**Rule Caption:** Guidelines for calculating child support: rebuttals.

**Adm. Order No.:** DOJ 3-2010(Temp)

**Filed with Sec. of State:** 1-8-2010

**Certified to be Effective:** 1-8-10 thru 7-1-10

**Notice Publication Date:**

**Rules Amended:** 137-050-0760

**Rules Suspended:** 137-050-0760(T)

**Subject:** OAR 137-050-0760 is adopted to provide factors for rebuttal to the presumed correct child support amount. This rule replaces the temporary rule filed January 4, 2010. It is changed to clarify that the rebuttal factors listed may not include all possible rebuttal factors, and to remove the requirement to use certain rebuttal factors in each area subject to rebuttal (income, costs or support amount).

**Rules Coordinator:** Vicki Tungate—(503) 946-6086

## 137-050-0760

### Rebuttals

(1) The presumed support amount may be rebutted by a finding that sets out the presumed amount, concludes that this amount is unjust or inappropriate, and states the reason the presumed amount is unjust or inappropriate. The rebuttal factors may be applied by adjusting the income of a parent, the costs for the child or the presumed support amount. The rebuttal factors include but are not limited to:

(a) Evidence of the other available resources of the parent;

(b) The reasonable necessities of the parent;

(c) The net income of the parent remaining after withholding required by law or as a condition of employment;

(d) A parent's ability to borrow;

(e) The number and needs of other dependents of a parent;

(f) The special hardships of a parent affecting the parent's ability to pay support, including, but not limited to, any medical circumstances, extraordinary travel costs related to the exercise of parenting time, or requirements of a reunification plan if the child is in state-financed care;

(g) The desirability of the custodial parent remaining in the home as a full-time parent or working less than full-time to fulfill the role of parent and homemaker;

(h) The tax consequences, if any, to both parents resulting from spousal support awarded, the determination of which parent will name the child as a

dependent, child tax credits, or the earned income tax credit received by either parent;

(i) The financial advantage afforded a parent's household by the income of a spouse or domestic partner;

(j) The financial advantage afforded a parent's household by benefits of employment including, but not limited to, those provided by a family owned corporation or self-employment, such as housing, food, clothing, health benefits and the like, but only if unable to include those benefits as income under OAR 137-050-0715;

(k) Evidence that a child who is subject to the support order is not living with either parent or is a child attending school as defined in ORS 107.108;

(L) Findings in a judgment, order, decree or settlement agreement that the existing support award is or was made in consideration of other property, debt or financial awards, and those findings remain relevant;

(m) The net income of the parent remaining after payment of mutually incurred financial obligations;

(n) The tax advantage or adverse tax effect of a parent's income or benefits.

(o) The extraordinary or diminished needs of the child, except:

(A) Expenses for extracurricular activities and

(B) Social Security benefits paid to a child because of a child's disability;

(2) Amounts used to rebut income will be applied prior to determining income shares. Amounts used to rebut costs will be based on the respective income shares of the parties. Amounts used to rebut the presumed support amount will be applied on a dollar-for-dollar basis.

Stat. Auth.: ORS 25.270 - 25.290, 180.345

Stats. Implemented: ORS 25.270 - 25.290

Hist.: DOJ 17-2009(Temp), f. 12-1-09, cert. ef. 1-4-10 thru 7-1-10; DOJ 3-2010(Temp), f. & cert. ef. 1-8-10 thru 7-1-10

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**Rule Caption:** Establishing medical support.

**Adm. Order No.:** DOJ 4-2010(Temp)

**Filed with Sec. of State:** 1-12-2010

**Certified to be Effective:** 1-12-10 thru 7-1-10

**Notice Publication Date:**

**Rules Amended:** 137-055-3340

**Rules Suspended:** 137-055-3340(T)

**Subject:** OAR 137-055-3340 is amended to clarify how the program will establish medical support and administer contingent medical provisions in orders, and to clarify that when services are being provided by the Child Support Program and both parents have private health care coverage available, both will be ordered to provide it, unless the parents agree that only one will provide it and there is no medical support assignment.

**Rules Coordinator:** Vicki Tungate—(503) 986-6086

## 137-055-3340

### Establishment or Modification of Medical Support

(1) For the purposes of establishing or modifying medical support, the definitions in ORS 25.321, OAR 137-050-0750 and 137-055-1020 apply.

(2) In any action to establish or modify an Oregon child support order when services are being provided under ORS 25.080, if both parents have appropriate and available health care coverage, the administrator will seek an order requiring both parties to provide coverage, unless the parties agree that only one parent will provide the coverage and there is no assignment of medical rights to the state.

(3) When medical support is contingent, as described in OAR 137-050-0750(10), unless otherwise specified in the order, the following provisions apply:

(a) For cases in which the providing party's appropriate private health care coverage is no longer available, the administrator will notify the parties that coverage has stopped and that cash medical support provisions in the order, if any, will begin the month following the month in which the coverage stopped; and

(b) For cases in which appropriate health care coverage becomes available, after notice from a party or other source, the administrator will notify the parties that coverage is now available and that cash medical support will stop effective the month after the child is enrolled or the administrator receives notice, whichever is later.

(4) When ordering cash medical support under OAR 137-050-0750, the administrator will not order an obligee to pay cash medical support.

Stat. Auth.: ORS 25.080, 180.345

Stats. Implemented: ORS 25.080, 25.270 - 25.343

Hist.: AFS 25-1993, f. 10-27-93, cert. ef. 11-4-93; AFS 28-1994, f. & cert. ef. 12-14-94; AFS 25-1995, f. 10-12-95, cert. ef. 10-15-95; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0062; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-3340; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-3340; DOJ 8-2007, f. 9-28-07, cert. ef. 10-1-07; DOJ 2-2010(Temp), f. & cert. ef. 1-4-10 thru 7-1-10; DOJ 4-2010(Temp), f. & cert. ef. 1-12-10 thru 7-1-10

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## Department of Oregon State Police Chapter 257

**Rule Caption:** Clarifies which tow business are subject to non-preference towing rules and how hearings are recorded.

**Adm. Order No.:** OSP 3-2009(Temp)

**Filed with Sec. of State:** 12-18-2009

**Certified to be Effective:** 1-1-10 thru 6-29-10

**Notice Publication Date:**

**Rules Amended:** 257-050-0020, 257-050-0040, 257-050-0050, 257-050-0060, 257-050-0070, 257-050-0090, 257-050-0095, 257-050-0100, 257-050-0110, 257-050-0115, 257-050-0125, 257-050-0130, 257-050-0140, 257-050-0145, 257-050-0150, 257-050-0155, 257-050-0157, 257-050-0170, 257-050-0180, 257-050-0200

**Subject:** The amendments to OAR 257 division 050 delete the references to “approved tow business,” “authorized tow business,” and “registered tow business” and replaces those words with the defined term of “qualified tow business.” The amendments further delete the word “applicant” and replaces it with “authorized agent or representative” of a tow business in reference to applications for a letter of appointment to the non-preference tow rotational list from the Department. The amendments create clearer distinctions between “tow businesses” in general and “qualified tow businesses” in particular and clarifies that “qualified tow businesses,” upon receiving a letter of appointment from the Department, are required to comply with the Department’s administrative rules governing the non-preference tow rotational list and are subject to suspension and revocation for failing to do so. The amendments further delete the requirement that “tow businesses” (when their registered agents or representatives apply for a letter of appointment), or “qualified tow businesses” (when complying with the administrative rule requirements), must be licensed as a “separate legal entity” and replaces it with the requirement that such businesses must be separately registered with the Secretary of State Corporate Division. Finally, the amendments delete the requirement that oral proceedings in Department suspension or revocation hearings must be recorded on tape. The amendment allows the Department to record suspension or revocation hearings by any means, including digital recording.

**Rules Coordinator:** Cort Dokken—(503) 934-0228

### 257-050-0020

#### Policy and Purpose

It is the policy and purpose of the Oregon State Police that:

(1) To further the Oregon State Police’s interest in the prompt and orderly removal of disabled or abandoned vehicles from the highways of the State of Oregon, and to meet the towing needs of the Department, the Department has established a non-preference tow program as defined in Oregon Administrative Rules (OAR) 257-050-0020 to 257-050-0200. The program, in part, consists of a non-preference tow rotational list comprised of qualified tow businesses. The non-preference tow rotational list is computer generated and does not favor any one qualified tow business. The non-preference tow rotational list is not a guarantee of business to the towing industry by the Department. Qualified tow businesses participating in the non-preference tow rotational list understand that they may be called upon to conduct vehicle tows at the operational need of the Oregon State Police, as may be determined by the requesting State Police Officer or Department member.

(2) Because the non-preference tow rotational list is designed to meet the towing needs of the Department, tow businesses do not need to be on the list to conduct business with the general public in the State of Oregon.

(3) The Oregon State Police do not charge any fees to the owner or driver of a vehicle towed under its non-preference tow program. Therefore, the Department does not require any qualified tow business participating in the non-preference tow rotational list to charge any fees to the owner or driver of a vehicle towed under the Department’s non-preference tow program. Accordingly, the Department shall not establish, recommend, or in any way dictate the cost of a non-preference tow conducted by a qualified tow business under the Department’s non-preference tow program. It is also the policy of the Department that qualified tow businesses that participate in the Department’s non-preference tow rotational program shall not represent to any person or business that a particular fee has been or will be charged by the Oregon State Police.

(4) Qualified tow businesses called upon by the Oregon State Police to conduct non-preference tows must reflect the highest standards of professionalism. Qualified tow businesses that, through their conduct or actions, abuse the non-preference tow system or the integrity, trust or security of the

Oregon State Police shall be removed from the non-preference tow rotational list through the suspension and/or revocation processes.

Stat. Auth.: ORS 181.440

Stats. Implemented: 181.440

Hist.: OSP 5-2005, f. & cert. ef. 11-18-05; OSP 1-2009(Temp), f. & cert. ef. 8-6-09 thru 1-31-10; OSP 2-2009, f. 10-8-09 cert. ef. 1-1-10; OSP 3-2009(Temp), f. 12-18-09, cert. ef. 1-1-10 thru 6-29-10

### 257-050-0040

#### Authority

(1) These Administrative Rules are promulgated pursuant to ORS 181.440, which permits the Superintendent of the Oregon State Police to make rules governing the eligibility of tow businesses to be placed and remain on any list of qualified tow businesses used by the Department when it requests towing services on behalf of any person.

(2) All qualified tow businesses providing service to the public and the Department through calls received from the Oregon State Police shall conduct their operation in accordance with all applicable federal, state, and local laws, rules, or their equivalent.

(3) In the event the Oregon State Police enters into an agreement with any other state agency, allowing that state agency the use of the non-preference tow rotational list, then these rules shall apply to tow requests made by that state agency.

Stat. Auth.: ORS 181.440

Stats. Implemented: ORS 181.440

Hist.: OSP 1-1989, f. & cert. ef. 1-3-89; OSP 3-1989, f. 10-16-89, cert. ef. 10-15-89; OSP 2-1995, f. & cert. ef. 10-20-95; OSP 5-2005, f. & cert. ef. 11-18-05; OSP 1-2009(Temp), f. & cert. ef. 8-6-09 thru 1-31-10; OSP 2-2009, f. 10-8-09 cert. ef. 1-1-10; OSP 3-2009(Temp), f. 12-18-09, cert. ef. 1-1-10 thru 6-29-10

### 257-050-0050

#### Definitions

(1) “Abandoned Auto” or “Abandoned Vehicle” — A vehicle that has been parked or left standing upon any public way for a period in excess of 24 hours without authorization by statute or local ordinance.

(2) “Area Commander” or “Station Commander” — The local commanding officer of an area established by the Oregon State Police.

(3) “Tow business” — Any person, enterprise, corporation or partnership that engages in the impounding, transporting, recovery or storage of towed or abandoned vehicles or in the disposal of abandoned vehicles.

(4) “Business Records” — Those records maintained by a qualified tow business that relate to the non-preference tows and which include, but are not limited to, tow bills, letters of appointment, and inspection sheets.

(5) “Certified” or “Certification” — The successful completion by an employee of a tow business of a written test administered by a nationally recognized towing affiliated body/organization relating to the level of towing the employee operates.

(6) “Convicted” — An adjudication of guilt upon a verdict or finding entered in a criminal proceeding in a court of competent jurisdiction.

(7) “Denial” — Action taken by the Department in refusing to issue a letter of appointment to a tow business.

(8) “Department” — The Department of State Police, also referred to as “Oregon State Police,” and its employees.

(9) “Employee” — Any person in the service of a tow business under contract of hire, express or implied, oral or written, where the business has the power or right to control and direct the employee in the material details of how the work for the business is to be performed.

(10) “Fencing” — Permanent fencing meeting zoning requirements, with a minimum height of six (6) feet.

(11) “Hazardous Vehicle” — the meaning as given in the Oregon State Highway Division Administrative Rule OAR 734-020-0147.

(12) “Hearings Officer” — A person appointed by an agency or entity contracted by the Department of State Police to conduct contested case hearings.

(13) “Highway” — Every public way, road, street, thoroughfare and place including bridges, viaducts and other structures within the boundaries of the state open, used or intended for use of the general public for vehicles or vehicular traffic as a matter of right (ORS 801.305).

(14) “Inspector” — A commissioned officer or other appointed representative of the Oregon State Police who has been designated by the Department to examine tow trucks and qualified tow businesses.

(15) “Letter of Appointment” — A letter issued by the Department that authorizes a tow business to tow abandoned or disabled vehicles on a non-preference rotational basis for the Oregon State Police.

(16) “Non-Preference tow rotational List” or “Non-Preference List” — The list of qualified tow businesses maintained at Oregon State Police Headquarters that is used to dispatch the tow trucks on an equitable basis when no choice or preference to a tow business is stated by the vehicle owner, driver, or other person responsible for the vehicle.

(17) “On Road Time” — The time it takes a qualified tow business to have a tow truck started and on the road from the time the dispatcher was called by the Department.

(18) “Patrol Services Division” — The administrative body of the Oregon State Police that is located at General Headquarters in Salem, Oregon.

# ADMINISTRATIVE RULES

(19) "Place of Business" — A separate building or physical structure that a qualified tow business occupies, either continuously or at regular times, where the qualified tow business' business books and records are kept and the business of towing vehicles is transacted in each assigned tow zone. Multiple or different qualified tow businesses may operate on a single piece of real property, provided that each qualified tow business maintains individual and separate records, storage facilities, and letters of appointment in order to be placed on the Department's non-preference tow rotational list.

(20) "Qualified Tow Business" is a tow business with a current letter of appointment issued by the Department.

(21) "Region Commander" or "District Commander" — The commanding officer of the region as established by the Oregon State Police.

(22) "Recovery Vehicle" — A motor vehicle that is:

(a) A commercially available truck chassis equipped with a commercially manufactured tow body or bed, that is rated and issued a serial number by the manufacturer;

(b) Designed and equipped for, and used in, the towing and/or recovery of vehicles;

(c) Capable of towing a vehicle by means of a tow bar, sling or wheel lift; and

(d) Capable of recovering a vehicle by means of a hoist, winch and tow-line.

(23) "Response Time" — The reasonable driving time it takes a tow truck to respond to the dispatched location once the tow truck is on the road.

(24) "Revocation" and "revoked" — The withdrawal of a letter of appointment and the removal from the Oregon State Police's non-preference towing program for a period of not less than 10 years, which becomes effective from the date of the Notice of Revocation from the Oregon State Police.

(25) "Suspension" and "suspend" — The removal from the Oregon State Police non-preference towing program for a period of not more than 10 years.

(26) "Tow Vehicle" — A motor vehicle that is:

(a) Altered or designed and equipped for, and used in, the business of towing vehicles; and

(b) Used to tow vehicles by means of a crane hoist, tow bar, towline or dolly, or otherwise used to render assistance to other vehicles (ORS 801.530).

(27) "Tow Zone" — The geographical area designated by the area commander for the removal of vehicles.

(28) "Vehicle Storage Area" — The approved yard or enclosed building where a qualified tow business keeps or stores towed vehicles.

Stat. Auth.: ORS 181.440

Stats. Implemented: ORS 181.440

Hist.: OSP 1-1989, f. & cert. ef. 1-3-89; OSP 3-1989, f. 10-16-89, cert. ef. 10-15-89; OSP 5-1992, f. & cert. ef. 12-16-92; OSP 2-1995, f. & cert. ef. 10-20-95; OSP 1-1999(Temp), f. & cert. ef. 9-10-99 thru 3-7-00; OSP 1-2000, f. & cert. ef. 3-15-00; OSP 2-2000(Temp), f. & cert. ef. 7-14-00 thru 1-9-01; Administrative correction 6-12-01; OSP 1-2006, f. 3-29-06, cert. ef. 3-31-06; OSP 1-2009(Temp), f. & cert. ef. 8-6-09 thru 1-31-10; OSP 2-2009, f. 10-8-09 cert. ef. 1-1-10; OSP 3-2009(Temp), f. 12-18-09, cert. ef. 1-1-10 thru 6-29-10

## 257-050-0060

### Application for Appointment

(1) An application for letter of appointment to provide towing services for the Department shall be filed by the authorized agent or representative of a tow business with the Patrol Services Division on a form prescribed by the Department. In case of a tow business that is a partnership, each partner will apply on the form prescribed by the Department. In the case of a tow business that is a corporation, the Department may require that each of the present, and any subsequent officers, managers, and stockholders holding 10% or more of the total issued and outstanding stock of the applicant corporation complete an application form.

(2) The application form will be assigned a document number by the Patrol Services Division which shall be its yearly identification number for all matters relating to appointments, granted or denied, and any other correspondence thereafter.

(3) The filing of an application for a letter of appointment to provide towing to the Department from a non-preference list does not in itself authorize a tow business to provide towing services pursuant to these regulations until a letter of appointment has been granted by the Department. The Department shall not call a towing business for non-preference towing unless a current/valid yearly appointment letter has been issued in connection with such tow business by the Department. Nothing herein shall prohibit the Department from calling a towing business upon a specific request of the person responsible for the vehicle or his agent. An appointment letter will not be granted until all application sections of the application form have been completed by the authorized agent or representative of a tow business.

(4) During implementation of the Administrative Rules, the present non-preference tow list system will be in effect until such time that the Administrative Rules are in place at the Patrol Services Division of the Department.

Stat. Auth.: ORS 181.440

Stats. Implemented: ORS 181.440

Hist.: OSP 1-1989, f. & cert. ef. 1-3-89; OSP 3-1989, f. 10-16-89, cert. ef. 10-15-89; OSP 2-1995, f. & cert. ef. 10-20-95; OSP 1-2009(Temp), f. & cert. ef. 8-6-09 thru 1-31-10; OSP 2-2009, f. 10-8-09 cert. ef. 1-1-10; OSP 3-2009(Temp), f. 12-18-09, cert. ef. 1-1-10 thru 6-29-10

## 257-050-0070

### Application Requirements

(1) Application for placement on the non-preference tow rotational list shall be made on the forms furnished by the Department and shall be accompanied by an inspection report. The inspection report shall be furnished by the Department, and shall be completed by the authorized agent or representative of a tow business. The application form shall establish or provide all of the following:

(a) The tow business has an established place of business at the address shown.

(b) The tow business' place of business has an office area that is accessible to the public without entering the storage area and that the storage area complies with these Administrative Rules and all local zoning rules and regulations.

(c) Each tow business is separately registered with the Secretary of State Corporate Division, with a separate place of business and a separate storage area. Only one tow business may be operated at any one place of business.

(d) The authorized agent or representative of the tow business has inspected and certifies, under penalty of perjury, suspension, revocation and/or criminal prosecution that all of the information supplied in the application form and inspection form is true and accurate and that the tow business' place of business and all tow truck equipment meet the minimum requirements established by these Administrative Rules.

(e) The tow business has proof of the following current, minimum insurance coverage (Proof of required current insurance coverage shall be submitted with applications and inspection forms.):

(A) \$750,000, or the minimum required by the Federal Motor Carrier Regulations, or the Oregon Department of Transportation (ODOT), which ever is greater when towing under authority of Federal Motor Carrier Regulations or ODOT, for liability, for bodily injury or property damage per occurrence;

(B) Garage keeper's legal liability (for care, custody and control) per occurrence in the amount of:

(i) Class A — \$50,000;

(ii) Class B — \$150,000;

(iii) Class C — \$200,000;

(iv) Class D (Note: Class "D" equipment is not considered to be recovery tow vehicles):

(I) Class D-A or Other Equipment under this classification — \$50,000;

(II) Class D-B or Other Equipment under this classification — \$75,000;

(III) Class D-C or Other Equipment under this classification — \$200,000.

(C) Insurance to protect against vehicle damage including, but not limited to fire and theft, from the time a vehicle comes into custody and control of the tow business and is hooked onto, throughout the recovery, and until that vehicle is reclaimed or sold.

(D) Insurance for cargo transported in the amount of:

(i) Class A — \$50,000;

(ii) Class B — \$100,000;

(iii) Class C — \$200,000;

(iv) Class D-A — or Other Equipment under this classification — \$50,000;

(v) Class D-B — or Other Equipment under this classification — \$100,000;

(vi) Class D-C — or Other Equipment under this classification — \$200,000.

(f) Nothing in this section will relieve a tow business or qualified tow business from maintaining insurance in the amounts and providing coverage of the type for motor carriers in ORS Chapter 825 if the amounts exceed, or coverage is different from, that required by this section.

(g) A certificate of insurance from the insurance carrier to the Department that includes the type and amounts of coverage and provides for notification of cancellation of the tow business's insurance is mandatory.

(h) The information for the letter of appointment may be included in the inspection form that is completed by the authorized agent or representative of the tow business.

(i) The tow business or tow business owner has a minimum of three (3) years of documented experience in the towing industry, either as a tow business or a tow business owner or tow vehicle driver for a tow business.

(j) The tow business has a dedicated recovery vehicle assigned to the tow zone applied for and capable of handling the classifications of tows requested in the application. A tow business may list a class B recovery vehicle to cover both class A and class B tows and a tow business may list a class C recovery vehicle to cover both class B and/or class A tows. If a larger recovery vehicle is listed by a tow business, that vehicle may only be listed for one tow zone for the smaller recovery tow classes it is used for, even if the larger tow vehicle tow zone overlaps with the other tow classification zones. Recovery Tow vehicles may only be listed for one tow zone. All tow vehicles approved must comply with these Administrative Rules for the classification of tow applied for. Only equipment approved through the letter of appointment to be used for the non-preference tow program for a specific tow zone can be used in that tow zone.

# ADMINISTRATIVE RULES

**NOTE:** A written waiver may be granted by the Oregon State Police based on local non-preference towing operational needs.

(k) The names of all drivers authorized by a tow business to drive in the tow zone for which the tow business applied, and all employees of a tow business who will have contact with the towed/assisted vehicle(s) and/or the driver/owner of the towed/assisted vehicle(s) or other representative(s) of the towed/assisted vehicle(s) owner(s). The use of non-listed and/or unreported drivers by a qualified tow business shall not be permitted.

(2) Within 30 days of the receipt of a request for an application for a letter of appointment, the Patrol Services Division of the Oregon State Police shall send an application packet, and include a current copy of these Administrative Rules and all forms related to the self certification, inspection and certification of equipment, and other related information required by these Administrative Rules.

(3) The address the tow business lists on its application shall be the place of business where the tow business keeps its business records. The application also shall list all locations of vehicle storage areas and places for redemption of vehicles. If there is a change in address of the tow business, the authorized agent or representative of the tow business shall immediately notify the Patrol Services Division, and in no event will notification take longer than ten (10) days.

(4) All tow trucks shall display the tow business's name, city, and telephone number. This information shall be painted or permanently affixed to both sides of the vehicle and the lettering shall be at least 2 inches in height with 1/2 inch stroke and in a color that is in contrast with the tow truck's color.

(5) Any tow business in violation of this Administrative Rule may be denied a letter of appointment and shall be notified of the denial in writing. The Department may also deny a renewal application for any qualified tow business with an existing letter of appointment that is in violation of this Administrative Rule and may have its existing letter of appointment immediately suspended, prior to any hearing and shall be notified of the suspension in writing. A suspension under this rule will be in effect until the violation is corrected and inspected. Other sanctions, up to revocation and/or criminal prosecution, may be applied to a qualified tow business upon finding by the Department that the qualified tow business is in violation of this Administrative Rule.

Stat. Auth.: ORS 181.440

Stats. Implemented: ORS 181.440

Hist.: OSP 1-1989, f. & cert. ef. 1-3-89; OSP 3-1989, f. 10-16-89, cert. ef. 10-15-89; OSP 5-1992, f. & cert. ef. 12-16-92; OSP 2-1995, f. & cert. ef. 10-20-95; OSP 5-2005, f. & cert. ef. 11-18-05; OSP 1-2006, f. 3-29-06, cert. ef. 3-31-06; OSP 1-2009(Temp), f. & cert. ef. 8-6-09 thru 1-31-10; OSP 2-2009, f. 10-8-09 cert. ef. 1-1-10; OSP 3-2009(Temp), f. 12-18-09, cert. ef. 1-1-10 thru 6-29-10

## 257-050-0090 Inspections

The authorized agent or representative of the tow business shall self-certify on its application under penalty of False Swearing related to Regulation of Vehicles related to Businesses (ORS 822.605), penalty of Perjury (ORS 162.065), suspension or revocation from the non-preference tow rotational list that its tow business, employees and vehicles meet the minimum requirements as set forth in these Administrative Rules. This self-certification shall verify that the tow business' request for a letter of appointment complies with all applicable local laws and regulations as prescribed for the geographical area where the tow business will be established. If local zoning regulations are applicable, the authorized agent or representative of the tow business must include with the application a copy of the certification of approval from the local planning department, zoning commission or other authorized unit of local government, to the Department. A zoning certification will become part of the permanent record maintained for each qualified tow business by the Department.

Stat. Auth.: ORS 181.440

Stats. Implemented: ORS 181.440

Hist.: OSP 1-1989, f. & cert. ef. 1-3-89; OSP 3-1989, f. 10-16-89, cert. ef. 10-15-89; OSP 5-1992, f. & cert. ef. 12-16-92; OSP 2-1995, f. & cert. ef. 10-20-95; OSP 5-2005, f. & cert. ef. 11-18-05; OSP 1-2006, f. 3-29-06, cert. ef. 3-31-06; OSP 1-2009(Temp), f. & cert. ef. 8-6-09 thru 1-31-10; OSP 2-2009, f. 10-8-09 cert. ef. 1-1-10; OSP 3-2009(Temp), f. 12-18-09, cert. ef. 1-1-10 thru 6-29-10

## 257-050-0095 Letter of Appointment

The letter of appointment shall be completed by the Department establishing that the tow business has met the requirements for a letter of appointment. The designated tow zone(s), class of tow vehicle(s), specific vehicles authorized to operate in each zone, and any waivers will be listed in the letter.

Stat. Auth.: ORS 181.440

Stats. Implemented: ORS 181.440

Hist.: OSP 1-2006, f. 3-29-06, cert. ef. 3-31-06; OSP 1-2009(Temp), f. & cert. ef. 8-6-09 thru 1-31-10; OSP 2-2009, f. 10-8-09 cert. ef. 1-1-10; OSP 3-2009(Temp), f. 12-18-09, cert. ef. 1-1-10 thru 6-29-10

## 257-050-0100 Issuance of Letter of Appointment

(1) No tow business shall be called upon to perform a non-preference towing service at the request of the Department unless such tow business has

a valid letter of appointment from the Department, as described herein. A letter of appointment will not be issued by the Department unless the Department is satisfied that all qualifications set out in these Administrative Rules either have been met by the tow business or that a waiver of one or more qualifications has been granted by the Department.

(2) A letter of appointment will be valid only in the zone or zones assigned by the area commander and will identify specific vehicles of a qualified tow business authorized to operate in each zone. Applications for additional letters of appointment in other zones must be based on a complete and separate place of business capable of independent operation within the additional zone.

(3) A tow business may petition the Department for a waiver of a non-safety related requirement. The waiver shall be sent to the area commander who may make a recommendation regarding the waiver as an operational need. The Department may grant a waiver if, it finds that the towing services available to the Department are inadequate in the area to meet the needs of the public.

(4) In the event a qualified tow business that meets all requirements and qualifications receives a letter of appointment in the same zone as a qualified tow business that has been granted a waiver, the qualified tow business currently operating under a waiver, upon notification, will be advised that it has up to 30 days to come into compliance with these rules before removal from the affected non-preference tow zone. If the qualified tow business operating under a waiver fails to come into compliance within the time specified by the Department, it may have its letter of appointment suspended or revoked by the Department and will not be called for Department initiated tows.

(5) Every letter of appointment shall be issued in the name of a tow business and the holder thereof shall not allow any other person or qualified tow business to use the letter of appointment.

(6) The letter of appointment will be valid only for the place of business named on the application and will not apply to any other place of business.

(7) A letter of appointment shall be valid for one (1) year unless suspended or revoked by the Department.

(8) Each separate place of business will have a letter of appointment.

(9) Before a letter of appointment can be issued by the Department the tow business must have a tow vehicle meeting the minimum standards set forth in these Administrative Rules OAR 257-050-0020 to 257-050-0200.

(10) The letter of appointment shall state the zone the qualified tow business is authorized to operate in. The zones will be determined by the area commander.

(11) All qualified tow businesses shall agree to tow abandoned vehicles in accordance with Chapter 819 of the Oregon Revised Statutes.

Stat. Auth.: ORS 181.440

Stats. Implemented: ORS 181.440

Hist.: OSP 1-1989, f. & cert. ef. 1-3-89; OSP 3-1989, f. 10-16-89, cert. ef. 10-15-89; OSP 5-1992, f. & cert. ef. 12-16-92; OSP 2-1995, f. & cert. ef. 10-20-95; OSP 1-2006, f. 3-29-06, cert. ef. 3-31-06; OSP 1-2009(Temp), f. & cert. ef. 8-6-09 thru 1-31-10; OSP 2-2009, f. 10-8-09 cert. ef. 1-1-10; OSP 3-2009(Temp), f. 12-18-09, cert. ef. 1-1-10 thru 6-29-10

## 257-050-0110 Suspension, Revocation and Voluntary Relinquishment of Letter of Appointment

(1) Upon receiving evidence that a qualified tow business has failed to comply, or no longer complies, with any requirement or provision of these Administrative Rules or that the authorized agent or representative of a tow business has falsified any documentation or certification related to compliance of these Administrative Rules in an application for a letter of appointment, the Department shall suspend or revoke the qualified tow business's letter of appointment. The Department may suspend or revoke the qualified tow business's letter of appointment at any time once the qualified tow business has been given notice in accordance with these Administrative Rules. A qualified tow business whose letter of appointment has been suspended or revoked may request an administrative hearing as outlined in these Administrative Rules.

(2) Upon receiving evidence that a qualified tow business has failed to comply, or no longer complies, with the requirements of these Administrative Rules, the qualified tow business's letter of appointment shall be suspended or revoked by the Department.

(3) The qualified tow business may voluntarily relinquish his/her appointment. The Department will be advised in writing of this voluntary relinquishment. After receiving written notice the Department will cause an inspector to obtain the original letter of appointment and forward the same to the Department.

Stat. Auth.: ORS 181.440

Stats. Implemented: ORS 181.440

Hist.: OSP 1-1989, f. & cert. ef. 1-3-89; OSP 3-1989, f. 10-16-89, cert. ef. 10-15-89; OSP 5-1992, f. & cert. ef. 12-16-92; OSP 2-1995, f. & cert. ef. 10-20-95; OSP 1-2006, f. 3-29-06, cert. ef. 3-31-06; OSP 1-2009(Temp), f. & cert. ef. 8-6-09 thru 1-31-10; OSP 2-2009, f. 10-8-09 cert. ef. 1-1-10; OSP 3-2009(Temp), f. 12-18-09, cert. ef. 1-1-10 thru 6-29-10

## 257-050-0115 Suspension and Revocation

(1) For purpose of 257-050-0115, the following suspension periods apply:



# ADMINISTRATIVE RULES

(a) "First suspension" — any first violation of OAR 257-050-0115 shall be for a period of not less than 60 days.

(b) "Second Suspension" — any second violation of OAR 257-050-0115 that is committed within a one (1) year period from the date of any final order under this rule shall be for a period of not less than one (1) year.

(c) "Third Suspension" — any third violation of OAR 257-050-0115 that is committed within a three (3) year period of the date of any final order under this rule shall be a revocation.

(2) The following constitutes grounds for suspension of a qualified tow business:

(a) A qualified tow business that commits a violation, traffic crime or traffic infraction of Oregon Law during the course and operation of the qualified tow business's business shall be suspended.

(b) An employee of a qualified tow business that commits any violation or traffic infraction of Oregon Law while in the performance of his or her duties of employment shall be suspended.

(3) The following constitutes grounds for revocation of a qualified tow business:

(a) A qualified tow business that commits a crime, other than a traffic crime and that is chargeable as a misdemeanor or felony during the course and operation of the qualified tow business's business shall be revoked.

(b) An employee of a qualified tow business that commits a crime chargeable as a misdemeanor or felony while in the performance of his or her duties of employment shall be revoked.

Stat. Auth.: ORS 181.440

Stats. Implemented: ORS 181.440

Hist.: OSP 1-1999(Temp), f. & cert. ef. 9-10-99 thru 3-7-00; OSP 1-2000, f. & cert. ef. 3-15-00; OSP 1-2009(Temp), f. & cert. ef. 8-6-09 thru 1-31-10; OSP 2-2009, f. 10-8-09 cert. ef. 1-1-10; OSP 3-2009(Temp), f. 12-18-09, cert. ef. 1-1-10 thru 6-29-10

## 257-050-0125

### Reinspection/Certification

(1) Self Certification/re-inspections will be conducted at least once a year by all qualified tow businesses. Unscheduled inspections of the qualified tow business may be conducted without notice by any Oregon State Police inspector to determine the fitness of tow trucks, facilities, and business records. These inspections shall be done during business hours.

(2)(a) In the event of missing or defective tow truck equipment that is not safety related, but that was required for initial approval, the Oregon State Police shall advise the qualified tow business of the defect. If the qualified tow business fails or refuses to repair the defect within 15 days of the notice, the defective truck will be removed from the list of tow vehicles in the qualified tow business's letter of appointment that are authorized for use in the Department's non-preference tow rotation list for the duration of the letter of appointment without renewal, until after the last day of authorization of the letter of appointment and the defect is repaired.

(b) In the event of a violation of these Administrative Rules by a qualified tow business relating to the qualified tow business's facilities, records or other conditions, the Oregon State Police shall advise the qualified tow business of the violation. If the qualified tow business fails or refuses to fix the violation within 15 days of the notice, the qualified tow business's letter of appointment will be suspended for its duration without renewal until after the last day of authorization of the letter of appointment and the violation is fixed.

(c) A qualified tow business may avoid suspension under this section by voluntarily removing the involved tow or recovery vehicle from the list of tow vehicles in the qualified tow business's letter of appointment that are authorized for use in the Oregon State Police's non-preference tow list until such repairs or corrections are made or by correcting the violation relating to the qualified tow business's facilities or records. Voluntary removal under this section shall be done by sending a letter to the Oregon State Police General Headquarters, Patrol Services Division, 4th Floor, 255 Capitol Street NE, Salem, Oregon 97310, advising the Oregon State Police of the qualified tow business's voluntary removal of the vehicle from service on non-preference calls for the Oregon State Police. This voluntary removal of defective equipment letter shall be received by the Oregon State Police, Patrol Services Division no later than 15 days after the initial notification of the defect.

(3)(a) In the event of a safety related violation which renders the tow truck a safety hazard upon a public highway, the tow truck shall be immediately removed from the list of tow vehicles in the qualified tow business's letter of appointment that are authorized for use in the Department's non-preference tow rotation list. If the defect is corrected and reinspected within 30 days of the immediate suspension, the tow truck shall be reinstated on the tow business's letter of appointment. If the defect is not corrected and reinspected within 30 days, the suspension will continue without reinstatement until after the last day of the authorization of the letter of appointment and the defect is repaired and reinspected.

(b) In the event of a safety related violation which renders a qualified tow business's facilities unsafe, the qualified tow business shall immediately be suspended for the duration of the letter of appointment from the Department's non-preference tow rotational list, without renewal until after the last day of the authorization of the letter of appointment and the defect is repaired. If the defect is corrected and reinspected within 30 days of the

immediate suspension, the qualified tow business's letter of appointment shall be reinstated.

(c) A qualified tow business may avoid immediate suspension under this section by voluntarily removing the tow or recovery vehicle from the list of tow vehicles in the qualified tow business's letter of appointment that are authorized for use in the Oregon State Police's non-preference tow list until such repairs or corrections are made or by correcting the violation relating to the qualified tow business's facilities or records. Voluntary removal under this section shall be done by sending a letter to the Oregon State Police General Headquarters, Patrol Services Division, 4th Floor, 255 Capitol Street NE, Salem, Oregon, 97310, advising of the qualified tow business's voluntary removal of the vehicle from service or the business on non-preference calls for the Oregon State Police. This voluntary removal safety hazard letter shall be received by the Oregon State Police, Patrol Services Division no later than 30 days after the initial notification of the defect.

(4) Upon repair or correction of a defect of a voluntarily removed tow truck or a defect related to a qualified tow business, an Oregon State Police inspector, upon written request from the affected qualified tow business, shall reinspect the equipment/facility which was found to be defective or missing. If the defects have been satisfactorily corrected, the inspector shall reinstate the tow truck to the list of tow vehicles in the qualified tow business's letter of appointment that are authorized for use in the Department's non-preference list and/or shall reinstate a qualified tow business's letter of appointment. In the event an Oregon State Police inspector is not readily available to reinspect, another officer appointed by the inspector's supervisor may reinspect and re-instate the tow truck or qualified tow business. The reinspection shall be completed as soon as possible after a written request from the qualified tow business has been received by the Patrol Services Division, advising that the defect has been repaired. In no event shall a reinspection take longer than ten (10) business days after the written request for inspection has been received by the Patrol Services Division.

(5) Upon revocation, suspension, expiration or voluntary relinquishment of a letter of appointment, a qualified tow business's right to conduct towing services at the request of the Department is terminated, unless the call for service is a preference tow made by the owner and/or driver of a vehicle.

(6) Upon sale or transfer by the qualified tow business of a truck listed in the qualified tow business's letter of appointment that is authorized for use in the Department's non-preference tow rotation list, the qualified tow business shall advise the department so that the truck may be removed from the non-preference list. This notification must be made immediately and in no event may exceed ten (10) days after the sale or transfer.

(7) Upon the purchase or acquisition of any additional tow truck(s) to be used pursuant to this rule, a qualified tow business shall immediately notify the Department. The qualified tow business shall make a self-certified inspection of the new unit and submit this inspection to the Department, prior to the tow truck being used for non-preference towing.

Stat. Auth.: ORS 181.440

Stats. Implemented: ORS 181.440

Hist.: OSP 5-2005, f. & cert. ef. 11-18-05; OSP 1-2006, f. 3-29-06, cert. ef. 3-31-06; OSP 1-2009(Temp), f. & cert. ef. 8-6-09 thru 1-31-10; OSP 2-2009, f. 10-8-09 cert. ef. 1-1-10; OSP 3-2009(Temp), f. 12-18-09, cert. ef. 1-1-10 thru 6-29-10

## 257-050-0130

### Appeal

A tow business or qualified tow business aggrieved by the decision of the Hearings Program officer denying, suspending, or revoking a letter of appointment must make any further appeal of such decision to the Oregon Court of Appeals.

Stat. Auth.: ORS 181.440

Stats. Implemented: ORS 181.440

Hist.: OSP 1-1989, f. & cert. ef. 1-3-89; OSP 3-1989, f. 10-16-89, cert. ef. 10-15-89; OSP 2-1995, f. & cert. ef. 10-20-95; OSP 1-2009(Temp), f. & cert. ef. 8-6-09 thru 1-31-10; OSP 2-2009, f. 10-8-09 cert. ef. 1-1-10; OSP 3-2009(Temp), f. 12-18-09, cert. ef. 1-1-10 thru 6-29-10

## 257-050-0140

### Place of Business Requirement and Business Hours

A qualified tow business's hours for the purpose of inspection of business records and towing equipment shall be 8AM-5PM, excluding weekends and holidays:

(1) When a qualified tow business is not open and does not have personnel present at the place of business, the qualified tow business shall post a clearly visible telephone number at its place of business for the purpose of public contact for the release of vehicles or personal property.

(2) The qualified tow business shall maintain personnel who can be contacted 24 hours a day to release impounded vehicles within a 30-minute period of time.

(3) The qualified tow business must post and maintain its letter of appointment at its place of business.

(4)(a) Dispatch service. The qualified tow business shall provide dispatch services 24 hours a day, 365 days a year. Each tow vehicle used by a qualified tow business shall be equipped with a two-way radio (not a citizen's band radio) or cellular phone capable of direct communications with the qualified tow business's dispatch service. Equipment provided shall be subject to

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approval of the Oregon State Police. Equipment shall be maintained in proper working condition at all times.

(b) Failure to respond to a call:

(A) Refusal or failure of a qualified tow business to respond to calls from the Department for towing services may result in the suspension or revocation of the qualified tow business's letter of appointment;

(B) The qualified tow business shall advise the appropriate Oregon State Police Dispatch Center when the qualified tow business is temporarily unavailable to respond to non-preference tow calls. Unavailability may occur due to conditions which include, but are not limited to, a disabled tow truck or a tow truck under repair, or unforeseen driver shortage due to illness or vacation. The qualified tow business shall advise the Oregon State Police Dispatch Center once the qualified tow business is available to resume its normal operation;

(C) Regardless of the unavailability of any qualified tow business, the non-preference list rotation shall continue as if the qualified tow business was available.

(5) Service call response time. Response times are mandatory. Class A and D-A tow trucks shall be on the road within fifteen minutes. Class B, C, D-B and D-C tow trucks shall be on the road within thirty minutes. At the time of the dispatch, all classes of tow trucks shall provide an estimated time of arrival at the scene. The station commander may waive this requirement due to inclement weather or unusual circumstances that might exist.

(6) For abandoned vehicles not deemed to be a hazard, tow requests will be made during business hours, defined as 8 A.M. to 5 P.M., seven (7) days a week, including holidays. Qualified tow businesses may tow abandoned vehicles at the qualified tow business's convenience during business hours on the date of the tow request. Once a vehicle is removed from the roadway and in possession of the qualified tow business, the qualified tow business shall notify the requesting Oregon State Police Office Dispatch Center as soon as possible on the date of the tow request of its possession of the abandoned vehicle. Notification of possession of the abandoned vehicle should be made immediately by the qualified tow business. In no case will notification to the Oregon State Police be made more than two hours after the abandoned vehicle comes into the possession of the qualified tow business.

(7) At the time a response is requested, the Department will provide the location, make, model, year of car license plate and estimated gross vehicle weight (if necessary) to the qualified tow business. Also, the Department will inform the qualified tow business about any condition or circumstances that may require special handling or assistance. The qualified tow business shall transmit the information to the person driving the tow truck.

(8) Qualified Tow business's record requirements: At its place of business of each tow zone, qualified tow businesses shall maintain the following records on each vehicle towed for a period of three years:

- (a) Vehicle description;
- (b) License number;
- (c) Issuing state;
- (d) Make;
- (e) Model;
- (f) Year;
- (g) Vehicle identification number;
- (h) Towing location;
- (i) Location vehicle was towed from;
- (j) Location to where the vehicle was towed;
- (k) Qualified Tow Business, Name, Address and Phone Number;
- (l) Name of tow truck driver;
- (m) Reasons for towing and/or service;
- (n) Time and date of service include storage dates as applicable;
- (o) Class of tow truck or truck number;
- (p) OSP Impound Forms;
- (q) All invoices for abandoned vehicles towed;
- (r) All invoices for all OSP non-preference tows.

(9) All fees for service shall be itemized. A copy of voided invoices shall be filed by invoice number at the qualified tow business's place of business and shall be retained in a file for a period of three years.

(10) All vehicles shall be handled and returned in substantially the same condition that they were in before being towed.

(11) All employees who operate tow truck(s) for a qualified tow business shall have an operator's license with the proper class or type for vehicle combinations. As prescribed by the state issuing the license, Oregon licensees shall comply with all applicable Oregon laws.

(12) Any person who shows proof of ownership or written authorization from the owner of the impounded vehicle may inspect and view the vehicle without charge during normal business hours. This does not apply to a vehicle seized and stored as evidence.

(13) All towing receipts on impounded vehicles, or confiscated vehicles, shall be made available by the qualified tow business to the nearest Department office after the tow has been completed.

(14) The qualified tow business shall notify the Oregon State Police Dispatch Center immediately when any person seeks to redeem any vehicle towed as abandoned or where a police hold has been placed on the vehicle. Release of vehicle under temporary or formal hold shall require written release from the Department. When a person entitled to take possession of the

vehicle subject to a hold presents the qualified tow business with an official Oregon State Police release form, the qualified tow business shall release the vehicle to the person named.

(15) When inspection or reinspection of a tow truck is necessary, the area commander shall designate a location and time for the inspection to be conducted. When practical the inspection or reinspection shall be made within ten (10) days following the request by the qualified tow business.

(16) The qualified tow business shall provide either locked outside storage or locked, secure indoor storage, or both, which meets the following requirements:

(a) The qualified tow business's storage facility shall be in conformance with all zoning requirements of all applicable governments. Storage shall be provided, and of sufficient size, for each class of vehicle towed for the Oregon State Police, including semi trucks and motor homes, except as provided in ORS 819.110. Storage shall be located within the contractual geographical service area described as tow zones. The vehicle storage area may be located up to five (5) miles from the qualified tow business's place of business, provided that both facilities are located within the appointed tow zone. Contact phone numbers and addresses are to be posted at both locations for the place of business and the storage area. When the towed vehicle storage area is not located at the qualified tow business's place of business, employees shall be able to respond from one location to the other within 30 minutes or less.

(b) The storage area will be under the exclusive access and control of the individual qualified tow business. The storage area cannot be shared with other businesses, including non-tow businesses not owned by the owner of a qualified tow business.

(17) The qualified tow business shall provide fencing around the outside storage area. The fencing must meet the following requirements:

(a) Fencing must comply with the requirements established in these Administrative Rules and all local zoning rules and regulations.

(b) Fencing shall be either made of a woven wire composition normally referred to as "cyclone fencing-chain link fencing," or made of a solid material, such as wood or concrete block, inclusive of a permanent natural barrier which would prevent access and unauthorized entry to the storage area. Fencing shall be topped by a minimum of three (3) strands of barbwire. Fencing not meeting the requirements of these regulations as determined by the Oregon State Police will not be accepted. Qualified tow businesses that are unable to comply with these fencing requirements due to local zoning requirements will be addressed on a case by case basis by the Department.

(c) Gates and entryways shall be of a solid frame, and the same minimum height as the other fencing material. All gates and entryways shall be designed to afford locking the gate or entryway securely to prevent unauthorized entry.

**NOTE:** Qualified tow businesses holding a valid appointment letter for a specific tow zone as of the adoption date of this Administrative Rule, will have one (1) year from their renewal date in the year 2003 to comply with this rule for the tow zone listed in the appointment letter. New tow businesses applying for a letter of appointment for the non-preference tow program shall immediately comply with this Administrative Rule after the adoption date of this rule.

(18) The qualified tow business shall allow the owner of a towed vehicle or anyone authorized in writing by the Oregon State Police, and/or an Oregon State Police Officer or other Department Member, to go to the vehicle and remove items of personal emergency nature, e/g/ eyeglasses, medication, clothing, identification, wallets-purses (and their contents), credit cards, check books, any known money-currency, child safety car and booster seats, except as provided in ORS 819.110 and 819.160.

(19) The qualified tow business shall be responsible for the contents, storage and disposal of all personal items, except items taken by authorized personnel in OAR 257-050-0140(18).

Stat. Auth.: ORS 181.440

Stats. Implemented: ORS 181.440

Hist.: OSP 1-1989, f. & cert. ef. 1-3-89; OSP 3-1989, f. 10-16-89, cert. ef. 10-15-89; OSP 5-1992, f. & cert. ef. 12-16-92; OSP 2-1995, f. & cert. ef. 10-20-95; OSP 5-2005, f. & cert. ef. 11-18-05; OSP 1-2006, f. 3-29-06, cert. ef. 3-31-06; OSP 1-2009(Temp), f. & cert. ef. 8-6-09 thru 1-31-10; OSP 2-2009, f. 10-8-09 cert. ef. 1-1-10; OSP 3-2009(Temp), f. 12-18-09, cert. ef. 1-1-10 thru 6-29-10

## 257-050-0145

### Felony Convictions

The Oregon State Police in the interest of public safety shall deny, suspend, or revoke a tow business' application or a qualified tow business' letter of appointment for the Department's non-preference towing program for any of the following reasons:

(1) A tow business, or any owner or employee of a tow business, convicted of any felony charge, or any charge in any state, which in Oregon is considered to be a felony, within the last fifteen (15) years from the date the tow business' application is received by the Oregon State Police. This subsection is subject to the provisions set forth under ORS 166.270.

(2) Any tow business, qualified tow business, or owner or employee of a tow business or qualified tow business convicted of two felony charges, regardless of when those felonies were committed.

(3) Any owner or employee of a tow business or qualified tow business convicted of a felony charge, or any charge from another state which in Oregon is considered to be a felony, where a weapon was used or threatened

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to be used in the commission of the crime, regardless of the date of the felony charge.

(4) Any owner or employee of a tow business or qualified tow business convicted of any of the sex crimes listed in ORS 181.594(4) or the equivalent conviction of a sex crime from another jurisdiction regardless of the degree of the charge.

Stat. Auth.: ORS 181.440  
Stats. Implemented: ORS 181.440  
Hist.: OSP 5-2005, f. & cert. ef. 11-18-05; OSP 1-2006, f. 3-29-06, cert. ef. 3-31-06; OSP 1-2009(Temp), f. & cert. ef. 8-6-09 thru 1-31-10; OSP 2-2009, f. 10-8-09 cert. ef. 1-1-10; OSP 3-2009(Temp), f. 12-18-09, cert. ef. 1-1-10 thru 6-29-10

## 257-050-0150

### Towing

(1) The Department shall not establish, recommend or in any way dictate the cost of a non-preference tow conducted by a qualified tow business.

(2) A qualified tow business that conducts a non-preference tow under these administrative rules shall not represent to any person or business that a particular fee has been or will be charged by the Oregon State Police.

(3) Qualified tow businesses shall furnish the Patrol Services Division with an itemized list of charges that can be incurred during a non-preference tow including, but not limited to:

- (a) Hookup charge;
- (b) Mileage fee;
- (c) Response fee.

(4) Qualified tow businesses shall not charge for items not declared on the list relating to the towing of a vehicle. This does not include mechanical work, bodywork or other repair work conducted subsequent to the tow.

(5) Complaints of unfair charges against a qualified tow business shall be referred to the Oregon Attorney General's Office.

(6) Qualified Tow businesses shall not transport passengers in any towed or carried vehicle(s).

Stat. Auth.: ORS 181.440  
Stats. Implemented: ORS 181.440  
Hist.: OSP 1-1989, f. & cert. ef. 1-3-89; OSP 3-1989, f. 10-16-89, cert. ef. 10-15-89; OSP 2-1995, f. & cert. ef. 10-20-95; OSP 5-2005, f. & cert. ef. 11-18-05; OSP 1-2006, f. 3-29-06, cert. ef. 3-31-06; OSP 1-2009(Temp), f. & cert. ef. 8-6-09 thru 1-31-10; OSP 2-2009, f. 10-8-09 cert. ef. 1-1-10; OSP 3-2009(Temp), f. 12-18-09, cert. ef. 1-1-10 thru 6-29-10

## 257-050-0155

### Suspension and Revocation (for Violation of a Law Chargeable as a Violation or Crime)

(1) The following suspension or revocation periods apply when a qualified tow business, or any owner or employee of a qualified tow business, has been convicted of a violation of law charged as a Violation or Crime:

(a) "First Suspension" — any first violation shall be for a period of not less than 60 days.

(b) "Second Suspension" — any second violation that is committed within a one (1) year period from the date of any final order under this rule shall be for a period of not less than one (1) year.

(c) "Third Suspension" — any third violation that is committed within a three (3) year period of the date of any final order under this rule shall be a revocation.

(2) The following constitute grounds for suspension of a qualified tow business' letter of appointment:

(a) A qualified tow business that commits a violation or traffic crime of Oregon Law during the course and operation of the qualified tow business' tow business.

(b) An owner or employee of a qualified tow business that commits any violation of Oregon Law while in the performance of his or her duties of employment.

(3) The following constitutes grounds for revocation of a qualified tow business' letter of appointment:

(a) A qualified tow business that commits a crime, other than a traffic crime and that is chargeable as a misdemeanor or felony during the course and operation of the qualified tow business' tow business.

(b) An owner or employee of a qualified tow business that commits a crime chargeable as a misdemeanor or felony while in the performance of his or her duties of employment.

Stat. Auth.: ORS 181.440  
Stats. Implemented: ORS 181.440  
Hist.: OSP 1-2006, f. 3-29-06, cert. ef. 3-31-06; OSP 1-2009(Temp), f. & cert. ef. 8-6-09 thru 1-31-10; OSP 2-2009, f. 10-8-09 cert. ef. 1-1-10; OSP 3-2009(Temp), f. 12-18-09, cert. ef. 1-1-10 thru 6-29-10

## 257-050-0157

### Suspension or Revocation for Violation (other than a Law Chargeable as a Violation or Crime)

(1) Suspensions or revocations of a letter of appointment, unless otherwise outlined or defined in these rules, shall fall under one of the following four levels:

(a) Immediate suspension — A suspension that takes place immediately, upon written notice from the Oregon State Police, as evidenced by the date of the postmark, removing a tow vehicle, tow equipment or a qualified tow business from the non-preference rotational tow list.

(b) Level one suspension — any first violation of these Administrative Rules unless otherwise defined in the rule and shall be for a period of not less than sixty (60) days, and not more than one (1) year in length.

(c) Level two suspension — any second violation of these Administrative Rules that is committed within a one (1) year period from the date of any final order and shall be for a period of not less than one (1) year and not more than two (2) years in length.

(d) Revocation — any third violation of these Administrative Rules that is committed within a three (3) year period of the date of any final order and shall result in a revocation of a qualified tow business' letter of appointment.

(2) A suspension shall be in effect until the violation is corrected, or the Department orders reinstatement of a qualified tow business' letter of appointment.

Stat. Auth.: ORS 181.440  
Stats. Implemented: ORS 181.440  
Hist.: OSP 5-2005, f. & cert. ef. 11-18-05; OSP 1-2006, f. 3-29-06, cert. ef. 3-31-06; OSP 1-2009(Temp), f. & cert. ef. 8-6-09 thru 1-31-10; OSP 2-2009, f. 10-8-09 cert. ef. 1-1-10; OSP 3-2009(Temp), f. 12-18-09, cert. ef. 1-1-10 thru 6-29-10

## 257-050-0170

### Hearings

(1) The Oregon Administrative Procedures Act shall govern the conduct of any hearing held pursuant to these regulations. The burden of proof in any hearing before the Hearing Officer shall be on the tow business seeking a letter of appointment, or on the qualified tow business that has had its letter of appointment suspended or revoked by the Oregon State Police.

(2) A request for an administrative hearing must be in writing and be received by the Department no later than fifteen (15) days from the date of notice of denial, suspension and/or revocation as evidenced by the postmark. The Department may also initiate or request an administrative hearing, regarding a denial, suspension and/or revocation of a letter of appointment.

(3) An administrative hearing must be conducted within ninety (90) days from the date the written request is received by the Department or on the first business day thereafter if the 90th day is a weekend or holiday, unless the parties agree to an extension of time.

(4) Any request by a qualified tow business for a continuance or reset of the hearing after the original scheduled date will result in the temporary suspension and/or extension of any temporary suspension of the qualified tow business's letter of appointment until a ruling is issued from the hearing with no liability to the Department. If the Department requests a continuance or reset of a hearing, the qualified tow business shall be left on the tow rotational list until a ruling is issued from the hearing unless a temporary suspension has been levied against the qualified tow business.

(5) Oral proceedings shall be recorded and shall become part of the hearing record.

(6) The Department shall appoint a Hearing Officer to conduct the hearing. The Hearings Officer shall issue a proposed order that shall include written findings of facts based on the evidence and written conclusions of law based on the findings.

(7) Exceptions to proposed orders must be submitted to the Department in writing within ten (10) days of the date the proposed order is issued, or on the first business day thereafter if the 10th day is a weekend or holiday. Written argument submitted with the exceptions will be considered; no opportunity for oral argument will be allowed. The Department shall issue a final order.

Stat. Auth.: ORS 181.440  
Stats. Implemented: ORS 181.440  
Hist.: OSP 5-2005, f. & cert. ef. 11-18-05; OSP 1-2006, f. 3-29-06, cert. ef. 3-31-06; OSP 1-2009(Temp), f. & cert. ef. 8-6-09 thru 1-31-10; OSP 2-2009, f. 10-8-09 cert. ef. 1-1-10; OSP 3-2009(Temp), f. 12-18-09, cert. ef. 1-1-10 thru 6-29-10

## 257-050-0180

### Judicial Review

A tow business or qualified tow business aggrieved by a final order of the Department denying, suspending, or revoking a letter of appointment may seek judicial review of such decision in the Oregon Court of Appeals. The denial, suspension or revocation shall remain in effect during the appeal.

Stat. Auth.: ORS 181.440  
Stats. Implemented: ORS 181.440  
Hist.: OSP 1-2006, f. 3-29-06, cert. ef. 3-31-06; OSP 1-2009(Temp), f. & cert. ef. 8-6-09 thru 1-31-10; OSP 2-2009, f. 10-8-09 cert. ef. 1-1-10; OSP 3-2009(Temp), f. 12-18-09, cert. ef. 1-1-10 thru 6-28-10

## 257-050-0200

### Mandatory Equipment Standards for Tow Trucks/Safety Related Requirements

(1) All tow vehicles operated by a qualified tow business under a letter of appointment under these rules shall have the following minimum equipment:

(a) Minimum of two (2) lights mounted behind the cab of the tow truck controlled by a dedicated on/off switch. This lighting must be capable of illuminating the area of the tow under darkened, foggy or dangerous conditions;

(b) An FCC licensed two-way radio, in conformance with Part 93 FCC Regulations, or cellular phone (citizen band radios so not meet this requirement);

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(c) Cables or wire ropes as called for in each class. Cable/wire rope lengths shall be measured from the point of attachment on each drum. Cables/wire ropes shall meet the following requirements.

(A) Each cable shall be capable of being fully extended from and fully wound onto its drum;

(B) Cables or wire ropes shall be free from the following defects or conditions:

(i) There shall be no more than six randomly distributed broken wires in one rope lay, or more than three broken wires in one strand in one rope lay;

(ii) There shall be no evidence of any heat damage from any cause;

(iii) There shall be no end attachments that are cracked, deformed, worn or loosened;

(iv) Where a wire rope is attached to a hook with clamps instead of being swaged, a minimum of three clamps shall be used on end attachments. Clamps shall be spaced at least six rope diameters apart and attached with the base or saddle of the clamp against the longer or "live" end of the rope. The "U" bolt will be placed over the short or "dead" end of the rope and will be of the proper size.

(d) Two revolving or intermittent red or amber lamps with 360 degree visibility. The truck may also be equipped with flashing amber lights, which may be used in conjunction with the red lamp(s). Such lighting will not be used when responding to a call, but only at the scene when necessary to warn approaching traffic of impending danger.

(e) A broom and a shovel. The broom shall be at least twelve inches wide and have a handle at least four feet long. The shovel shall be flat scoop type with a minimum width of seven inches and overall length of a least three feet. Tow truck driver shall clean accident/incident scenes of all vehicle glass and debris required by ORS 822.225.

(f) A tow sling, wheel lift, car carrier or other comparable device made of a material designed to protect vehicles.

(g) Motorcycle Tows — A tow sling, wheel lift, car carrier or other comparable device that has the ability to tow motorcycles.

(h) One fire extinguisher, 25 BC rating or equivalent.

(i) One snatch block, or equivalent block, in good working condition for each working line.

(j) Commercially manufactured dollies on all class A recovery vehicles and class B recovery vehicles up to 26,000 GVW. Commercially manufactured dollies are required for all tow class categories when dollies are used and/or defined for use up to 26,000 GVW.

(k) All class A and B tow vehicles that are inclusive of class DA and DB tow vehicles shall carry at least one pinch bar, or an equivalent device. The bar or equivalent device must be 4 feet in length and 3/4 inch in diameter, and the ends may either be tapered or flattened.

(l) Portable lights for unit being towed including, but not limited to, tail lights, stop lights and directional signals.

**NOTE:** Class D tow trucks roll backs are exempt from this section if not towing a second vehicle.

(m) All tow vehicles must have a minimum of two "wreck ahead" signs to be placed by tow truck drivers as required by ORS 822.220. The signs shall confirm to all specifications as set forth in the Oregon Department of Transportation's publication "Traffic Control on State Highways for Short Term Work Zones" (Form 734-2272) and the "Manual Uniform of Traffic Control Devices."

(n) All tow trucks and equipment used to perform services under these rules shall be maintained in good working order. Failure to maintain equipment shall be cause for suspension and removal of the defective equipment from the non-preference list. If equipment does not meet the Department's criteria for non-preference tows under these Administrative Rules, the Department may suspend and remove the equipment from the non-preference list.

(2) Class A Tow Trucks (Small): Tow trucks shall be provided that are capable of towing and recovery operations for passenger cars, pickup trucks, small trailers or equivalent vehicles. All equipment used in conjunction with the tow truck must be compatible with the manufacturer's basic boom rating and must comply with current state laws and Oregon Administrative Rule 735-154-0040. In addition to the equipment required for all trucks used to provide service under this rule, all trucks in this class shall have:

(a) Ten thousand pounds minimum manufacturer's gross vehicle weight rating or equivalent;

(b) Dual tires on the rear axle or duplex type tires, referred to as super single with a load rating that is comparable to dual tire rating;

(c) Six ton minimum boom rating dual or single boom with dual or single winches to control a minimum of one service cable;

(d) A minimum of one hundred (100) feet of 3/8-inch continuous length cable; and

(e) A wheel lift for this class of tow truck.

(3) Class B Tow Trucks (Medium): Class B tow trucks shall be capable of towing and recovery operations for medium size trucks, trailers, motor homes or equivalent vehicles. In addition to standard equipment required for all trucks used to provide service under this rule, all trucks in this class shall have:

(a) Seventeen thousand pounds minimum manufacturer's gross vehicle weight rating or equivalent;

(b) Ten ton minimum boom rating dual or single boom with dual or single winches to control a minimum of one service cable;

(c) Class B tow trucks in excess of 26,000 pounds GVW will not be required to carry dollies when used for heavy towing;

(d) A wheel lift for this class of tow truck; and

(e) A minimum of 150 feet of seven-sixteenths inch cable.

(4) Class C Tow Trucks (Large): Tow trucks that are capable of towing and recovery operations for large trucks, trailers, motor homes or equivalent vehicles. In addition to the standard equipment required for all trucks used to provide service under this rule, all trucks in this class shall have:

(a) Twenty-seven thousand five hundred pounds minimum manufacturer's gross vehicle weight rating or equivalent;

(b) Twenty-five ton minimum boom rating dual or single boom with dual or single winches to control a minimum of one service cable;

(c) Minimum of 150 feet of cable, five-eighths inch diameter;

(d) Air brakes and an air system capable of supplying air to the towed unit;

(e) Portable dollies are not required;

(f) Tandem rear axle truck chassis (three axle truck);

(g) May include an under-lift for this class of tow truck.

(h) Exception to commercially manufactured tow vehicles (for Class C recovery tow trucks/equipment only). Class C Recovery Tow Equipment that has been approved by the Oregon State Police to be used on the Department's non-preference towing list prior to the adoption of these Administrative Rules, but does not meet the criteria outlined under these Administrative Rules, may continue to be used for the Department's non-preference tows if the following conditions are met:

(A) The equipment must first be inspected and approved by the Oregon State Police;

(B) If a qualified tow business has the only "Class C" tow truck in a zone, then the qualified tow business must replace the equipment after 5 years from the adoption date of these rules. The Oregon State Police reserve the option to extend the time period for the use of Class C Towing Equipment under this exception based on operational need by the Department; and

(C) If it is determined at any time that the equipment does not meet Oregon State Police criteria for towing under these Administrative Rules, then the Oregon State Police can remove the equipment from the non-preference list.

(5) Class D Tow Trucks (Trucks and equipment in this class are not considered recovery vehicles):

(a) Tow trucks and other vehicles in this class are to be used for towing and/or hauling purposes only. No recovery can be performed by equipment in this class;

(b) Equipment in this class capable of towing/hauling passenger cars, pickup trucks, trailers, trucks or equivalent vehicles, and debris is based on the size and ratings of the Class D tow unit used. All equipment used in conjunction with the tow truck must comply with current state laws and Oregon Administrative Rule 735-154-0040. In addition to the equipment required for all trucks used to provide service under this rule, all trucks in this class shall have:

(A) Class D-A:

(i) Eleven thousand pounds minimum manufacturer's gross vehicle weight rating or equivalent;

(ii) Dual tires on the rear axle;

(iii) A minimum of fifty feet three-eighths inch continuous length cable;

(iv) May include wheel lift, if chassis GVW is over 14,500 pounds; and

(v) If a Metro unit, dollies and a wheel lift.

(B) Class D-B:

(i) Seventeen thousand pounds minimum manufacturer's gross vehicle weight rating or equivalent;

(ii) Dual tires on the rear axle;

(iii) A minimum of 50 feet of three-eighths inch cable;

(iv) May include wheel lift; and

(v) If a Metro unit, dollies and a wheel lift.

(C) Class D-C:

(i) Twenty-seven thousand five hundred pounds minimum manufacturer's gross vehicle weight rating or equivalent.

(ii) Minimum of 50 feet of cable, five-eighths inch diameter.

(iii) Tandem rear axle truck chassis (three axle truck).

(iv) May include wheel lift; and

(v) Air brakes and an air system capable of supplying air to the towed unit.

Stat. Auth.: ORS 181.440

Stats. Implemented: ORS 181.440

Hist.: OSP 5-2005, f. & cert. ef. 11-18-05; OSP 1-2006, f. 3-29-06, cert. ef. 3-31-06; OSP 1-2009(Temp), f. & cert. ef. 8-6-09 thru 1-31-10; OSP 2-2009, f. 10-8-09 cert. ef. 1-1-10; OSP 3-2009(Temp), f. 12-18-09, cert. ef. 1-1-10 thru 6-29-10

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**Rule Caption:** Creates hearing process for vehicle tows conducted by OSP pursuant to ORS 819.110 and 819.120.

**Adm. Order No.:** OSP 4-2009(Temp)

**Filed with Sec. of State:** 12-22-2009

# ADMINISTRATIVE RULES

**Certified to be Effective:** 1-1-10 thru 6-29-10

**Notice Publication Date:**

**Rules Adopted:** 257-045-0010, 257-045-0020, 257-045-0030, 257-045-0040, 257-045-0050

**Rules Amended:** 257-001-0005

**Subject:** Effective January 1, 2010, the Oregon legislature amended ORS chapter 819 to require that if the department is the agency that proposes to remove, or has taken into custody, either an abandoned vehicle or a vehicle that constitutes a hazard that is located upon the right of way of a state highway, an interstate highway that is part of the National System of Interstate and Defense Highways, or state property, the department will now be responsible for exercising authority over the vehicle, as well as conducting hearings to determine the validity of the vehicle being taken into custody and towed, as well as the reasonableness of the tow fees and storage costs. See Oregon Laws (2009), chapter 371 (House Bill 2739). Currently, the department does not have an administrative hearing process in place to conduct the hearings required by the amendment to ORS chapter 819. The amendment of 257-001-0005 authorizes the department to use the new informal hearing process created under 257 division 045, rather than the Model Rules of Procedure promulgated by the Attorney General of the State of Oregon, for vehicles taken into custody or towed under ORS 819.110 or 819.120. The new temporary rules under OAR 257 division 045 generally create an informal hearing process within the department. The temporary rules define the scope of the hearing and who may request a hearing, and under what circumstances a hearing will be rescheduled when a petitioner fails to appear at a scheduled hearing. Moreover, the temporary rules govern when a hearing request must be received by the department, and who within the department will act as the hearing officers. Finally, the temporary rules dictate what must be contained within a written order of the hearing officer, depending on whether the hearing officer determines the taking into custody and tow of the vehicle to be valid or invalid, and whether the hearing officer's written order can be appealed.

**Rules Coordinator:** Cort Dokken—(503) 934-0228

## 257-001-0005

### Model Rules of Practice and Procedures

Except as provided in OAR 257-001-0020, 257-01-025 and 257-045-0010 to 257-045-0050 with respect to the rules for impoundment hearings under ORS 806.016 and hearings for vehicles taken into custody and towed under ORS 819.110 or 819.120, the Model Rules of Procedure as promulgated by the Attorney General of the State of Oregon under the Administrative Procedure Act effective November 4, 1993, are adopted as the Rules of Procedure of the Department of State Police and shall be controlling except as otherwise required by statute or rule.

[ED. NOTE: The full text of the Attorney General's Model Rules of Procedure is available from the office of the Attorney General or Oregon State Police.]

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 181, 181.040, 181.280, 183, 806, 806.014, 806.016 & 814, OL 2009, ch. 371 (HB 2739)

Stats. Implemented: ORS 183.341(4), OL 2009, ch. 371 (HB 2739)

Hist.: DSP 1, f. 4-19-74, ef. 5-11-74; DSP 4, f. 4-22-76, ef. 4-30-76; DSP 4-1979, f. & ef. 12-13-79; DSP 5-1981, f. 12-14-81, ef. 12-15-81; OSP 1-1986, f. & ef. 7-28-86; OSP 2-1994(Temp), f. 6-30-94, cert. ef. 7-1-94; OSP 5-1994, f. 11-21-94, cert. ef. 11-22-94; OSP 1-1998(Temp), f. & cert. ef. 7-24-98 thru 1-1-99; Administrative correction 8-5-99; OSP 4-2009(Temp), f. 12-22-09, cert. ef. 1-1-10 thru 6-29-10

## 257-045-0010

### Purpose and Authority

(1) These administrative rules govern the hearing process regarding vehicles that will be, or have been taken, into custody by the department pursuant to ORS 819.110 or 819.120.

(2) These Administrative Rules are promulgated pursuant to Oregon Laws 2009, chapter 371 (HB 2739), which requires that if the department is the authority that takes a vehicle into custody pursuant to ORS 819.110 or 819.120 that is located upon the right of way of a state highway, an interstate highway that is part of the National System of Interstate and Defense Highways, or state property, the department is responsible for notices and hearings related to the vehicle taken into custody.

Stat. Auth.: OL 2009, ch. 371 (HB 2739)

Stats. Implemented: OL 2009, ch. 371 (HB 2739)

Hist.: OSP 4-2009(Temp), f. 12-22-09, cert. ef. 1-1-10 thru 6-29-10

## 257-045-0020

### Scope of Hearing

(1) The owner of the vehicle, a person entitled to possession of the vehicle, or a person with a recorded interest on the title of the vehicle, may request a hearing to contest the validity of the towing and custody of the vehicle.

(2) The owner of the vehicle, a person entitled to possession of the vehicle, or a person with a recorded interest on the title of the vehicle, may request a hearing to contest the reasonableness of the charges for towing and storage only if the department used its own personnel, equipment and facilities in conducting the tow or in storing the vehicle.

Stat. Auth.: OL 2009, ch. 371 (HB 2739)

Stats. Implemented: OL 2009, ch. 371 (HB 2739)

Hist.: OSP 4-2009(Temp), f. 12-22-09, cert. ef. 1-1-10 thru 6-29-10

## 257-045-0030

### Notice and Request for Hearing

(1) If the department proposes to take or has taken custody of a vehicle in accordance with ORS 819.110 or 819.120, the department shall provide notice as described in ORS 819.170 or 819.180.

(2) A request for hearing shall be made in writing to the department at the address contained in the notice.

(3) Requests for hearing must be received by the department by 5:00 p.m. of the fifth business day (Saturdays, Sundays, and Holidays excluded) following the date of the posting or mailing of the notice. For purposes of this rule, "received by the department" means:

(a) Personally delivered to the Station Commander of the local patrol office in the area in which the vehicle will be, or has been, taken into custody and towed;

(b) Delivered by mail to OSP Headquarters, Patrol Services Division, 255 Capitol Street NE, 4th Floor, Salem, Oregon 97310; or

(c) Received by facsimile machine at telephone number (503) 391-5910.

(4) Requests for hearing shall contain at least the following information:

(a) Petitioner's full name;

(b) Petitioner's complete mailing address;

(c) Telephone number where petitioner can be called between 8 a.m. and 5 p.m.;

(d) A statement of the grounds upon which the person believes the custody and towing of the vehicle is not justified; and

(e) Dates and times within the immediate future that the petitioner cannot appear at a hearing.

(5) Untimely requests for hearing shall not be granted by the department.

(6) A person who requests a hearing but who fails to appear for a scheduled hearing shall not be entitled to another hearing unless the person provides written good cause to the department for the person's failure to appear. For purposes of these administrative rules, "good cause" shall be limited to serious impediments that affect a person's ability to attend a scheduled hearing, such as court conflicts, the death of an immediate family member of the person (verified to the satisfaction of the department), the person's physical incapacity (verified by a physician to the satisfaction of the department), or the person's service in the US Armed Forces, military reserves, National Guard or the organized militia.

Stat. Auth.: OL 2009, ch. 371 (HB 2739)

Stats. Implemented: OL 2009, ch. 371 (HB 2739)

Hist.: OSP 4-2009(Temp), f. 12-22-09, cert. ef. 1-1-10 thru 6-29-10

## 257-045-0040

### Hearing Process

(1) Within 72 hours of its receipt of a timely request for hearing, the department shall schedule a hearing. The 72 hour period shall not include Saturdays, Sundays, or Holidays.

(2) The department shall provide notice of the hearing to the following persons:

(a) The person requesting the hearing;

(b) The owner(s) of the vehicle; and

(c) Any lessors or security interest holders of the vehicle, as shown in the records of the Oregon Department of Transportation.

(3) Except as otherwise provided in these administrative rules, actions taken by the department or the hearing officer in conducting the hearing or issuing a written order are not subject to the Oregon Administrative Procedures Act, ORS chapter 183.

(4) The Superintendent of the Oregon State Police shall designate officers, officials, or employees of the department to act as hearing officers under these administrative rules, except that a hearings officer shall not be an officer, official, or employee of the department who participated in any determination or investigation related to the actual or proposed taking into custody and removal of the vehicle that is the subject of the hearing. In such case, the Superintendent shall designate another officer, official, or employee of the department to act as the hearings officer.

(5) Hearings shall be conducted by telephonic means, unless the person requesting the hearing provides written justification to the department why the hearing should be conducted in person. In the event a hearing is conduct-

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ed in person, the hearing shall be conducted at the Oregon State Police Headquarters located in Salem, Oregon, or at any other location designated by the hearing officer.

(6) Hearings shall be informal in nature. Hearings shall be recorded and the presentation of evidence shall be consistent with the requirements of ORS 183.450.

(7) If, after the hearing and by substantial evidence on the record, the hearing officer determines that the towing of the vehicle was invalid, the hearing officer shall issue a written order stating the facts of the vehicle tow and the hearing officer's reasoning why the vehicle tow is invalid. The hearing officer's written order shall further order that:

(a) The department shall pay the costs of towing and storage fees as soon as reasonably possible;

(b) The department shall immediately notify the tow company responsible for towing and storing the vehicle that the department is the party responsible for the charges and fees incurred in towing and storing the vehicle;

(c) The vehicle shall be immediately released to the person having a right of possession to the vehicle upon the department notifying the towing company of the department's liability for the towing charges and storage fees;

(d) The person to whom the vehicle is released is not liable for any towing or storage costs or fees; and

(e) If the person to whom the vehicle is to be released has already paid the towing and storage charges for the vehicle, the department shall reimburse the person for those towing and storage charges upon presentation, to the department's satisfaction, of proof of payment of those charges.

(8) If, after the hearing and by substantial evidence on the record, the hearing officer determines that the towing of the vehicle was valid, the hearing officer shall issue a written order stating the facts of the vehicle tow and the hearing officer's reasoning why the vehicle tow is valid. The hearing officer's written order shall further order that the vehicle shall remain in custody until the party claiming the vehicle pays the costs of the department's hearing, if any, as well as all towing and storage costs for the vehicle. In the event that the department has not yet taken the vehicle into custody, the hearing officer shall further order the removal of the vehicle.

(9) In the event that the department has used its own personnel, equipment and facilities for the towing and storage of a vehicle and the owner of the vehicle, a person entitled to possession of the vehicle, or a person with a recorded interest on the title of the vehicle requests a hearing to contest the reasonableness of the charges for towing and storage, the hearing officer shall make written findings and conclusion as to the reasonableness of the tow charges and storage fees in his or her written order.

(10) The hearing officer shall provide a copy of a written order to the person requesting a hearing.

(11) The department shall conduct only one hearing for each vehicle taken into custody or towed under ORS 819.110 or 819.120, even if an otherwise interested party fails to appear at a scheduled hearing, unless the party failing to appear provides written good cause to the department for the interested party's failure to appear.

Stat. Auth.: OL 2009, ch. 371 (HB 2739)  
Stats. Implemented: OL 2009, ch. 371 (HB 2739)  
Hist.: OSP 4-2009(Temp), f. 12-22-09, cert. ef. 1-1-10 thru 6-29-10

## 257-045-0050

### Appeals

The determination of the hearing officer is final and not subject to appeal.

Stat. Auth.: OL 2009, ch. 371 (HB 2739)  
Stats. Implemented: OL 2009, ch. 371 (HB 2739)  
Hist.: OSP 4-2009(Temp), f. 12-22-09, cert. ef. 1-1-10 thru 6-29-10

## Department of Public Safety Standards and Training Chapter 259

**Rule Caption:** Background Investigation for Tele/EMD, Multi-Discipline training and Maintenance Training Reporting.

**Adm. Order No.:** DPSST 1-2010

**Filed with Sec. of State:** 1-11-2010

**Certified to be Effective:** 1-11-10

**Notice Publication Date:** 12-1-2009

**Rules Amended:** 259-008-0015, 259-008-0060, 259-008-0064

**Subject:** Adopts minimum standards related to pre-employment background investigations for Telecommunicators and emergency medical dispatchers.

Updates and simplifies the process for reporting maintenance training for law enforcement officers who also hold certification as Telecommunicators or Emergency Medical Dispatchers.

Amends rules related to maintenance of certification for Telecommunicators and Emergency Medical Dispatchers.

**Rules Coordinator:** Bonnie Narvaez—(503) 378-2431

## 259-008-0015

### Background Investigation

(1) A personal history investigation must be conducted by the employing agency on each public safety professional being considered for employment to determine if applicant is of good moral fitness (professional fitness).

(2) Results of the personal history investigation on all public safety professionals must be retained by the employing agency and must be available for review at any reasonable time by representatives of the Department.

(3) All applicants for public safety professional must be interviewed personally, prior to employment, by the department head or an authorized representative.

Stat. Auth.: ORS 181.640  
Stats. Implemented: ORS 181.640  
Hist.: PS 1-1983, f. & ef. 12-15-83; Renumbered from 259-010-0021, PS 1-1990, f. & cert. ef. 2-7-90; PS 2-1995, f. & cert. ef. 9-27-95; PS 10-1997(Temp), f. & cert. ef. 11-5-97; BPSST 1-1998, f. & cert. ef. 5-6-98; BPSST 2-1998(Temp), f. & cert. ef. 5-6-98 thru 6-30-98; BPSST 3-1998, f. & cert. ef. 6-30-98; DPSST 1-2010, f. & cert. ef. 1-11-10

## 259-008-0060

### Public Safety Officer Certification

(1) Basic, Intermediate, Advanced, Supervisory, Management, Executive and Instructor Certificates are awarded by the Department to law enforcement officers and telecommunicators meeting prescribed standards of training, education, experience; and the levels established by the employing law enforcement units, or public or private safety agencies. Emergency medical dispatchers may be awarded basic certification only.

(2) Basic certification is mandatory and shall be acquired by all police officers, telecommunicators, and emergency medical dispatchers within 18 months of employment, and by all corrections officers within one year of employment unless an extension is granted by the Department.

(3) To be eligible for the award of a certificate, law enforcement officers shall be full-time employees as defined by ORS 181.610 and OAR 259-008-0005 or part-time parole and probation officers, as described in ORS 181.610 and OAR 259-008-0066.

(4) To be eligible for the award of a certificate, law enforcement officers shall meet the Board's prescribed minimum employment standards as established by OAR 259-008-0010.

(5) To be eligible for the award of a certificate, telecommunicators must meet the Board's prescribed minimum employment standards as established by OAR 259-008-0011.

(6) To be eligible for the award of a certificate, law enforcement officers shall subscribe to and swear or affirm to abide by the Criminal Justice Code of Ethics (Form F11). Telecommunicators and emergency medical dispatchers shall subscribe to and swear or affirm to abide by the Telecommunicator Code of Ethics. (Form F-11T). [Form not included. See ED. NOTE.]

(7) Application for certification must be submitted on Form F7, with all applicable sections of the form completed. The form shall be signed by the applicant. In order to insure that the applicant does or does not meet the minimum standards of employment, training, education, and experience, and is competent to hold the level of certification for which the applicant has applied, the department head or authorized representative shall sign the form recommending that the certificate be issued or withheld. If the department head chooses not to recommend the applicant's request for certification, the reason for this decision shall be specified in writing and shall accompany the Application for Certification (Form F7). [Form not included. See ED. NOTE.]

(8) When a department head is the applicant, the above recommendation shall be made by the department head's appointing authority such as the city manager or mayor, or in the case of a specialized agency, the applicant's superior. Elected department heads are authorized to sign as both applicant and department head.

(9) In addition to the requirements set forth above, each applicant, for the award of an Intermediate, Advanced, Supervisory, Management, or Executive Certificate, shall have completed the designated education and training, combined with the prescribed corrections, parole and probation, police or telecommunications experience.

(a) Each quarter credit unit granted by an accredited college or university which operates on a quarterly schedule shall equal one (1) education credit.

(b) Each semester credit unit granted by an accredited college or university operating on a semester schedule shall equal one and one half (1-1/2) education credits.

(c) The Department must receive sealed official transcripts from a college prior to entering college credit on an individual's official record.

(10) Training Points. Twenty (20) classroom hours of job-related training approved by the Department shall equal one (1) training point. (Example: 200 training hours equal 10 training points.)

(a) Basic, Intermediate, Advanced, Supervisory, Middle Management, Executive, or Specialized courses certified, sponsored, or presented by the Department shall be approved.

(b) The Department may award training points for departmental or other in-service training which is recorded and documented in the personnel

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files of the trainee's department. These records shall include the subject, instructor, classroom hours, date, sponsor, and location.

(c) Training completed in other states, military training, and other specialized training, if properly documented may be accepted, subject to staff evaluation and approval. These records shall include the subject, date, and classroom hours, and shall be certified true copies of the original.

(d) Upon receipt of documentation which shall include the source, syllabus, number of hours, dates and successful completion of the course, the Department or its designated staff may award training points for correspondence courses.

(e) College credits earned may be counted for either training points or education credits, whichever is to the advantage of the applicant.

(f) College credit awarded based on training completed may be applied toward either training points or education credits, whichever is to the advantage of the applicant.

(A) Prior to applying an applicant's college credit toward any upper level of certification, the Department must receive documentation of the number of college credits awarded based on training attended.

(B) The training hours identified under paragraph (A) and submitted as college credit toward an upper level of certification will not be included in any calculation of whether the applicant has earned sufficient training hours to qualify for the requested certification level(s).

(i) Any college credit received for practical or skills-based training attended will be calculated at a ratio of 1:20 hours for each quarter credit, for purposes of training hour deductions.

(ii) Any college credit received for academic training attended will be calculated at a ratio of 1:10 hours for each quarter credit, for purposes of training hour deductions.

(g) Notwithstanding subsection (e) and (f) above, no credit can be applied toward both an education credit and training point when originating from the same training event.

## (11) Experience/Employment:

(a) Experience acquired as a corrections, parole and probation, or police officer employed full time with municipal, county, state, or federal agencies, may be accepted if the experience is in the field in which certification is requested and is approved by the Department. For the purpose of this rule, creditable service time for experience will cease to accrue under the following circumstances:

(A) When an individual is employed in a casual, seasonal, or temporary capacity;

(B) When an individual is on "leave." This includes, but is not limited to, medical leave, a leave of absence or military leave;

(C) Notwithstanding section (B) of this rule, a public safety professional may submit a written request for credit for military time served upon return from a military leave. The Department may approve credit for military time served if the public safety professional's military duties are determined to be equivalent to the duties the public safety professional was performing prior to the public safety professional's military leave. Any credit received for time served will be at the discretion of the Department.

(D) From the date a public safety professional's certification is recalled until it is reinstated by the Department;

(E) When a public safety professional fails to obtain Basic certification within a mandated timeframe and is prohibited from being employed as a public safety professional;

(b) Experience acquired as a telecommunicator or emergency medical dispatcher employed with a public or private safety agency may be accepted if the experience is in the field in which certification is requested and is approved by the Department.

(c) Experience acquired as a certified part-time telecommunicator, emergency medical dispatcher as defined in OAR 259-008-0005(12) and (32) respectively, or part time parole and probation officer, as defined under 259-008-0005(20) and (21) and 259-008-0066, shall count on a pro-rated basis.

(d) Police, corrections, parole and probation, telecommunicator, or emergency medical dispatch experience in fields other than that in which certification is requested may receive partial credit when supported by job descriptions or other documentary evidence. In all cases, experience claimed is subject to evaluation and approval by the Department.

(12) The Basic Certificate. In addition to the requirements set forth in section (1) of this rule, the following are required for the award of the Basic Certificate:

(a) Applicants shall have completed a period of service of not less than nine (9) months with one or more law enforcement units, or public or private safety agencies in a certifiable position, in the field in which certification is being requested.

(b) Applicants shall have satisfactorily completed the required Basic Course in the field in which certification is requested or have completed equivalent training as determined by the Department.

(c) Applicants shall have valid first aid and cardiopulmonary resuscitation (CPR) card(s).

(13) The Intermediate Certificate. In addition to the requirements set forth in section (1) of this rule, the following are required for the award of the Intermediate Certificate:

(a) Applicants shall possess a Basic Certificate in the field in which certification is requested.

(b) Applicants shall have acquired the following combinations of education and training points combined with the prescribed years of police, corrections, parole and probation or telecommunications experience, or the college degree designated combined with the prescribed years of experience: [Table not included. See ED. NOTE.]

(14) The Advanced Certificate. In addition to the requirements set forth in section (1) of this rule, the following are required for the award of the Advanced Certificate:

(a) Applicants shall possess or be eligible to possess the Intermediate Certificate in the field in which certification is requested.

(b) Applicants shall have acquired the following combinations of education and training points combined with the prescribed years of corrections, parole and probation, police, telecommunications experience, or the college degree designated combined with the prescribed years of experience: [Table not included. See ED. NOTE.]

(15) The Supervisory Certificate. In addition to requirements set forth in section (1) of this rule, the following are required for the award of the Supervisory Certificate:

(a) Applicants shall possess or be eligible to possess the Advanced Certificate in the field in which certification is requested.

(b) Applicants shall have satisfactorily completed no less than 45 education credits as defined in section (10) of this rule.

(c) Applicants shall have satisfactorily completed the prescribed Supervision Course or an equivalent number of hours of Department approved supervisory level training within five (5) years prior to application for the Supervisory Certificate.

(d) Applicants shall be presently employed in, or have satisfactorily performed the duties associated with the position of a first level supervisor, as defined in ORS 181.610 and OAR 259-008-0005(16), as attested to by the applicant's department head during the time such duties were performed, for a period of one (1) year. The required experience shall have been acquired within five (5) years prior to the date of application.

(e) Upon request of the employing agency, the Department may waive the requirements of subsection (d) of this section, provided the employing agency demonstrates that the applicant performs, on a regular basis, supervisory duties.

(16) The Management Certificate. In addition to requirements set forth in section (1) of this rule, the following are required for the award of the Management Certificate:

(a) Applicants shall possess or be eligible to possess the Supervisory Certificate in the field in which certification is requested.

(b) Applicants shall have satisfactorily completed no less than 90 education credits as defined in section (10) of this rule.

(c) Applicants shall have satisfactorily completed the prescribed Middle Management Course or an equivalent number of hours of Department approved management level training within five (5) years prior to application for the Management Certificate.

(d) Applicants shall be presently employed in, and shall have served satisfactorily in a Middle Management position, as an Assistant Department Head, or as a Department Head as defined in ORS 181.610 and OAR 259-008-0005, for a period of two (2) years. The required experience must have been acquired within five (5) years prior to the date of application.

(e) Upon request of the employing agency, the Department may waive the requirements of subsection (d) of this section, provided the employing agency demonstrates that the applicant performs, on a regular basis, management duties.

(17) The Executive Certificate. In addition to requirements set forth in section (1) of this rule, the following are required for the award of the Executive Certificate:

(a) Applicants shall possess or be eligible to possess the Management Certificate in the field in which certification is requested.

(b) Applicants shall have satisfactorily completed no less than 90 education credits as defined in section (10) of this rule.

(c) Applicants shall have satisfactorily completed 100 hours of Department approved executive level training within five (5) years prior to application for the Executive Certificate.

(d) Applicants shall be presently employed in, and shall have served satisfactorily in a Middle Management position, as an Assistant Department Head, or as a Department Head as defined in OAR 259-008-0005, for a period of two (2) years. The required experience must have been acquired within five (5) years prior to the date of the application.

(e) Upon request of the employing agency, the Department may waive the requirements of subsection (d) of this section, provided the employing agency demonstrates that the applicant performs, on a regular basis, the duties associated with that of a department head or assistant department head.

(18) Multi-discipline Certification. Upon receiving written request from the department head stating a justified and demonstrated need exists for the efficient operation of the employing agency, the Department may approve multi-discipline certification for law enforcement officers who meet all minimum employment, training and education standards established in OAR 259-008-0010, 259-008-0025, and this rule, in the disciplines which they are

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requesting certification. The officer must meet the following requirements for the award of multi-discipline certification:

(a) Basic certification: A law enforcement officer who is certified in one discipline may apply for multi-discipline certification, if employed in or transferred to another discipline within the same law enforcement unit. The applicant must demonstrate completion of all training requirements in the discipline in which certification is being requested.

(b) Higher levels of certification: Law enforcement officers who possess higher levels of certification in one discipline may, upon employment in or transfer to another discipline within the same law enforcement unit, apply for the same level of certification after completion of nine (9) months experience in the discipline in which they are requesting certification, and meeting the requirements for those higher levels of certification as outlined in this rule. This section does not apply to the EMD discipline since it only exists at the basic certification level.

(c) Retention of Multi-discipline certification. In order to maintain multi-discipline certification, each discipline in which certification is held requires successful completion and documentation of training hours by the holders of the certificates every twelve (12) months. The training must be reported to the Department, as follows:

(A) For a law enforcement officer who also holds EMD certification; a minimum of four (4) hours of training, specific to the EMD discipline, must be reported annually as required under OAR 259-008-0064.

(B) For a law enforcement officer who also holds Telecommunicator certification, a minimum of twelve (12) hours of training, specific to the Telecommunicator discipline, must be reported annually as required under OAR 259-008-0064.

(C) A minimum of twenty (20) hours of training, specific to each law enforcement discipline in which certification is held, must be reported annually as required under subsections (h) through (l) of this rule.

(d) The same training may be used for more than one discipline if the content is specific to each discipline. It is the responsibility of the agency head to determine if the training is appropriate for more than one discipline.

(e) The maintenance training cycle for law enforcement officers who are certified in more than one discipline begins on July 1st of each year and ends on June 30th the following year.

(f) The employing agency must maintain documentation of all required maintenance training completed.

(g) If reported on an F-6 Course Roster, required maintenance training must be submitted to the Department by June 30th of each year. Training reported on an F-6 will result in credit for training hours. No training hours will be added to a law enforcement officer's record, unless accompanied by an F-6 Course Roster.

(h) On or after July 1 of each year, the Department will identify all law enforcement officers who are deficient in maintenance training according to Department records and provide notification to the individual and his/her employing agency.

(i) Within 30 days of receipt of the notification in (h) above, the agency or individual must:

(A) Notify the Department of the training status of any law enforcement officer identified as deficient in submitting a Form F-15M or F-15T to the Department; and

(B) Submit an F-15M, or F-15T if multi-discipline includes certification as a telecommunicator or emergency medical dispatcher, identifying the maintenance training completed during the previous one (1) year reporting period.

(C) Maintenance training hours reported to the Department on an F-15M or F-15T will be used solely to verify completion of maintenance training requirements and will not be added to an officer's DPSST training record.

(j) Failure to notify the Department of completion of any required training for individuals with identified training deficiencies will result in a notification of recall letter being sent to the agency head and the officer.

(k) The Department will recall a law enforcement officer's certification for:

(A) Failure to complete or report any required maintenance training identified in section (c) above on or before June 30th of each year; or

(B) Failure to submit a Form F-15M or F-15T within 30 days after a warning notification letter has been sent.

(l) A law enforcement officer with a recalled certification is prohibited from being employed in any position that has been recalled.

(m) Upon documentation of compliance with subsection (i) of this rule, a law enforcement officer may reapply for single or multi-discipline certification as outlined by this rule.

(19) Certificates Are Property of Department. Certificates and awards are the property of the Department, and the Department shall have the power to revoke or recall any certificate or award as provided in the Act.

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

Stat. Auth.: ORS 181.640, 181.644, 181.651, 181.652, 181.653, 181.654, 181.665

Stats. Implemented: ORS 181.640, 181.644, 181.651, 181.652, 181.653, 181.654 & 181.665  
Hist.: PS 12, f. & ef. 12-19-77; PS 1-1979, f. 10-1-79, ef. 10-3-79; PS 1-1980(Temp), f. & ef. 6-26-80; PS 2-1980, f. & ef. 12-8-80; PS 1-1981, f. 9-26-81, ef. 11-2-81; PS 1-1983, f. & ef. 12-15-83; PS 1-1985, f. & ef. 4-24-85; Renumbered from 259-010-0055, PS 1-1990, f. & ef. 2-7-90; PS 1-1995, f. & ef. 3-30-95, PS 2-1995, f. & ef. 9-27-95; PS 7-1997, f. 3-20-97, cert. ef. 3-25-97; PS 10-1997(Temp), f. & ef. 11-5-97; BPSST 1-1998, f. & ef. 5-6-98; BPSST 2-1998(Temp), f. & ef. 5-6-98 thru 6-30-98; BPSST 3-1998,

f. & cert. ef. 6-30-98; BPSST 1-1999, f. & cert. ef. 3-9-99; BPSST 6-1999, f. & cert. ef. 7-29-99; BPSST 11-2000, f. 11-13-00, cert. ef. 11-15-00; BPSST 13-2001(Temp), f. & cert. ef. 10-26-01 thru 4-10-02; BPSST 8-2002, f. & cert. ef. 4-3-02; BPSST 21-2002, f. & cert. ef. 11-21-02; DPSSST 1-2004, f. 1-16-04, cert. ef. 1-20-04; DPSSST 5-2004, f. & cert. ef. 4-23-04; DPSSST 2-2008, f. & cert. ef. 1-15-08; DPSSST 9-2008, f. & cert. ef. 7-15-08; DPSSST 22-2008, f. & cert. ef. 12-29-08; DPSSST 4-2009, f. & cert. ef. 4-8-09; DPSSST 1-2010, f. & cert. ef. 1-11-10

## 259-008-0064

### Maintenance of Certification for Telecommunicators and Emergency Medical Dispatchers

(1) Basic Certification:

(a) All certified telecommunicators must complete 12 hours of maintenance training annually, regardless of whether they are employed as a telecommunicator.

(b) All certified emergency medical dispatchers must complete four (4) hours of maintenance training annually, regardless of whether they are employed as an emergency medical dispatcher.

(c) The maintenance training cycle begins on July 1st each year and ends on June 30th the following year.

(2)(a) The employing agency must maintain documentation of all required telecommunicator or emergency medical dispatcher maintenance training completed;

(b) An individual who is certified as a telecommunicator or emergency medical dispatcher, but is no longer employed in a certifiable position, is responsible for meeting all maintenance training requirements and maintaining documentation of any maintenance training completed.

(3)(a) If reported on an F-6 Course Roster, required maintenance training must be submitted to the Department by June 30th of each year. Training reported on an F-6 will result in credit for training hours. No training hours will be added to an individual's record, unless accompanied by an F-6 Course Roster.

(b) On or after July 1 of each year, the Department will identify all telecommunicators and emergency medical dispatchers who are deficient in maintenance training according to Department records and provide notification to the individual and his/her employing agency.

(c) Within 30 days of receipt of the notification in (3)(b) above, the agency or individual must notify the Department of the training status of any telecommunicator or emergency medical dispatcher identified as deficient by submitting a Form F-16 to the Department identifying the maintenance training completed during the previous one (1) year reporting period.

(d) Maintenance training hours reported to the Department on an F-16 will be used solely to verify completion of maintenance training requirements and will not be added to the officer's DPSST training record.

(4) Failure to notify the Department of completion of the required training for individuals with identified training deficiencies will result in a notification of recall letter being sent to the agency head and the officer.

(5) The Department will recall a telecommunicator's or emergency medical dispatcher's certification for:

(a) Failure to complete or report any required maintenance training identified in sections (1) or (2) above on or before June 30th of each year; or

(b) Failure to submit a Form F-16 within 30 days after a warning notification letter has been sent.

(6) A telecommunicator or emergency medical dispatcher with a recalled certification is prohibited from being employed in a certifiable position as a telecommunicator or emergency medical dispatcher.

(7)(a) Instructors may apply hours spent instructing a class one (1) time annually toward maintenance training, but instructed hours reported for a class may not exceed the lesser of:

(A) The actual class hours; or

(B) The actual number of hours the instructor spent instructing the class.

(b) The total number of instructed hours applied towards the annual maintenance training requirement may not exceed:

(A) Six (6) hours for a telecommunicator; or

(B) Two (2) hours for an emergency medical dispatcher;

(8) Recertification following a recall may be obtained at the approval of DPSST by submitting the following to DPSST:

(a) A written request from the employing agency head, or individual if unemployed, requesting recertification, along with a justification of why the maintenance training was not completed; and

(b) Verification that the missed training was completed.

(9) Notwithstanding paragraph (5) of this subsection, the failure of a telecommunicator or emergency medical dispatcher to complete required maintenance training will not result in recall of certification if the telecommunicator or emergency medical dispatcher on authorized leave of absence from a public or private safety agency;

(10) The Department may grant an extension of time for completion of any required training or in-service training based upon good cause. A written request for an extension of time must be submitted to the Department by the agency head.

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

Stat. Auth.: ORS 181.640 & 181.644

Stats. Implemented: ORS 181.640 & 181.644



# ADMINISTRATIVE RULES

Hist.: PS 2-1995, f. & cert. ef. 9-27-95; PS 10-1997(Temp), f. & cert. ef. 11-5-97; BPSST 1-1998, f. & cert. ef. 5-6-98; BPSST 2-1998(Temp), f. & cert. ef. 5-6-98 thru 6-30-98; BPSST 3-1998, f. & cert. ef. 6-30-98; BPSST 1-1999, f. & cert. ef. 3-9-99; BPSST 5-2001, f. & cert. ef. 8-22-01; DPSST 3-2007, f. & cert. ef. 1-12-07; DPSST 15-2008, f. & cert. ef. 10-15-08; DPSST 1-2010, f. & cert. ef. 1-11-10

## Department of Revenue Chapter 150

**Rule Caption:** Interest on deficiencies and delinquencies; interest on refunds.

**Adm. Order No.:** REV 9-2009

**Filed with Sec. of State:** 12-21-2009

**Certified to be Effective:** 1-1-10

**Notice Publication Date:** 10-1-2009

**Rules Amended:** 150-305.220(1), 150-305.220(2)

**Subject:** OAR 150-305.220(1) and 150-305.220(2) are amended to reflect a decrease in the interest rate paid on refunds and charged on deficiencies as provided by ORS 305.220(3). These changes apply to interest periods beginning on or after January 1, 2010.

**Rules Coordinator:** Debra L. Buchanan—(503) 945-8653

### 150-305.220(1)

#### Interest on Deficiencies and Delinquencies

(1) Adjustment to statutory rate. For interest periods beginning on or after January 1, 2010, unless otherwise provided by law, every deficiency and delinquency arising under any law administered by the Department of Revenue will bear interest at the rate of 0.4167 percent per month (5 percent annually). For a fraction of a month, interest will be computed at 0.0137 percent per day. For historic interest rates, see section (4) of this rule.

(2) Interest starting date. The interest starting date for deficiencies and delinquencies will be one day after the due date of the return, excluding extensions.

(3) Interest periods. An interest period is each full month starting with the interest starting date and ending one day before the corresponding date one month later. Interest will be computed on a daily basis for a fraction of a month. The daily rate is based on a 365-day year.

(4) Interest rates. The following table shows interest rates and interest periods used by the Oregon Department of Revenue to compute interest due from taxpayers on deficiencies and delinquencies. [Table not included. See ED. NOTE.]

(5) Decimal places used in computations. In all computations, the interest rate will consist of six decimal places.

**Example A:** A 2002 return is filed and a tax of \$500 is paid on February 25, 2006.

Interest is computed as follows:

4/16/2003 – 1/15/2004 9 mos. @ .5833% = \$ 26.25

1/16/2004 – 1/15/2005 12 mos. @ .5% = 30.00

1/16/2005 – 1/15/2006 12 mos. @ .4167% = 25.00

1/16/2006 – 2/15/2006 1 month @ .5833% = 2.92

2/16/2006 – 2/25/2006 10 days @ .0192% = .96

Total interest \$ 85.13

The new interest rate, even though effective on the first day of a month, does not apply until the first day of the first interest period that begins after the effective date. In this example, the first interest period begins on the 16th of the month.

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

Stat. Auth.: ORS 305.100, 305.220

Stats. Implemented: ORS 305.220

Hist.: RD 2-1986, f. 7-2-86, cert. ef. 8-1-86; RD 8-1986, f. & cert. ef. 12-31-86; RD 14-1987, f. 12-18-87, cert. ef. 1-16-88; RD 11-1988, f. 12-19-88, cert. ef. 12-31-88; RD 12-1990, f. 12-20-90, cert. ef. 12-31-90; RD 7-1992, f. & cert. ef. 12-29-92; RD 5-1993, f. 12-30-93, cert. ef. 12-31-93; RD 7-1994, f. 12-15-94, cert. ef. 12-30-94; REV 7-1998, f. 11-13-98, cert. ef. 12-31-98; REV 12-2000, f. & cert. ef. 12-29-00, cert. ef. 12-31-00; REV 9-2001, f. 12-31-01, cert. ef. 2-1-02; REV 9-2002, f. 12-31-02, cert. ef. 1-31-03; REV 4-2003, f. & cert. ef. 12-31-03; REV 10-2004, f. 12-29-04 cert. ef. 12-31-04; REV 5-2005, f. 12-30-05, cert. ef. 1-1-06; REV 11-2006, f. 12-27-06, cert. ef. 1-1-07; REV 16-2008, f. 12-26-08, cert. ef. 1-1-09; REV 9-2009, f. 12-21-09, cert. ef. 1-1-10

### 150-305.220(2)

#### Interest on Refunds

(1) Adjustment to statutory rate. For interest periods beginning on or after January 1, 2010, unless specifically provided by statute or by rule, every refund arising under any law administered by the Department of Revenue will bear interest at the rate of 0.4167 percent per month (5 percent annually). For a fraction of a month, interest will be computed at 0.0137 percent per day. For historic rates, see section (6) of this rule.

(2) Interest starting date.

(a) As provided in OAR 150-314.415, the interest starting date for refunds of individual income tax, corporate excise tax, or corporate income tax, is 45 days after the date the tax was paid, 45 days after the return was due or 45 days after the original return was filed, whichever is latest.

(b) The interest starting date for refunds not described in (2)(a) is 45 days after the return was due or 45 days after the date the tax was paid, whichever is later.

(3) Interest periods. An interest period is each full month starting with the interest starting date and ending one day before the corresponding date

one month later. Interest will be computed on a daily basis for a fraction of a month. The daily rate is based on a 365 day year.

(4) Interest rates. For interest periods beginning on or after June 1, 1983, the interest rate paid on refunds will be the same as the interest rate charged on deficiencies and delinquencies.

(5) Decimal places used in computations. In all computations, the interest rate will consist of six decimal places.

(6) The following table shows interest rates used by the Oregon Department of Revenue to compute interest due to taxpayers on refunds. [Table not included. See ED. NOTE.]

**Example 1:** Debby files her 2002 return on April 15, 2003. Debby later files a 2002 amended return on May 15, 2005, asking for a refund of \$500. The refund is paid on

July 22, 2005. The interest is computed as follows:

5/30/2003 – 1/29/2004 8 mos. @ .5833% = \$23.33

1/30/2004 – 1/29/2005 12 mos. @ .5% = 30.00

1/30/2005 – 6/29/2005 5 mos. @ .4167% = 10.42

6/30/2005 – 7/22/2005 23 days @ .0137% = 1.58

Total interest \$65.33

The new interest rate, even though effective on the first day of a month, does not apply until the first day of the first interest period that begins after the effective date. In this example, the first interest period begins on the 30th of the month.

**Example 2:** Tom filed his 2004 return and paid the tax due on April 6, 2005. On

November 1, 2006, Tom filed a 2004 amended return to claim a refund of \$1,000. The

refund was paid on December 11, 2006. The interest starting date is May 30, 2005,

the 45th day after the return was due. The interest is computed as follows:

5/30/2005 – 01/29/2006 8 mos. @ .4167% = 33.34

1/30/2006 – 11/29/2006 10 mos. @ .5833% = 58.33

11/30/2006 – 12/11/2006 12 days @ .0192% = 2.30

Total interest \$ 93.97

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

Stat. Auth.: ORS 305.100, 305.220

Stats. Implemented: ORS 305.220

Hist.: 5-5-82, 6-15-82; 12-31-82, Renumbered from Ch. 16, Or Laws 1982 (2nd SS) to 150-314.415(1)(a); 12-31-85; 12-31-86; Renumbered from 150-314.415(1)(a); RD 15-1987, f. 12-10-87, cert. ef. 12-31-87, Renumbered from 305.220; 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 12-1990, f. 12-20-90, cert. ef. 12-31-90; RD 7-1991, f. 12-30-91, cert. ef. 12-31-91; RD 7-1992, f. & cert. ef. 12-29-92; RD 7-1993, f. 12-30-93, cert. ef. 12-31-93; RD 7-1994, f. 12-15-94, cert. ef. 12-30-94; REV 7-1998, f. 11-13-98, cert. ef. 12-31-98; REV 12-2000, f. & cert. ef. 12-29-00, cert. ef. 12-31-00; REV 9-2001, f. 12-31-01, cert. ef. 2-1-02; REV 9-2002, f. 12-31-02, cert. ef. 1-31-03; REV 4-2003, f. & cert. ef. 12-31-03; REV 10-2004, f. 12-29-04 cert. ef. 12-31-04; REV 5-2005, f. 12-30-05, cert. ef. 1-1-06; REV 11-2006, f. 12-27-06, cert. ef. 1-1-07; REV 11-2007, f. 12-28-07, cert. ef. 1-1-08; REV 16-2008, f. 12-26-08, cert. ef. 1-1-09; REV 9-2009, f. 12-21-09, cert. ef. 1-1-10

**Rule Caption:** Inheritance tax extension; 2009 legislation conformity; “moist snuff” defined.

**Adm. Order No.:** REV 10-2009

**Filed with Sec. of State:** 12-21-2009

**Certified to be Effective:** 1-1-10

**Notice Publication Date:** 11-1-2009

**Rules Adopted:** 150-323.500(9)

**Rules Amended:** 150-118.225, 150-314.280-(N), 150-315.204-(A), 150-315.262, 150-317.097

**Rules Repealed:** 150-305.290, 150-314.610(4), 150-317.326, 150-323.500(9)(T)

**Subject:** 150-118.225, *Extension of Time to Pay Tax*, is amended to provide that stock may not be used as collateral if an estate requires an extension of time to pay tax under ORS chapter 118.

150-305.290 is repealed as obsolete following changes in federal bankruptcy laws.

150-314.280-(N), *Modified Factors for Financial Organizations*, is amended to conform to statutory changes made by SB 180 (2009 Oregon Laws, chapter 401), which replaced references to “financial organizations” with “financial institutions.”

150-314.610(4), *Financial Organizations: Definition of “Investment Company”*, is repealed due to statutory changes made by SB 180.

150-315.204-(A), *Dependent Care Credits: General Information*, is amended to reflect statutory changes made in 2009 that extended the date on which the credit is scheduled to sunset.

150-315.262, *Working Family Childcare Credit*, is amended to reflect a 2009 legislative change to the definition of “qualifying child.”

150-317.097, *Affordable Housing Credit; Definitions; Transfers; Carry Forward of Unused Credit*, is amended to reflect 2009 statutory changes.

150-317.326, *Adjustment to Basis for Recognized Gain*, is repealed as the corresponding statute has been repealed.

150-323.500(9), *Definition of Moist Snuff*, is adopted to provide guidance as to the types of tobacco products that are “moist snuff”

# ADMINISTRATIVE RULES

in the context of HB 2672 (2009 Oregon Laws, chapter 717) and the temporary rule is repealed.

**Rules Coordinator:** Debra L. Buchanan—(503) 945-8653

## 150-118.225

### Extension of Time to Pay Tax

(1)(a) An application for extension of time to pay the inheritance tax shown on the return shall be by letter mailed to the Department within nine months after the date of decedent's death or within the time of any extension granted for filing of the return.

(b) An application for extension of time to pay a tax deficiency shall be by letter mailed to the Department within thirty days from the date of mailing of the notice of deficiency. The department shall consider that an extension of time to pay the tax has been granted if the executor has obtained an approved federal extension and collateral has been provided to the department. The extended period for the department shall agree with the extended period for federal purposes. The federal extension must be submitted with the return. An approved federal extension to pay shall not waive the penalties for late filing and interest shall accrue during the extension period.

(2) An extension of time will be granted for reasonable cause. For example, reasonable cause will generally exist where:

(a) Funds are not available to pay the tax except by disposing of property at a sacrifice price (less than market value) or by borrowing money at a rate in excess of the mortgage money market (on terms that would inflict loss on the estate), or

(b) The gross taxable estate includes a beneficial interest in a closely held business where the value of such interest exceeds either 35 percent of the gross taxable estate or 50 percent of the net taxable estate. For purposes of the 35 percent and 50 percent tests provided in this paragraph, interest in two or more closely held businesses shall be treated as an interest in a single closely held business.

(3) The time to pay the tax shall be extended only on the portion of the tax attributable to the interest in the closely held business.

(4) For purposes of this rule, "interest in a closely held business" means an interest as described below determined immediately before the decedent's death:

(a) An interest as a proprietor in a trade or business carried on as a proprietorship;

(b) An interest as a partner in a partnership carrying on a trade or business if 20 percent or more of the total capital interest in such partnership is included in the gross taxable estate, or such partnership has 15 or fewer partners;

(c) Stock in a corporation carrying on a trade or business if 20 percent or more of the voting stock of such corporation is included in the gross taxable estate, or such corporation had 15 or fewer shareholders. Stock or a partnership interest which is held by a husband and wife as community property or as joint tenants, tenants by the entirety, or tenants in common shall be treated as owned by one shareholder or one partner, whichever is applicable.

(d) A "trade or business" does not include an investment or holding company.

(5) If the time for payment has been extended, the amount extended shall be paid in equal annual installments plus accrued interest. If any installment is not paid on or before the date fixed for its payment, the unpaid portion of the tax payable in installments shall be paid upon notice and demand from the Department.

(6) An extension of time for payment of tax shall generally cease to apply, and any unpaid portion of the tax payable in installments shall be paid upon notice and demand from the Department if:

(a) One-third or more in value of an interest in a closely held business is sold, exchanged or otherwise disposed of; or

(b) Aggregate withdrawals of money and other property from the closely held business equal or exceed one-third of the value of such closely held business.

(7) Collateral acceptable to the Department will generally include the following:

(a) First mortgage on real property having a value of double the extended tax;

(b) Assignment of a contract and deed for the sale of real property where the market value of the contract is double the amount of the extended tax;

(c) A surety bond in double the amount of the extended tax executed by a corporation licensed to do business in the State of Oregon. Such bond shall be renewed every five years.

(8) Examples of reasonable cause:

(a) "A" died January 10, 1997, leaving a gross estate of \$1,200,000 of which \$700,000 was the value of a retail store operated by the decedent. The balance of the estate was listed securities, cash, a family residence and miscellaneous personal effects. The taxable estate was \$850,000 on which the Oregon tax was \$25,200. The portion that could be extended is \$20,753. (\$700,000 divided by \$850,000) multiplied by \$25,200 equals \$20,753.

(b) "B" died February 1, 1997, leaving a taxable estate of \$1,000,000 of which \$700,000 was stock in a closely held corporation. The balance of the

property was listed securities and personal effects. The corporation was a holding company with the majority of corporate assets invested in real estate. It was not shown that money could only be borrowed on terms that would inflict loss upon the estate. An extension would not be granted.

(c) "C" died January 1, 1997, leaving a taxable estate of \$1,000,000. The estate included farm land valued at \$500,000. The balance of the estate was real property, listed securities, cash and personal effects. The farm land was leased for cash rent. Because this is an investment in real property, it would not be considered a trade or business and the tax would not be extended.

(d) "D" died May 10, 1997, leaving a taxable estate of \$750,000 including a tree farm valued at \$400,000. The farm consisted of all pre-merchandise timber. It was shown that the farm could only be sold at a sacrifice price in a depressed market and that money could only be borrowed on terms that would inflict loss upon the estate. The tax of \$10,880 would be extended. (\$400,000 divided by \$750,000) multiplied by \$20,400 equals \$10,880.

(e) "E" died May 10, 1997, leaving a taxable estate of \$5,000,000 of which tree farms were valued at \$1,000,000. The balance of the estate was comprised of merchantable timber and timberlands valued at \$2,000,000 and an interest in a closely held lumber manufacturing company valued at \$2,000,000. Only the portion of the tax attributable to the closely held business (\$156,640) would qualify for the extension. Other reasonable causes were not shown. (\$2,000,000 divided by \$5,000,000) multiplied by \$391,600 equals \$156,640.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 118.225

Hist.: 12-31-77; 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 4-1997, f. 9-12-97, cert. ef. 12-31-97; REV 10-2009, f. 12-21-09, cert. ef. 1-1-10

## 150-314.280-(N)

### Modified Factors for Financial Organizations

(1) This rule is based on a model regulation adopted by the Multistate Tax Commission to promote uniform treatment of this item by the states. A financial institution having income from business activity that is taxable both within and without this state must allocate and apportion its net income as provided in this rule for tax years beginning on or after January 1, 1993. All items of nonbusiness income (income that is not includable in the apportionable tax base) must be allocated pursuant to the provisions of ORS 314.610 through 314.645 and the rules thereunder. A financial institution organized under the laws of a foreign country, the Commonwealth of Puerto Rico, or a territory or possession of the United States whose effectively connected income (as defined under the Federal Revenue Code) is taxable both within this state and within another state, other than the state in which it is organized, must allocate and apportion its net income as provided in this rule.

(2)(a) For tax years beginning on or after January 1, 1991 and before May 1, 2003, all business income must be apportioned to this state by multiplying the income by a fraction. The numerator of the fraction is two times the sales factor, as described in section (4) of this rule, plus the property factor, as described in section (5) of this rule, plus the payroll factor, as described in section (6) of this rule. The denominator of the fraction is four. If one of the factors is missing, the remaining factors are added and the sum is divided by three (divide by two if the missing factor is the sales factor). A factor is missing if both its numerator and denominator are zero, but it is not missing merely because its numerator is zero.

(b) For tax years beginning on or after May 1, 2003 and before July 1, 2005, all business income must be apportioned to this state by multiplying the income by a multiplier equal to 80 percent of the sales factor described in section (4) of this rule plus 10 percent of the property factor described in section (5) of this rule plus 10 percent of the payroll factor described in section (6) of this rule.

(c) For tax years beginning on or after July 1, 2005, all business income must be apportioned to this state by multiplying the income by a multiplier equal to 100 percent of the sales factor described in section (4) of this rule.

(d) Each factor must be computed according to the method of accounting (cash or accrual) used by the taxpayer for the taxable year.

(e) See OAR 150-314.280-(M) for other methods of apportionment and allocation or modification of the method in this rule that may be allowable.

(3) Definitions as used in this rule, unless the context otherwise requires:

(a) "Billing address" means the location indicated in the books and records of the taxpayer on the first day of the taxable year (or on such later date in the taxable year when the customer relationship began) as the address where any notice, statement, or bill relating to a customer's account is mailed.

(b) "Borrower or credit card holder located in this state" means:

(A) A borrower, other than a credit card holder, that is engaged in a trade or business that maintains its commercial domicile in this state; or

(B) A borrower that is not engaged in a trade or business or a credit card holder whose billing address is in this state.

(c) "Commercial domicile" means:

(A) The headquarters of the trade or business, that is, the place from which the trade or business is principally managed and directed; or

(B) If a taxpayer is organized under the laws of a foreign country, or of the Commonwealth of Puerto Rico, or any territory or possession of the

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United States, such taxpayer's commercial domicile is deemed for the purposes of this rule to be the state of the United States or the District of Columbia from which such taxpayer's trade or business in the United States is principally managed or directed. It is presumed, subject to rebuttal, that the location from which the taxpayer's trade or business is principally managed and directed is the state of the United States or the District of Columbia to which the greatest number of employees are regularly connected or out of which they are working, no matter where the services of such employees are performed, as of the last day of the taxable year.

(d) "Credit card" means credit, travel or entertainment card.

(e) "Credit card issuer's reimbursement fee" means the fee a taxpayer receives from a merchant's bank because one of the persons to whom the taxpayer has issued a credit card has charged merchandise or services provided by the merchant to the credit card. (f) "Financial corporation" has the same meaning as "financial institution" in subsection (3)(g) of this rule.

(g) "Financial institution" is defined in ORS 314.610(4).

(h) "Loan" means any extension of credit resulting from direct negotiations between the taxpayer and its customer, or the purchase, in whole or in part, of such extension of credit from another. Loans include participations, syndications, and leases treated as loans for federal income tax purposes. Loans do not include: loans representing property acquired in lieu of or pursuant to a foreclosure under section 595 of the federal Internal Revenue Code; futures or forward contracts; options; notional principal contracts such as swaps; credit card receivables, including purchased credit card relationships; noninterest bearing balances due from other depository institutions; cash items in the process of collection; federal funds sold; securities purchased under agreements to resell; assets held in a trading account; securities; interests in a REMIC, or other mortgage-backed or asset-backed security; and other similar items.

(i) "Loan secured by real property" means that 50 percent or more of the aggregate value of the collateral used to secure a loan or other obligation, when valued at fair market value as of the time the original loan or obligation was incurred, was real property.

(j) "Merchant discount" means the fee (or negotiated discount) charged to a merchant by the taxpayer for the privilege of participating in a program whereby a credit card is accepted in payment for merchandise or services sold to the card holder.

(k) "Participation" means an extension of credit in which an undivided ownership interest is held on a pro rata basis in a single loan or pool of loans and related collateral. In a loan participation, the credit originator initially makes the loan and then subsequently resells all or a portion of it to other lenders. The participation may or may not be known to the borrower.

(l) "Person" means an individual, estate, trust, partnership, corporation, and any other business entity.

(m) "Principal base of operations" with respect to transportation property means the place of more or less permanent nature from which said property is regularly directed or controlled. With respect to an employee, the "principal base of operations" means the place of more or less permanent nature from which the employee regularly:

(A) Starts his or her work and to which the employee customarily returns in order to receive instructions from the employer, or

(B) Communicates with customers or other persons, or

(C) Performs any other functions necessary to the exercise of the employee's trade or profession at some other point or points.

(n) "Real property owned" and "tangible personal property owned" means real and tangible personal property, respectively.

(A) On which the taxpayer may claim depreciation for federal income tax purposes; or

(B) Property to which the taxpayer holds legal title and on which no other person may claim depreciation for federal income tax purposes (or could claim depreciation if subject to federal income tax). Real and tangible personal property do not include coin, currency, or property acquired in lieu of or pursuant to a foreclosure.

(o) "Regular place of business" means an office at which the taxpayer conducts business in a regular and systematic manner and that is continuously maintained, occupied, and used by employees of the taxpayer.

(p) "State" is defined in ORS 314.610(8).

(q) "Syndication" means an extension of credit in which two or more persons fund and each person is at risk only up to a specified percentage of the total extension of credit or up to a specified dollar amount.

(r) "Taxable" is defined as "taxable in another state" in ORS 314.620.

(s) "Transportation property" means vehicles and vessels capable of moving under their own power, such as aircraft, trains, water vessels, and motor vehicles, as well as any equipment or containers attached to such property, such as rolling stock, barges, trailers, or the like.

(4) Sales Factor.

(a) In general. The sales factor is a fraction as provided in ORS 314.665(1). The sales factor includes only those receipts described herein that constitute business income and are included in the computation of the apportionable income base for the taxable year.

(b) Receipts from the lease of real property. See OAR 150-314.665(4).

(c) Receipts from the lease of tangible personal property.

(A) Except as described in paragraph (B) of this subsection, the numerator of the sales factor includes receipts from the lease or rental of tangible personal property owned by the taxpayer if the property is located within this state when it is first placed in service by the lessee.

(B) Receipts from the lease or rental of transportation property owned by the taxpayer are included in the numerator of the sales factor to the extent that the property is used in this state. The extent an aircraft is deemed to be used in this state is determined by multiplying the receipts from the lease or rental of the aircraft by a fraction, the numerator of which is the number of landings of the aircraft in this state and the denominator of which is the total number of landings of the aircraft. If the extent of the use of any transportation property within this state cannot be determined, then the property is deemed to be used wholly in the state in which the property has its principal base of operations. A motor vehicle is deemed to be used wholly in the state in which it is registered.

(d) Interest from loans secured by real property.

(A) The numerator of the sales factor includes interest and fees or penalties in the nature of interest from loans secured by real property if the property is located within this state. If the property is located both within this state and one or more other states, the receipts described in this subsection are included in the numerator of the sales factor if more than 50 percent of the fair market value of the real property is located within this state. If more than 50 percent of the fair market value of the real property is not located within any one state, then the receipts described in this subsection must be included in the numerator of the sales factor if the borrower is located in this state.

(B) The determination of whether the real property securing a loan is located within this state is made as of the time the original agreement was made, and any and all subsequent substitutions of collateral are disregarded.

(e) Interest from loans not secured by real property. The numerator of the sales factor includes interest and fees or penalties in the nature of interest from loans not secured by real property if the borrower is located in this state.

(f) Net gains from the sale of loans. The numerator of the sales factor includes net gains from the sale of loans. Net gains from the sale of loans includes income recorded under the coupon stripping rules of section 1286 of the Internal Revenue Code.

(A) The amount of net gains (but not less than zero) from the sale of loans secured by real property included in the numerator is determined by multiplying such net gains by a fraction, the numerator of which is the amount included in the numerator of the sales factor pursuant to subsection (d) of this section and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans secured by real property.

(B) The amount of net gains (but not less than zero) from the sale of loans not secured by real property included in the numerator is determined by multiplying such net gains by a fraction, the numerator of which is the amount included in the numerator of the sales factor pursuant to subsection (e) of this section and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans not secured by real property.

(g) Receipts from credit card receivables. The numerator of the sales factor includes interest and fees or penalties in the nature of interest from credit card receivables and receipts from fees charged to card holders, such as annual fees, if the billing address of the card holder is in this state.

(h) Net gains from the sale of credit card receivables. The numerator of the sales factor includes all net gains (but not less than zero) from the sale of credit card receivables multiplied by a fraction, the numerator of which is the amount included in the numerator of the sales factor pursuant to subsection (g) of this section and the denominator of which is the taxpayer's total amount of interest and fees or penalties in the nature of interest from credit card receivables and fees charged to card holders.

(i) Credit card issuer's reimbursement fees. The numerator of the sales factor includes all credit card issuer's reimbursement fees multiplied by a fraction, the numerator of which is the amount included in the numerator of the sales factor pursuant to subsection (g) of this section and the denominator of which is the taxpayer's total amount of interest and fees or penalties in the nature of interest from credit card receivables and fees charged to card holders.

(j) Receipts from merchant discount. The numerator of the sales factor includes receipts from merchant discount if the commercial domicile of the merchant is in this state. Such receipts are computed net of any card holder charge backs, but are not reduced by any interchange transaction fees or by any issuer's reimbursement fees paid to another for charges made by its card holders.

(k) Loan servicing fees.

(A) The numerator of the sales factor includes loan servicing fees derived from loans secured by real property multiplied by a fraction, the numerator of which is the amount included in the numerator of the sales factor pursuant to subsection (d) of this section and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans secured by real property.

(B) The numerator of the sales factor includes loan servicing fees derived from loans not secured by real property multiplied by a fraction, the numerator of which is the amount included in the numerator of the sales fac-

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tor pursuant to subsection (e) of this section and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans not secured by real property.

(C) In circumstances in which the taxpayer receives loan servicing fees for servicing either the secured or the unsecured loans of another, the numerator of the sales factor must include such fees if the borrower is located in this state.

(l) Receipts from services. See OAR 150-314.665(4).

(m) Receipts from investment assets and activities and trading assets and activities.

(A) Interest, dividends (less Oregon dividend deduction), net gains (but not less than zero), and other income from investment assets and activities and from trading assets and activities are included in the sales factor. Investment assets and activities and trading assets and activities include but are not limited to: investment securities, trading account assets, federal funds; securities purchased and sold under agreements to resell or repurchase, options, future contracts, forward contracts, notional principal contracts such as swaps, equities, and foreign currency transactions. With respect to the investment and trading assets and activities described in subparagraphs (i) and (ii) of this paragraph, the sales factor includes the amounts described in such subparagraphs.

(i) The sales factor includes the amount by which interest from federal funds sold and securities purchased under resale agreements exceeds interest expense on federal funds purchased and securities sold under repurchase agreements.

(ii) The sales factor includes the amount by which interest, dividends (less Oregon dividend deduction), gains, and other income from trading assets and activities, including but not limited to assets and activities in the matched book, in the arbitrage book, and foreign currency transactions, exceed amounts paid in lieu of interest, amounts paid in lieu of dividends, and losses from such assets and activities.

(B) The numerator of the sales factor includes interest, dividends (less Oregon dividend deduction), net gains (but not less than zero), and other income from investment assets and activities and from trading assets and activities described in paragraph (A) that are attributable to this state.

(i) The amount of interest, dividends (less Oregon dividend deduction), net gains (but not less than zero) and other income from investment assets and activities in the investment account to be attributed to this state and included in the numerator of the sales factor is determined by multiplying all such income from such assets and activities by a fraction, the numerator of which is the average value of such assets that are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the average value of all such assets.

(ii) The amount of interest from federal funds sold and purchased and from securities purchased under resale agreements and securities sold under repurchase agreements attributable to this state and included in the numerator of the sales factor is determined by multiplying the amount described in subparagraph (i) of paragraph (A) from such funds and such securities by a fraction, the numerator of which is the average value of federal funds sold and securities purchased under agreements to resell that are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the average value of all such funds and such securities.

(iii) The amount of interest, dividends (less Oregon dividend deduction), gains, and other income from trading assets and activities, including but not limited to assets and activities in the matched book, in the arbitrage book, and foreign currency transactions, (but excluding amounts described in subparagraphs (i) and (ii) of this paragraph), attributable to this state and included in the numerator of the sales factor is determined by multiplying the amount described in subparagraph (ii) of paragraph (A) by a fraction, the numerator of which is the average value of such trading assets that are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the average value of all such assets.

(iv) For purposes of this paragraph, average value is determined using the rules for determining the average value of tangible personal property set forth in subsections (c) and (d) of section (5).

(C) In lieu of using the method set forth in paragraph (B) of this subsection, the taxpayer may elect, or the department may require in order to fairly represent the business activity of the taxpayer in this state, the use of the method set forth in this paragraph.

(i) The amount of interest, dividends (less Oregon dividend deduction), net gains (but not less than zero), and other income from investment assets and activities in the investment account to be attributed to this state and included in the numerator of the sales factor is determined by multiplying all such income from such assets and activities by a fraction, the numerator of which is the gross income from such assets and activities that are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the gross income from all such assets and activities.

(ii) The amount of interest from federal funds sold and purchased and from securities purchased under resale agreements and securities sold under repurchase agreements attributable to this state and included in the numerator of the sales factor is determined by multiplying the amount described in subparagraph (i) of paragraph (A) from such funds and such securities by a

fraction, the numerator of which is the gross income from such funds and such securities that are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the gross income from all such funds and such securities.

(iii) The amount of interest, dividends (less Oregon dividend deduction), gains, and other income from trading assets and activities, including but not limited to assets and activities in the matched book, in the arbitrage book, and foreign currency transactions (but excluding amounts described in subparagraphs (i) and (ii) of this paragraph) attributable to this state and included in the numerator is determined by multiplying the amount described in subparagraph (ii) of paragraph (A) by a fraction, the numerator of which is the gross income from such trading assets and activities that are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the gross income from all such assets and activities.

(D) If the taxpayer elects or is required by the department to use the method set forth in paragraph (C) of this subsection, it must use this method on all subsequent returns unless the taxpayer receives prior written permission from the department, or the department requires the use of a different method.

(E) The taxpayer has the burden of proving that an investment asset or activity or trading asset or activity was properly assigned to a regular place of business outside of this state by demonstrating that the day-to-day decisions regarding the asset or activity occurred at a regular place of business outside this state. Where the day-to-day decisions regarding an investment asset or activity or trading asset or activity occur at more than one regular place of business, and one such regular place of business is in this state and one such regular place of business is outside this state, such asset or activity is considered to be located at the regular place of business of the taxpayer where the investment or trading policies or guidelines with respect to the asset or activity are established. Unless the taxpayer demonstrates to the contrary, such policies and guidelines are presumed to be established at the commercial domicile of the taxpayer.

(n) All other receipts. The numerator of the sales factor includes all other receipts pursuant to the rules set forth under ORS 314.665.

(o) Attribution of certain receipts to commercial domicile. All receipts that would be assigned under this section to a state in which the taxpayer is not taxable are included in the numerator of the sales factor if the taxpayer's commercial domicile is in this state.

(5) Property Factor.

(a) In general. The property factor is a fraction, the numerator of which is the average value of the taxpayer's real property, tangible personal property, loans, and credit card receivables located and used within this state during the taxable year and the denominator of which is the average value of all such property located and used both within and without this state during the taxable year.

(b) Property included. The property factor includes only property the income or expenses of which are included (or would have been included if not fully depreciated or expensed, or depreciated or expensed to a nominal amount) in the computation of the apportionable income base for the taxable year.

(c) Value of property owned by the taxpayer.

(A) The value of real property and tangible personal property owned by the taxpayer is the original cost or other basis of such property for federal income tax purposes without regard to depletion, depreciation, or amortization.

(B) Loans are valued at their outstanding principal balance, without regard to any reserve for bad debts. If a loan is charged off in whole or in part for federal income tax purposes, the portion of the loan charged off is not outstanding. A specifically allocated reserve established pursuant to regulatory or financial accounting guidelines that is treated as charged off for federal income tax purposes is treated as charged off for purposes of this section.

(C) Credit card receivables are valued at their outstanding principal balance, without regard to any reserve for bad debts. If a credit card receivable is charged off in whole or in part for federal income tax purposes, the portion of the receivable charged off is not outstanding.

(d) Average value of property owned by the taxpayer. See OAR 150-314.655(2)-(A) and 150-314.655(3).

(e) Average value of real property and tangible personal property rented to the taxpayer. See OAR 150-314.655(2)-(B).

(f) Location of real property and tangible personal property owned by or rented to the taxpayer.

(A) Except as described in paragraph (B) of this subsection, real property and tangible personal property owned by or rented to the taxpayer is considered to be located within this state if it is physically located, situated, or used within this state.

(B) Transportation property is included in the numerator of the property factor to the extent that the property is used in this state. The extent an aircraft is deemed to be used in this state and the amount of value that is included in the numerator of this state's property factor is determined by multiplying the average value of the aircraft by a fraction, the numerator of which is the number of landings of the aircraft in this state and the denominator of which is the total number of landings of the aircraft everywhere. If the extent

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of the use of any transportation property within this state cannot be determined, then the property is deemed to be used wholly in the state in which the property has its principal base of operations. A motor vehicle is deemed to be used wholly in the state in which it is registered.

(g) Location of loans.

(A)(i) A loan is considered to be located within this state if it is properly assigned to a regular place of business of the taxpayer within this state.

(ii) A loan is properly assigned to the regular place of business with which it has a preponderance of substantive contacts. A loan assigned by the taxpayer to a regular place of business without the state is presumed to have been properly assigned if:

(I) The taxpayer has assigned, in the regular course of its business, such loan on its records to a regular place of business consistent with federal or state regulatory requirements;

(II) Such assignment on its records is based upon substantive contacts of the loan to such regular place of business; and

(III) The taxpayer uses said records reflecting assignment of loans for the filing of all state and local tax returns for which an assignment of loans to a regular place of business is required.

(iii) The presumption of proper assignment of a loan provided in subparagraph (A)(ii) of this section may be rebutted upon a showing by the department, supported by a preponderance of the evidence, that the preponderance of substantive contacts regarding such loan did not occur at the regular place of business to which it was assigned on the taxpayer's records. When such presumption has been rebutted, the loan is located within this state if:

(I) The taxpayer had a regular place of business within this state at the time the loan was made; and

(II) The taxpayer fails to show, by a preponderance of the evidence, that the preponderance of substantive contacts regarding such loan did not occur within this state.

(B) In the case of a loan that is assigned by the taxpayer to a place within this state that is not a regular place of business, it is presumed, subject to rebuttal by the taxpayer on a showing supported by the preponderance of evidence, that the preponderance of substantive contacts regarding the loan occurred within this state if, at the time the loan was made the taxpayer's commercial domicile, as defined by subsection (3)(c), was within this state.

(C) To determine the state in which the preponderance of substantive contacts relating to a loan have occurred, the facts and circumstances regarding the loan at issue will be reviewed on a case-by-case basis and consideration will be given to such activities as the solicitation, investigation, negotiation, approval, and administration of the loan. The terms "solicitation," "investigation," "negotiation," "approval," and "administration" are defined as follows:

(i) Solicitation. Solicitation is either active or passive. Active solicitation occurs when an employee of the taxpayer initiates the contact with the customer. Such activity is located at the regular place of business that the taxpayer's employee is regularly connected with or working out of, regardless of where the services of such employee were actually performed. Passive solicitation occurs when the customer initiates the contact with the taxpayer. If the customer's initial contact was not at a regular place of business of the taxpayer, the regular place of business, if any, where the passive solicitation occurred is determined by the facts in each case.

(ii) Investigation. Investigation is the procedure whereby employees of the taxpayer determine the credit-worthiness of the customer as well as the degree of risk involved in making a particular agreement. Such activity is located at the regular place of business that the taxpayer's employees are regularly connected with or working out of, regardless of where the services of such employees were actually performed.

(iii) Negotiation. Negotiation is the procedure whereby employees of the taxpayer and its customer determine the terms of the agreement (e.g., the amount, duration, interest rate, frequency of repayment, currency denomination, and security required). Such activity is located at the regular place of business that the taxpayer's employees are regularly connected with or working out of, regardless of where the services of such employees were actually performed.

(iv) Approval. Approval is the procedure whereby employees or the board of directors of the taxpayer make the final determination whether to enter into the agreement. Such activity is located at the regular place of business that the taxpayer's employees are regularly connected with or working out of, regardless of where the services of such employees were actually performed. If the board of directors makes the final determination, such activity is located at the commercial domicile of the taxpayer.

(v) Administration. Administration is the process of managing the account. This process includes bookkeeping, collecting the payments, corresponding with the customer, reporting to management regarding the status of the agreement, and proceeding against the borrower or the security interest if the borrower is in default. Such activity is located at the regular place of business that oversees this activity.

(h) Location of credit card receivables. For purposes of determining the location of credit card receivables, credit card receivables are treated as loans and are subject to the provisions of subsection (g) of this section.

(i) Period for which properly assigned loan remains assigned. A loan that has been properly assigned to a state, absent any change of material fact, remains assigned to that state for the length of the original term of the loan. Thereafter, the loan may be properly assigned to another state if the loan has a preponderance of substantive contact to a regular place of business there.

(6) Payroll factor. In general, the payroll factor is determined as provided in ORS 314.660 and the rules thereunder.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 314.280

Hist.: RD 7-1993, f. 12-30-93, cert. ef. 12-31-93; RD 3-1995, f. 12-29-95, cert. ef. 12-31-95; REV 8-2002, f. & cert. ef. 12-31-02; REV 2-2003, f. & cert. ef. 7-31-03; REV 6-2004, f. 7-30-04, cert. ef. 7-31-04; REV 3-2005, f. 12-30-05, cert. ef. 1-1-06; REV 5-2006, f. & cert. ef. 7-31-06; REV 10-2009, f. 12-21-09, cert. ef. 1-1-10

## 150-315.204-(A)

### Dependent Care Credits: General Information

(1) For tax years beginning on or after January 1, 2002, taxpayers must apply to the Child Care Division of the Employment Department and receive certification before being eligible for the Dependent Care Assistance or Dependent Care Information and Referral Services credits. See chapter 414, division 300 of the Oregon Administrative Rules (e.g., OAR 414-300-0000 to 414-300-0410) and contact the Child Care Division of the Employment Department for more information.

(2) For taxable years beginning on or after January 1, 1988, the following credits are available to employers that provide dependent care assistance or information and referral services to their employees:

(a) Dependent Care Assistance Credit. This credit is available to employers for the expenses paid or incurred by the employer for the care of employees' dependents.

(b) Dependent Care Information and Referral Services Credit. This credit is available to employers that provide information and referral services to assist their employees in obtaining dependent care.

(3) Any tax credit otherwise allowable that is not used by the taxpayer in a tax year may be carried forward and offset against the taxpayer's tax liability for up to five tax years. The amount of credit carried forward to a succeeding tax year is the sum of credits that exceed the tax liability, after other credits, for all prior tax years that are within the carryover period. The following publication statement is needed if the rule references external resources such as the Internal Revenue Code, Treasury Regulations, etc. If it does not make such a reference, please delete the statement from your draft.

(a) If a credit carried forward from a prior year and a current year's credit are available, the taxpayer must use the credit from the prior year first and then the current year's credit.

(b) If a credit carried forward from a prior year and a current year's credit are available, the two credits may be combined and taken up to the amount of tax liability for the year.

(4) If the taxpayer is an individual and the tax year is changed resulting in a short period return (a return covering a period of less than 12 months), the credit must be computed in a manner consistent with ORS 314.085.

(5) If the taxpayer is a part-year resident individual, the credit must be computed in a manner consistent with ORS 316.117.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 315.204

Hist.: RD 5-1988, f. 5-25-88, cert. ef. 6-1-88; RD 11-1988, f. 12-19-88, cert. ef. 12-31-88; RD 7-1991, f. 12-30-91, cert. ef. 12-31-91; RD 7-1993, f. 12-30-93, cert. ef. 12-31-93; Renumbered from 150-316.134(A); REV 8-2001, f. & cert. ef. 12-31-01; REV 3-2005, f. 12-30-05, cert. ef. 1-1-06; REV 10-2009, f. 12-21-09, cert. ef. 1-1-10

## 150-315.262

### Working Family Childcare Credit

(1) Definitions. For purposes of ORS 315.262 and this rule:

(a) "Federal poverty level" means the federal poverty level for the same tax year as determined by the federal Department of Health and Human Services.

(b) "Household size" generally means the number of individuals related by birth, marriage, or adoption who are living in the home and are allowed as exemptions on the taxpayer's return. There are special rules for children whose parents are divorced, legally separated, or permanently living apart. See section (4) of this rule for those special rules.

**Example 1:** Chris and Shelly live together but are not married. They have two children together: Tyler and Alec. Each child could be the qualifying child of one parent or the other, but not both parents. Each parent may claim their qualifying child(ren) in their household size. See definition of qualifying child later in this section.

**Example 2:** Mike and Sarah are married and have three children and also support Sarah's parents who do not live with Mike and Sarah in their home. Because they meet the federal tests for claiming individuals not living with them, their federal return allows seven exemptions. Mike and Sarah cannot increase their household size by the people they claim as dependents on their federal return that do not live with them. Their household size for purposes of the working family childcare credit is five.

(c) "Physical or cognitive condition" means a state where an individual's ability to perform a basic activity of daily living is markedly restricted where all or substantially all of the time, even with therapy and the use of appropriate devices and medication, the individual is unable (or requires an inordinate amount of time) to perform an activity of daily living. "Activities of daily living" include:

(A) Bathing;

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(B) Dressing oneself, except that it does not include any of the activities of identifying, finding, shopping for or otherwise procuring clothing;

(C) Feeding oneself, except that it does not include any of the activities of identifying, finding, shopping for or otherwise procuring food, or the activity of preparing food to the extent that the time associated with the activity would not have been necessary in the absence of a dietary restriction or regime;

(D) Medicating oneself;

(E) Toileting; or

(F) Transferring, ambulating, and being mobile.

(d) "Qualifying child" means a son, daughter, stepson, stepdaughter, grandchild, step grandchild, brother, sister, stepbrother, stepsister, niece, nephew, step niece, step nephew, eligible foster child, child legally placed with the taxpayer for adoption by the taxpayer, or adopted child of the taxpayer, and descendants of all such individuals who:

(A) Lived more than half the year with the qualifying taxpayer;

(B) Is under 13 years of age or who is a disabled child of the taxpayer for whom the additional exemption credit under ORS 316.099 is allowed; and

(C) Is not claimed as a qualifying child by another taxpayer. A child can only be the qualifying child of one taxpayer. See section (4) of this rule for the special rules for divorced and separated parents and taxpayers filing as married filing separately.

**Example 3:** John and Kim have never been married and have two children: Kyle who lives with John all year, and Shannon who lives with Kim all year. In the summer each child spends one month with the child's other parent and sibling. John has both Kyle and Shannon in July and Kim has both kids in August. In addition to the child care for the child that lives with them, each parent also has daycare expenses during those months where both children are living in the parent's home. John may claim one "qualifying child" because Kyle lives with him. He may claim the expenses he paid for Kyle, but he may not claim the child care expenses he paid for Shannon because Shannon is not his qualifying child; Shannon is Kim's qualifying child. Kim may claim one "qualifying child" because Shannon lives with her. She may claim the expenses she paid for Shannon, but she may not claim the child care expenses she paid for Kyle because Kyle is not her qualifying child; Kyle is John's qualifying child. John and Kim each have a household size of two.

(2) Schedule WFC. To claim the working family child care credit, the taxpayer must provide all information requested on the Schedule WFC and file the Schedule WFC with the tax return to the department. Failure to file a completed Schedule WFC with the department may result in denial of the working family child care credit.

(3) Costs associated with child care. For purposes of determining the credit, the credit is limited to costs associated with child care. The payments must be made by the parent claiming the working family child care credit. Payments made by an entity or individual other than the parent claiming the credit are not payments made by the taxpayer.

**Example 4:** Shannon and Caleb are not married and live together with their son, Adam. Adam's child care expense for the year is \$4,600 of which each parent pays half. Caleb's adjusted gross income (AGI) is \$30,000 and Shannon's AGI is \$16,000. Under federal law, either Caleb or Shannon could claim the dependency exemption for Adam as their qualifying child. They agree that Shannon will claim Adam as her qualifying child, therefore Caleb cannot. Shannon may claim the working family child care credit based on the \$2,300 of child care expenses she paid and a household size of two. Even though Caleb paid child care expenses, he may not claim the working family child care credit because Adam is not his qualifying child.

(a) Costs associated with child care include:

(A) Child care expenses paid with amounts excluded from income as dependent care benefits under IRC section 129;

(B) Child care expenses paid from dependent care benefits provided as part of a cafeteria plan under IRC section 125; or,

(C) Reimbursement of child care expenses as part of a flexible spending arrangement under IRC section 125.

(b) Costs associated with child care do not include:

(A) Expenses for a child's kindergarten through twelfth grade education at a public or a private institution;

**Example 5:** Traci has a five-year-old son who attends a local academy. She pays \$750 per month for her son's kindergarten and child care. Of the amount she pays each month, \$500 is the contract price for child care and \$250 is an additional amount she pays for the child's education. Traci can only claim \$500 per month as qualifying child care.

(B) Expenses for extracurricular activities or elective courses such as swimming, dance lessons, or other such activities unless the activities or courses are an ordinary part of the care provided to the child and cannot be separated;

**Example 6:** David and Lisa are married and they have a three-year old son, Noah. David and Lisa are both gainfully employed and they send Noah to a daycare center near Lisa's work for child care. Noah's parents signed him up for a swimming class through the daycare center that costs \$50 per month. The daycare center charges \$400 per month for the full-time care of a toddler. The daycare center bills David and Lisa \$450 per month for Noah's child care and activities. David and Lisa can use the child care expenses they paid (\$400 per month or \$4,800 annually) to determine the working family child care credit they are entitled to claim. They cannot use the amounts they paid for the swimming lessons.

(C) Expenses for care provided when one spouse on a joint return is not gainfully employed, not seeking employment, not a full-time or part-time student, or not disabled as explained in Section (5) of this rule.

**Example 7:** James and Holly are married and James stays home to take care of their four children. Holly earns \$55,000 annually and they paid \$4,000 in child care during the year. The child care expenses they paid are not costs associated with both James and Holly being gainfully employed, seeking employment, or being a full-time or part-time student. James and Holly cannot claim the working family child care credit.

(D) Expenses paid by a federal or state assistance agency (such as Department of Human Services or the Employer Related Day Care program) for child care expenses on behalf of the taxpayer who is claiming the working family child care credit;

**Example 8:** Debbie works full time and qualifies for state assistance in paying her child care expenses. The child care provider charges Debbie \$600 per month to care for her two children or \$7,200 per year. Of the \$600 per month, the state pays \$450 and Debbie has a copay of \$150. Debbie cannot claim the entire \$7,200 because she did not pay it. She can only claim \$1,800, the amount she actually paid.

(E) The value of a child care owner-operator's forgone revenue relating to child care that the owner-operator provided to his or her own child; or,

**Example 9:** Shirley is the owner-operator of a registered daycare facility. She cares for six children every day, of which two are her own children. Shirley cannot use the value of the two spaces her children use to calculate her working family child care credit because the forgone revenue is not a cost associated with child care.

(F) Transactions that are not arm's-length or have no economic substance.

(4) Divorced or Separated Parents and Married Individuals Filing Separately:

(a) Divorced or Separated Parents:

(A) For purposes of this credit, a child is the qualifying child of the custodial parent, even if the exemption was released to a noncustodial parent under Internal Revenue Code (IRC) section 152(e). In situations where both parents live in the home with the child more than 50 percent of the year, the child may be the qualifying child of either parent, but not both. If the child is claimed on both parent's returns, the child is the qualifying child of the parent with the highest adjusted gross income (AGI).

**Example 10:** Maria and Kendall are divorced with two children. The children live in Maria's home with Maria for more than half of the year. Kendall has the children on certain weekends, holidays, and one month in the summer. Maria pays childcare expenses for 11 months during the year. Kendall pays childcare expenses for the one month in the summer when the children are with him. Maria releases the exemption for one child to Kendall. Only Maria may claim the working family child care credit because the children are her qualifying children. Kendall may not claim the working family child care credit because he does not have a qualifying child.

(B) An individual cannot be counted in the household size on more than one tax return.

**Example 11:** Sam and Sally are divorced with two children, Ben and Brianna. Ben lives with Sam and Brianna lives with Sally. Each parent pays the child care expenses for the child that lives with them. Sally releases the dependent exemption for Brianna to Sam under IRC section 152(e). Brianna is counted in the household size of Sally because she lives with Sally. Ben is counted in the household size of Sam, because he lives with Sam. Sam and Sally will each have a household size of two to determine the percentage of child care costs each may claim as a working family child care credit.

(b) Married Individuals Filing Separately:

(A) Taxpayers filing separate returns who share a common household cannot claim the working family child care credit.

(B) Taxpayers maintaining separate residences at the end of the tax year, and who intend to live apart in the future, determine their household size based on the computation defined in subsection (1)(c) of this rule.

**Example 12:** John and Sue are married and have two children. They are legally separated and live apart permanently, and one child lives with each. John and Sue file separate returns for the tax year and each claims a child as a dependent. John and Sue will each have a household size of two to determine the percentage of child care costs each may claim as a working family child care credit. John may claim the credit based on the child care costs he paid for the child that lives with him and Sue may claim the credit based on the child care costs she paid for the child that lives with her.

(5) Disabled Spouse:

(a) Married taxpayer with disabled spouse. Beginning in tax year 2007, a qualified taxpayer is allowed to claim the working family credit based on child care expenses paid even if the expenses were paid when the taxpayer has a spouse who did not work, look for work, or attend school. The expenses may be claimed if the taxpayer's disabled spouse has a physical or cognitive condition which causes the disabled spouse to require assistance in performing basic activities of daily living and prevents the disabled spouse from working, looking for work, and attending school.

(b) Certification by physician. For a taxpayer to claim child care expenses paid when the taxpayer's spouse is unable to work, look for work, and attend school because the spouse has a disability that prevents the spouse from such tasks, the taxpayer must obtain certification from the physician or other qualified medical professional that the taxpayer's spouse meets the definition of disabled in the statute and this rule. This certification is to be kept in the taxpayer's records and provided to the department upon request.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 315.262

Hist.: RD 5-1997, f. 12-12-97, cert. ef. 12-31-97; REV 7-1998, f. 11-13-98, cert. ef. 12-31-98; REV 4-2003, f. & cert. ef. 12-31-03; REV 11-2004, f. 12-29-04, cert. ef. 12-31-04; REV 3-2005, f. 12-30-05, cert. ef. 1-1-06; REV 11-2007, f. 12-28-07, cert. ef. 1-1-08; REV 10-2009, f. 12-21-09, cert. ef. 1-1-10

## 150-317.097

### Affordable Housing Credit; Definitions; Transfers; Carry Forward of Unused Credit

(1) Definitions, as used in ORS 317.097.

(a) Community Rehabilitation Program. A "community rehabilitation program" is a program sponsored by a nonprofit corporation or local government unit for the rehabilitation of low income housing.

(b) Project. A "project" is one or more units of housing that will be sold or rented to households whose incomes are less than 80 percent of the area median income.

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(c) Time the qualified loan for housing construction, development, acquisition or rehabilitation is made. The “time the qualified loan for housing construction, development, acquisition or rehabilitation is made” is the date a note is signed for a loan and the interest rate becomes effective with the closing of the loan, or the date a conversion loan becomes a permanent loan. Either date may be used to determine the interest rate on unsubsidized loans made under like terms and conditions as the qualifying affordable housing loan.

(2) If a qualifying loan is transferred by a lending institution to another entity, the transferee’s credit must be computed in the same way and subject to the same limitations as the prior lending institution’s credit. The transferee cannot claim a credit on the loan beyond the 20 year period that started with the date the loan was originally made.

(3) Unused credits from tax years starting before January 1, 1995 may be carried forward 15 years. Unused credits from tax years starting on or after January 1, 1995 may be carried forward 5 years.

(4) See OAR 813-110-0005 through 813-110-0040 for Housing and Community Development Department rules relating to the Oregon Affordable Housing Tax Credit Program.

Stat. Auth.: ORS 305.100 & 317.097

Stats. Implemented: ORS 317.097

Hist.: RD 1-1990, f. & cert. ef. 3-15-90; RD 7-1991, f. 12-30-91, cert. ef. 12-31-91; RD 6-1996, f. 12-23-96, cert. ef. 12-31-96; REV 7-1999, f. 12-1-99, cert. ef. 12-31-99; REV 3-2005, f. 12-30-05, cert. ef. 1-1-06; REV 10-2009, f. 12-21-09, cert. ef. 1-1-10

## 150-323.500(9)

### Definition of Moist Snuff

(1) Moist snuff means any finely cut, ground, milled or powdered tobacco product that is not intended to be smoked or placed in the nasal cavity. Words such as long cut, mid cut, fine cut and snus only describe minor differences of product that fit within this tobacco category.

(2) Moist snuff also includes other products containing tobacco that are not intended to be consumed by burning. Examples include, but are not limited to:

(a) Pouches, which hold fine cut tobacco in a small, teabag-like pouch.

(b) Dissolvable tobacco, which consists of finely-processed tobacco developed in such a way as to allow the substance to dissolve on the tongue or in the mouth and includes strips, sticks, orbs, and compressed tobacco lozenges.

(3) Moist snuff does not include dry snuff or chewing tobacco.

(a) Dry snuff is powdered tobacco that is intended to be placed in the nasal cavity.

(b) Chewing tobacco means any leaf tobacco that is not intended to be smoked. Examples of chewing tobacco include, but are not limited to:

(A) Coarsely shredded tobacco leaves, such as those sweetened and packaged loosely in aluminum lined pouches;

(B) Plug tobacco, which is tobacco press formed into sheets and cut into individually wrapped plugs; and

(C) Twist tobacco, which is tobacco spun and rolled into rope-like strands.

Stat. Auth.: ORS 305.100 & 323.575

Stats. Implemented: ORS 323.500

Hist.: REV 7-2009(Temp), f. & cert. ef. 10-7-09 thru 3-31-10; REV 10-2009, f. 12-21-09, cert. ef. 1-1-10

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**Rule Caption:** Value transmittal, veterans program requirements, exemption requirements, certification, standing for appeal and historic property.

**Adm. Order No.:** REV 11-2009

**Filed with Sec. of State:** 12-21-2009

**Certified to be Effective:** 1-1-10

**Notice Publication Date:** 11-1-2009

**Rules Adopted:** 150-307.547, 150-309.100-(D), 150-358.505

**Rules Amended:** 150-306.126(2), 150-307.330, 150-307.270(1)-(A), 150-308.875-(A), 150-311.668(1)(a)-(A), 150-311.668(1)(a)-(B), 150-311.688, 150-311.689, 150-311.691, 150-311.706

**Rules Ren. & Amend:** 150-307.250(1)(b) to 150-307.260(3)

**Subject:** 150-306.126(2), *Transmittal of the Values for Principal and Secondary Industrial Properties*, is amended to specify the types of information included in the Value Transmittal Sheet, which is sent to county assessors for all Principle and Secondary Industrial properties valued by the department.

150 307.250(1)(b) is amended and renumbered to 150-307.260(3), *Physician Certification of Disability for Exemption*. The amendment clarifies the filing requirements related to the physician’s certificate annual filing requirements once the veteran has filed for the property tax exemption as described under ORS 307.250(1)(b) and is age 65.

150-307.270(1)-(A), *Property to Which Veteran’s Exemption Applies*, is amended to define “by reason of health” and “basic life

needs” for purposes of this exemption. The rule also expands reasons for which a taxpayer may be away from home by reason of health and continue to qualify for the exemption. The rule includes an example of a qualifying temporary absence and an example of an absence by reason of health.

150-307.330, *Exemption of Buildings, Structures and Machinery or Equipment during Construction*, clarifies which property is eligible for exemption under the “Commercial Facilities Under Construction” statute, ORS 307.330. The rule is amended to clearly provide that “modification” of an existing building or structure does not qualify for exemption under ORS 307.330 as the statute states that only “each new building or structure or an addition to an existing building or structure is exempt from taxation.” The amendment also reflects an Oregon Tax Court decision (North Harbour Corporation v. DOR) by making clear that the statute does not exclude a one-time income from the sale of property and may apply to property such as a condominium development.

150-307.547, *Certification of Nonprofit Corporation Low Income Housing Exemption to County Assessor*, specifies a latest date by which the governing body must certify the Nonprofit Corporation Low Income Housing property tax exemption to the county assessor.

150-308.875-(A), *Manufactured Structure Classified as Real or Personal Property*, conforms the rule to statutory changes made by the 2009 legislature to ORS 308.875.

150-309.100-(D), *Definition of Person Who Holds an Interest in the Property and Procedures for Transfers of Ownership or Interest*, is amended to clarify what is meant by “a person who holds an interest” for purposes of appealing to a local board of property tax appeals (BOPTA). The proposed rule provides that a petitioner must: (1) Be an owner or “person who holds an interest” at the time the petition is filed; (2) Have held an interest in the property that obligates the person to pay the taxes imposed on the property on or after July 1 but prior to the time the petition is filed; or (3) Have gained standing as one of the above by the last day for filing a petition with BOPTA.

150-311.668(1)(a)-(A), *Requirements to Qualify for Senior Citizen’s Property Tax Deferral* - The rule is amended to reflect 2007 legislation (HB 2007), which authorized creation of registered domestic partnerships and provided that registered domestic partners have the same privileges, immunities, rights, benefits and responsibilities as married persons.

150-311.668(1)(a)-(B), *Requirements to Qualify for Disabled Citizen’s Property Tax Deferral* - The rule is amended to reflect 2007 legislation (HB 2007), which authorized creation of registered domestic partnerships and provided that registered domestic partners have the same privileges, immunities, rights, benefits and responsibilities as married persons.

150-311.688, *Election by Spouse to Continue Tax Deferral* - The rule is amended to reflect 2007 legislation (HB 2007), which authorized creation of registered domestic partnerships and provided that registered domestic partners have the same privileges, immunities, rights, benefits and responsibilities as married persons.

150-311.691, *Taxes Unpaid Before Approval of Senior Deferral Application* - The rule is amended to reflect 2007 legislation (HB 2007), which authorized creation of registered domestic partnerships and provided that registered domestic partners have the same privileges, immunities, rights, benefits and responsibilities as married persons.

150-311.706, *Requirements to Qualify for Senior Citizen’s Special Assessment Deferral* - The rule is amended to reflect 2007 legislation (HB 2007), which authorized creation of registered domestic partnerships and provided that registered domestic partners have the same privileges, immunities, rights, benefits and responsibilities as married persons.

150-311.689, *Annual Income Requirements to Continue Property Tax Deferral*, is amended to reflect a court ruling stating that income of a claimant’s spouse cannot be considered in the determi-

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nation of the deferral claimant's individual federal adjusted gross income, if the deferral claimant's spouse does not file a joint claim for deferral.

150-358.505 *Determining Value of Historic Property Qualified for Special Assessment*, clarifies the correct procedure for calculating specially assessed and maximum specially assessed values for historic property.

**Rules Coordinator:** Debra L. Buchanan—(503) 945-8653

## 150-306.126(2)

### Transmission of the Values for Principal and Secondary Industrial Properties

(1) The department will transmit the real market values of principal and secondary industrial accounts to the assessor prior to July 1 of each year.

(2) For each real property account, the real market value transmitted to the assessor by the department will include:

(a) The total real market value of all improvements as of January 1; and

(b) The real market value of all additions minus retirements as of January 1 for purposes of calculating maximum assessed value for the current assessment year.

(3) For each personal property account, the real market value transmitted to the assessor by the department will include the total real market value of all personal property assets as of January 1 for the current assessment year.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 306.126

Hist.: Repealed by RD 3-1989, f. 12-18-89, cert. ef. 12-31-89; RD 8-1991, f. 12-30-91, cert. ef. 12-31-91, Renumbered from 306.126(2)-(A); RD 9-1997, f. & cert. ef. 12-31-97; REV 11-2009, f. 12-21-09, cert. ef. 1-1-10

## 150-307.260(3)

### Physician Certification of Disability for Exemption

(1) A veteran described under ORS 307.250(1)(b) must be certified annually by a physician as having a disability rating of 40 percent or more.

(2) The veteran must file the physician's certificate annually with the Exemption Claim form and their statement of total gross income.

(3) The veteran must file the physician's certificate annually up to and including age 65. Once the veteran reaches the age of 66 and has filed the physician's certificate in the previous year, the veteran is no longer required to file the certificate but is required to file annually the Exemption Claim form and the statement of total gross income.

**Example:** A veteran 64 years of age files the physician's certificate with the Exemption Claim form and their statement of total gross income on or before April 1, 2009. He then has his 65th birthday on May 15, 2009. The veteran must file the physician's certificate with the Exemption Claim form and income statement when he next files on or before April 1, 2010. On May 15, 2010, the veteran has his 66th birthday. Since the veteran is now 66 years of age and previously filed the certificate after his 65th birthday, he is no longer required to file the certificate but is required to file his Exemption Claim form and statement of total gross income on or before April 1, 2011, or for any year thereafter.

(4) A veteran with a physician-certified permanent disability must be rated as having disabilities of 40 percent or more to qualify for the exemption.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 307.260

Hist.: RD 8-1992, f. 12-29-92, cert. ef. 12-31-92; REV 8-1998, f. 11-13-98, cert. ef. 12-31-98, Renumbered from 150-307.260(1)-(A); Renumbered from 150-307.250(1)(b) by REV 11-2009, f. 12-21-09, cert. ef. 1-1-10

## 150-307.270(1)-(A)

### Property to Which Veteran's Exemption Applies

(1) Definitions for the purpose of this rule:

(a) "Basic life needs" include, but are not limited to, preparation of meals, personal hygiene, or daily care of oneself.

(b) "By reason of health" means to obtain medical care or to receive basic life needs.

(c) "Temporary absence" means absence with the intention to reoccupy the homestead, similar to a domicile. Examples include but are not limited to temporary vacation, business travel, or military service.

(2) If a qualified veteran or surviving spouse owns only an undivided interest in a property and the remaining interest is owned by a nonspouse or a nonveteran, the veteran is entitled to a tax exemption only to the extent of the veteran's actual ownership interest in the homestead property.

**Example 1:** A qualified veteran owns an undivided one-half interest in a manufactured structure that has an assessed value of \$10,000. The remaining undivided one-half interest is in the name of the veteran's son. The veteran will be allowed an exemption of \$5,000, which is one-half the assessed value of the manufactured structure. The remaining undivided interest is not entitled to an exemption unless the person owning the remaining one-half interest is a qualified veteran who also occupies the same homestead property.

(3) Only one exemption for each qualified veteran is allowed in any tax year. Two or more qualified veterans may each receive an exemption on the same homestead property if each veteran owns, lives on the property, and files timely.

(4) The right to claim the exemption will not be lost if the claimant is temporarily absent from the property or is required to live away from the homestead by reason of health. Examples of absence by reason of health may include, but are not limited to:

(a) Confinement to a nursing home or other long-term care facility; or  
(b) Receiving care at a family member's or other individual's home.

**Example 2:** An Oregon resident who qualifies for the veteran's property tax exemption on their homestead stays in Arizona for a few months during the year. Although temporarily absent from their homestead, it continues to qualify as their primary residence because the claimant has the intention of returning.

**Example 3:** Due to failing health, the claimant moves to her daughter's home. After eighteen months, it becomes apparent it is unlikely the claimant will ever be able to return to her own home. Although the claimant did not remain in her home, the property continues to qualify as her primary residence and is eligible for the exemption because the claimant was absent by reason of health.

(6) If the assessor is notified or has reason to believe the claimant is not living at the primary residence by reason of health, the assessor may request documentation that proves continued eligibility for the exemption. An example of documentation is a letter from a medical provider stating the claimant is unable to provide their own basic life needs.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 307.270

Hist.: RD 8-1991, f. 12-30-91, cert. ef. 12-31-91; RD 6-1994, f. 12-15-94, cert. ef. 12-30-94; REV 8-1998, f. 11-13-98, cert. ef. 12-31-98, Renumbered from 150-307.270; REV 11-2009, f. 12-21-09, cert. ef. 1-1-10

## 150-307.330

### Exemption of Buildings, Structures and Machinery or Equipment during Construction

(1) Definitions for purposes of ORS 307.330 and this rule:

(a) "Addition" means any enlargement of an existing building or structure. This includes the construction of additional stories or the erection of a new wing on an existing building.

(b) "Building" means all real property improvements erected upon the land such as hotels, office buildings, retail stores, condominiums and manufacturing plants and includes heating and ventilating systems, elevators, and similar equipment normally installed as part of the building construction.

(c) "Completed" means the building, structure or addition is ready for its intended use or occupancy.

(d) "In the process of construction" means that construction of the new building, structure or addition has begun, but is not yet completed, and typically the foundation is partially or wholly laid. Site preparation or demolition of an existing building or structure is not considered part of the construction process.

(e) "In use or occupancy" means the property is being utilized in the manner for which the completed building, structure or addition was intended.

(f) "Land" means land in its natural state and includes site development such as fill, excavation, grading and leveling.

(g) "Machinery or equipment" includes machinery or equipment housed within the building, structure or addition for the purpose of manufacturing or otherwise processing raw or finished materials.

(h) "Modernization" means to take corrective measures to bring a property into conformity with changes in style.

(i) "Structure" means all real property improvements, other than buildings, and includes improvements such as ramps, loading docks, wharfs, and paved areas used for parking or storage.

(j) "Testing" means a limited trial production run as a check of equipment and system performance, but does not include the processing of a substantial quantity of finished and marketable products that are, or can be, sold through the usual channels of trade.

(2) Property eligible for exemption:

(a) New building, structure or addition to an existing building or structure that is in the process of construction on January 1 of each assessment year in which exemption is claimed. The building, structure or addition must be intended primarily for the furtherance of the production of income, whether from a one-time sale of property or an ongoing stream of income. For example, a new condominium project being constructed for future sale to purchasers, who may live on the property or rent the property to others, will qualify for exemption.

(b) Machinery or equipment located at the construction site or installed in or affixed to a building, structure or addition. Testing of equipment is allowable during the period of construction.

(c) All personal property that would qualify as real property under OAR 150-307.010(1) that is situated at the place of construction on January 1 of each assessment year in which exemption is claimed.

(3) Manufacturing facilities may claim exemption for no more than two consecutive years. Conditions for exemption must exist on January 1 of each assessment year in which exemption is claimed.

(4) Property not eligible for exemption:

(a) Land.

(b) Modernization of an existing building or structure.

(c) Heating equipment, elevators, ventilating systems and similar equipment installed in a building after its original construction.

(d) Property constructed for residential occupancy by the owner.

(e) Nonmanufacturing facilities, of any kind, completed less than one year from the date construction began.

(5) No exemption may be allowed if use or occupancy is made of the building, structure or addition, or any part thereof, on or before January 1 of any assessment year in which exemption is claimed.



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(a) If the building, structure or addition is completed and ready for use or occupancy on January 1, although not in use, it is taxable.

(b) If the building, structure or addition is completed and leased on January 1, but not occupied by the lessee, it is taxable.

Stat. Auth.: ORS 305.100  
Stats. Implemented: ORS 307.330  
Hist.: 11-59, 11-61; 7-64; 1-66; 12-66; 3-70; 11-71; RD 8-1991, f. 12-30-91, cert. ef. 12-31-91; RD 9-1997, f. & cert. ef. 12-31-97; REV 11-2009, f. 12-21-09, cert. ef. 1-1-10

## 150-307.547

### Certification of Nonprofit Corporation Low Income Housing Exemption to County Assessor

If the governing body determines the property that is the subject of the application filed under ORS 307.545 qualifies for exemption from taxation, the governing body must certify the exemption to the county assessor:

(1) On or before August 1 of the tax year for which the nonprofit corporation low income housing exemption is granted when the application is filed on or before April 1 preceding the tax year for which the exemption is claimed; or

(2) On or before September 1 of the tax year for which the nonprofit corporation low income housing exemption is granted when the application is filed within 30 days after acquiring property after April 1 and before July 1 preceding the tax year for which the exemption is claimed.

Stat. Auth.: ORS 305.100  
Stats. Implemented: ORS 307.547  
Hist.: REV 11-2009, f. 12-21-09, cert. ef. 1-1-10

## 150-308.875-(A)

### 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:* A husband and wife are owners of a parcel of land upon which a manufactured structure is located. The ownership document for the manufactured structure is in the husband's name only. The ownership is not the same and the manufactured structure must be classified as personal property.

*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

## 150-309.100-(D)

### Definition of Person Who Holds an Interest in the Property and Procedures for Transfers of Ownership or Interest

This rule supplements the definition of "petitioner" found in OAR 150-309.100(3)-(C).

(1) The petitioner in an appeal to the board of property tax appeals (BOPTA) under ORS 309.100 must possess or acquire legal standing to appeal during the petition filing period. The petition filing period begins the date following the date the tax statements are mailed for the current tax year and ends December 31 or the last day for filing a petition under ORS 305.820.

(2) For purposes of appealing to BOPTA, a person who holds an interest in the property as described in subsection (3) of this rule, that obligates the person to pay the taxes imposed on the property shall be defined as a person or entity that:

(a) Holds an interest in the property that obligates the person or entity to pay all or a portion of the taxes imposed on the property for the current tax year at the time the petition is filed; or

(b) Has held an interest in the property that obligated the person or entity to pay all or a portion of the taxes imposed on the property for the current tax year after July 1 but prior to the time the petition is filed; or

(c) Will hold an interest in the property by the last day for filing a petition with BOPTA that will obligate the person or entity to pay all or a portion of the taxes imposed on the property for the current tax year.

(3) Standing to appeal to BOPTA as a person who holds an interest other than an ownership interest must be established through an intervening instrumentality such as a contract or lease that proves the person or entity is obligated to pay all or a portion of the taxes imposed on the property for the current tax year. Escrow instructions signed by a seller in a transaction that is consummated during the period from July 1 through the last day for filing a petition with BOPTA may also be used to establish such an interest.

(4) When an ownership or other interest is transferred on or after July 1 but prior to the end of the petition filing period or a question arises regarding ownership or the existence of a present obligation to pay taxes, BOPTA must determine whether the petitioner has standing to appeal. The following examples are intended to give guidance to the clerk for purposes of determining whether a Notice of Defective Petition should be sent under OAR 150-309.100(3)-(B) and to the board in its final determination regarding the standing of the petitioner:

*Example 1:* The clerk of the board receives a petition on November 5 and reviews the petition on November 20 according to the guidelines in OAR 150-309.100(3)-(C) and this rule. When the clerk reviews the petition, the county records indicate that the petitioner sold the property on October 30. Because the petitioner did not own the property when the petition was filed, the petitioner must establish standing as a person who holds an interest in the property that obligates the petitioner to pay the taxes imposed on the property for the current tax year. The petitioner can do so by submitting a copy of the escrow instructions or other document that shows the petitioner must pay all or a portion of the property taxes for the current tax year.

*Example 2:* The clerk of the board receives a petition on October 29 and reviews the petition on November 19 according to the guidelines in OAR 150-309.100(3)-(C) and this rule. When the clerk reviews the petition, the county records indicate that the petitioner sold the property on August 13. Because the petitioner did not own the property when the petition was filed, the petitioner must establish standing as a person who holds an interest in the property that obligates the petitioner to pay the taxes imposed on the property for the current tax year. Even though the petitioner sold the property prior to the beginning of the petition filing period, the petition will be allowed if the petitioner has a present obligation to pay the taxes as demonstrated by a copy of the escrow instructions or other document that shows the petitioner must pay all or a portion of the property taxes for the current tax year.

*Example 3:* The clerk of the board receives a petition on December 4. The clerk reviews the petition on December 10. The petitioner has included a copy of an earnest money agreement to purchase property with a projected closing date of December 28. The clerk sends a Notice of Defective Petition on December 17 asking the petitioner to provide proof that the petitioner owned the property on December 31 or the last day for filing a petition under ORS 305.820. The petitioner is given 20 days as provided in OAR 150-309.100(3)-(B) to provide proof of ownership. The clerk also has the option of waiting until after December 31 to send the notice to allow more time for county ownership records to be updated. If proof is provided (or county records are updated) that confirms the petitioner owned the property by December 31, the petitioner has standing to appeal to BOPTA as the owner of the property.

*Example 4:* The clerk of the board receives a petition on December 23. The petitioner includes a copy of an earnest money agreement to purchase property with a projected closing date of January 19. The language of the earnest money agreement does not include a present obligation for the petitioner to pay the taxes imposed on the property. The petitioner lacks standing to appeal because the petitioner will not own or hold an interest in the property that obligates the petitioner to pay the taxes imposed on the property until after the deadline for filing a petition with BOPTA.

(5) Lenders that hold an interest in property as security against a loan generally lack standing to appeal to BOPTA. See OAR 150-309.100(3)-(C) subsection (3)(b). However, in the event of a default or foreclosure proceeding, the lender may acquire standing if specific language in the contract allows or requires the lender to assume the tax obligation or through actual assumption of ownership prior to the deadline for filing a petition.

Stat. Auth.: ORS 305.100  
Stats. Implemented: ORS 309.100  
Hist.: REV 11-2009, f. 12-21-09, cert. ef. 1-1-10

## 150-311.668(1)(a)-(A)

### Requirements to Qualify for Senior Citizen's Property Tax Deferral

(1) For the purposes of this rule, "registered domestic partnership" has the meaning given that term in section 3, chapter 99, Oregon Laws 2007, as amended by section 1, Oregon Laws 2009, chapter 561, and the partnership must meet the provisions of section 1 to 9 of the same 2007 Act, as amended.

(2) Applicants for Senior Citizens Property Tax Deferral must file an application with the county assessor between January 1 and April 15 and meet the following requirements:

(3) A sole property owner, a qualifying spouse, or registered domestic partner may apply as an individual applicant. The individual who files the application must:

(a) Be 62 years of age or older on April 15 of the year in which the claim is filed;

(b) Live on the homestead, except for an absence due to health related reasons; and

(c) Individually, or with his or her spouse or registered domestic partner, either own or be purchasing the fee-simple estate under a recorded instrument of sale.

(4) Joint property owners, other than spouses or registered domestic partners, must apply as joint applicants. All applicants must:

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(a) Be 62 years of age or older on April 15 of the year in which the claim is filed;

(b) Live on the homestead, except for an absence due to health related reasons, and

(c) Either own or be purchasing the fee simple estate with a right of survivorship under a recorded instrument of sale.

(5) The combined household income, as defined in ORS 310.630(7), for individuals and their spouses or all joint applicants, must be less than the following limits:

(a) For applications filed in the calendar year 2009 for the deferral of 2009-2010 property taxes, the total household income limit for the income tax year 2008 is \$39,000.

(b) For applications filed in the calendar year 2010 and later, the total household income limit for the prior year is adjusted, based on the application of the U.S. City Average Consumer Price Index as provided in ORS 311.668(7). The Department of Revenue will publish the total household income limit each year in the deferral application booklet.

(6) To confirm that the taxpayer meets the qualifications for the program, the department may request from the applicant additional written information relating to program eligibility. Failure to provide the information as requested may result in denial of tax deferral.

(7) The department will review information submitted on the application.

(a) If the department determines that the property and applicant(s) qualify for deferral, it will send a preliminary notice of approval by July 1. The notice will inform that applicant that the approval is based on information provided on the application, and that if the department discovers additional information that indicates the person or property does not qualify for deferral the application will be denied.

(b) If the department determines that the property or applicant(s) do not qualify for deferral, it will send a Notice of Denial.

(8) By December 15 of each year, the department will send a notice to each person who has applied for deferral. The notice will:

(a) Inform the applicant whether the property taxes have or have not been deferred in the current year, and

(b) Include the total amount of deferred taxes, interest and fees remaining unpaid on the account,

(9) The applicant will have 90 days from the date he or she becomes aware of the denial, or no later than one year from the date of the determination, whichever comes first, to appeal to the Oregon Tax Court as provided in ORS 305.280.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 305.100 & 311.668

Stats. Implemented: ORS 311.668

Hist.: RD 1-1995, f. 12-29-95, cert. ef. 12-31-95, Renumbered from 150-311.670; REV 2-2002, f. 6-26-02, cert. ef. 6-30-02, Renumbered from 150-311.668; REV 1-2003, f. & cert. ef. 7-31-03; REV 2-2005, f. 6-27-05, cert. ef. 6-30-05; REV 7-2008, f. 8-29-08, cert. ef. 8-31-08; REV 11-2009, f. 12-21-09, cert. ef. 1-1-10

## 150-311.668(1)(a)-(B)

### Requirements to Qualify for Disabled Citizen's Property Tax Deferral

(1) For the purposes of this rule, "registered domestic partnership" has the meaning given that term in section 3, chapter 99, Oregon Laws 2007, as amended by section 1, Oregon Laws 2009, chapter 561, and the partnership must meet the provisions of section 1 to 9 of the same 2007 Act, as amended.

(2) Applicants for Disabled Citizens Property Tax Deferral must file an application with the county assessor between January 1 and April 15 and meet the requirements of this rule:

(3) A sole property owner, a qualifying spouse, or registered domestic partner may apply as an individual applicant. The individual who files the application must:

(a) Live on the homestead, except for an absence due to health related reasons.

(b) Individually, or with his or her spouse or registered domestic partner, either own the fee simple estate or be purchasing the fee simple estate under a recorded instrument of sale; and

(c) Be eligible to receive, or receiving, federal Social Security benefits due to disability or blindness on or before April 15 of the year in which the claim is filed.

(4) Joint property owners, other than spouses or registered domestic partners, must apply as joint applicants. At least one applicant must be eligible to receive, or be receiving, federal Social Security benefits due to disability or blindness on or before April 15 of the year in which the application is filed. All owners must:

(a) Own or be purchasing the fee simple estate with rights of survivorship under a recorded instrument of sale;

(b) Live on the homestead, except for an absence due to health related reasons.

(5) The combined household income, as defined in ORS 310.630(7), for individuals and their spouses, or all joint applicants, must be less than the following limits:

(a) For applications filed in the calendar year 2009 for the deferral of 2009-2010 property taxes, the total household income limit for the income tax year 2008 is \$39,000.

(b) For applications filed in the calendar year 2010 and later, the total household income limit for the prior year is adjusted, based on the application of the U.S. City Average Consumer Price Index as provided in ORS 311.668(7). The Department of Revenue will publish the total household income limit each year in the deferral application booklet.

(6) To confirm that the applicant meets the qualifications for the program, the department may request from the applicant additional written information relating to program eligibility. Failure to provide the information as requested may result in denial of tax deferral.

(7) The department will review information submitted on the application.

(a) If the department determines that the property and applicant(s) qualify for deferral, it will send a preliminary notice of approval by July 1. The notice will inform that applicant that the approval is based on information provided on the application, and if the department discovers additional information that indicates the person or property does not qualify for deferral the application will be denied.

(b) If the department determines that the property or applicant(s) do not qualify for deferral, it will send a Notice of Denial.

(8) By December 15 of each year, the department will send a notice to each person who has applied for deferral. The notice will:

(a) Inform the applicant whether the property taxes have or have not been deferred in the current year, and

(b) Include the total amount of deferred taxes, interest and fees remaining unpaid on the account,

(9) The applicant will have 90 days from the date he or she becomes aware of the denial, or no later than one year from the date of the determination, whichever comes first, to appeal to the Oregon Tax Court as provided in ORS 305.280.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 311.668

Hist.: REV 2-2002, f. 6-26-02, cert. ef. 6-30-02; REV 1-2003, f. & cert. ef. 7-31-03; REV 7-2008, f. 8-29-08, cert. ef. 8-31-08; REV 11-2009, f. 12-21-09, cert. ef. 1-1-10

## 150-311.688

### Election by Spouse to Continue Tax Deferral

(1) "Surviving spouse" means:

(a) A man or woman who is legally married to an applicant at the time of the applicant's death; or

(b) A man or woman who is joined in a registered domestic partnership with an applicant at the time of the applicant's death. "Registered domestic partnership" has the meaning given that term in section 3, chapter 99, Oregon Laws 2007, as amended by section 1, Oregon Laws 2009, chapter 561, and the partnership must meet the provisions of section 1 to 9 of the same 2007 Act, as amended.

(2) When any one of the circumstances listed in ORS 311.684(1) to (3) occurs, a surviving spouse may continue the property in deferred tax status as active or inactive.

(a) When an account continues as active, the department continues to pay the yearly property taxes to the county. The account balance continues in deferral, and interest continues to accrue on all taxes paid.

(b) When an account continues in an inactive status, the department does not continue to pay property taxes to the county. The deferral account balance of past-deferred taxes, accrued interest, and recording fees remains deferred and interest continues to accrue on the past-deferred taxes.

(3) If a surviving spouse did not apply jointly with the taxpayer for the original Senior or Disabled deferral or was not eligible for deferral, the spouse must file a new deferral application in order to continue the account as active or inactive.

(a) For the deferral account to remain active, in addition to the filing of a new deferral application all the following is required:

(A) The spouse is at least 59-1/2 years of age or is disabled as defined in ORS 311.666(2) the day a circumstance in 311.684(1) to (3) occurs,

(B) The property is the homestead of the surviving spouse,

(C) The total household income continues to be less than the allowable yearly limitation, and

(D) The property ownership meets the requirement in ORS 311.670(2).

(b) When a surviving spouse meets all of the requirements of section (2)(a) of this rule except the age requirement of 59-1/2, or a disability as defined in ORS 311.666(2), the surviving spouse may only continue the deferral account in an inactive status. The surviving spouse is responsible to pay all future property taxes to the county. The surviving spouse may file a new application to change the deferral account status from inactive to active when the surviving spouse turns 62 years of age before April 15 of any year, or if the surviving spouse becomes disabled and begins to receive or becomes eligible to receive federal Social Security disability benefits..

(4) In the case of a divorce or termination of a registered domestic partnership, if the circumstances in ORS 311.684(3) occur before the divorce, then the surviving spouse remaining in the homestead may file an application

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to continue the deferral. The requirements of section (2) of this rule determine if the account remains active or becomes inactive.

(5) All applications to continue deferral must be filed in the time and manner as provided in ORS 311.668. The department may determine that good and sufficient cause exists to accept a late filed application. The application may be filed within 180 days after the department mails or delivers to the applicant the deferred tax due and payable notice.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 311.688

Hist: REV 12-2004, f. 12-29-04, cert. ef. 12-31-04; REV 11-2009, f. 12-21-09, cert. ef. 1-1-10

## 150-311.689

### Annual Income Requirements to Continue Property Tax Deferral

(1) For purposes of this rule, "federal adjusted gross income" (FAGI) means the individual applicant's federal adjusted gross income. The "combined federal adjusted gross income" (CFAGI) means the sum of all applicants' federal adjusted gross incomes. FAGI is defined under the provisions of the Internal Revenue Code Section 62 in effect for the tax year without any of the additions, subtractions or other modifications or adjustments required under ORS Chapter 316. The FAGI is reported on the federal income tax return. (2) Taxpayers electing to have their property taxes deferred under ORS 311.666 to 311.701 must meet an income limit requirement each year. The limit is based on the income received in the previous calendar year.

(a) The dollar amount of the limit may change each year, based on adjustments to the U.S. City Average Consumer Price Index as provided in ORS 311.668(7).

(b) The limit will be listed in deferral forms and publications produced by the Department of Revenue.

(3) After initial approval into the program, the income limit is applied to the FAGI of each applicant. The combined FAGI of all applicants must be below the limit. In the case of an individual applicant who files a federal income tax return as "married filing jointly," the applicant may be required to provide evidence establishing the applicant's individual FAGI, if different from the applicant's FAGI on the joint return.

*Example 1:* Mary Jones and Sue Smith are sisters, who live together and applied as joint owners to have their property taxes deferred. Sue is married to Steve Smith, and they file a joint income tax return even though Steve lives in another house. For each year after approval into the program, the combined FAGI of Mary and Sue must be below the limit in order to continue qualification in the program. Because Sue files a joint return with Steve, she will need to provide the department with evidence establishing documentation of her individual FAGI.

(4) By June 1, the department will review income tax returns of deferral program applicants to verify that income limits have not been exceeded. If an Oregon income tax return has not been filed, the department may ask the applicant to provide documentation of their income. Documentation may include, but is not limited to, a copy of the federal income tax return or a completed income worksheet questionnaire that lists all income that is required to be reported on a federal tax return.

(a) Failure to provide the requested documentation will result in the denial of tax deferral for that year. Any past deferred taxes will remain deferred, unless they otherwise become due and payable.

(b) After approval into the deferral program, any year that the income limit is exceeded, the amount of tax for which the deferral is allowed will be reduced by \$0.50 for each dollar of FAGI above the limit.

(A) If the FAGI amount in excess of the income limit exceeds the amount of property tax by a factor of two, no property tax will be deferred for that year.

(B) If the FAGI amount exceeds the income limit, the department will pay only a part or none of the property tax due in November, whichever is applicable. The applicant is responsible for paying any property tax not deferred for that year directly to the county. The department will notify applicants of the amount by which the tax deferral will be reduced, and an estimate of the amount of tax that applicants must pay to the county.

(C) Any past deferred taxes will remain deferred, unless they otherwise become due and payable.

(D) The applicant does not qualify for delay of foreclosure under ORS 311.691(1) if the foreclosure is due to delinquent taxes the applicant is required to pay as a result of exceeding the income limit.

(5) When an applicant's FAGI is in excess of the limit any year, the applicant must notify the department before September 1 that the income limit was exceeded for the previous calendar year.

(6) Examples using \$39,000 as the income limit:

*Example 2:* John is participating in the deferral program. His FAGI was \$43,000 for income tax year 2008, and his 2009-2010 property taxes are \$3,000. The FAGI exceeds the income limit by \$4,000, so the deferred amount is reduced by \$2,000 ( $\$4,000 \times \$0.50 = \$2,000$ ). John is responsible for \$2,000 (minus 3 percent discount if paid timely) of his 2009-2010 property tax to the county in November. The department will pay the county the remaining \$1,000 (minus 3 percent discount) of John's 2009-2010 property taxes.

*Example 3:* Debbie is participating in the deferral program. Her 2009-2010 property taxes are \$3,000. Debbie notifies the department by September 1, 2009 that her FAGI was \$47,000 for income tax year 2008. The FAGI income limit was exceeded by \$8,000, which is more than twice the amount of the property tax due. Debbie is responsible for the entire \$3,000 (minus 3 percent discount if paid timely) of her 2009-2010 property tax to the county in November. The department will not pay any of Debbie's 2009-2010 property taxes.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 311.689

Hist.: f. 10-14-92, ef. 12-31-92; RD 1-1995, f. 12-29-95, cert. ef. 12-31-95; REV 2-2002, f. 6-26-02, cert. ef. 6-30-02; REV 12-2007, f. 12-28-07, cert. ef. 1-1-08; REV 11-2009, f. 12-21-09, cert. ef. 1-1-10

## 150-311.691

### Taxes Unpaid Before Approval of Senior Deferral Application

(1) For the purposes of this rule, "registered domestic partnership" has the meaning given that term in section 3, chapter 99, Oregon Laws 2007, as amended by section 1, Oregon Laws 2009, chapter 561, and the partnership must meet the provisions of section 1 to 9 of the same 2007 Act, as amended.

(2) Delay of foreclosure is only available for real property. It is not available on personal property.

(3) When an application for property tax deferral has been submitted and approved by the department, the taxpayer is notified of that approval. If taxes on the property subject to deferral remain unpaid on the date of approval, the applicant may apply for a delay of foreclosure by completing the appropriate application for all years in which unpaid taxes exist.

(a) Total household income, both taxable and nontaxable (ORS 310.630), must be less than the allowed amount for new applications for the calendar year prior to the original deferral application.

(b) Applications can be accepted for delay of foreclosure only for delinquent taxes accumulated prior to the original deferral application approval. Delay of foreclosure is not available for tax years coming due after the original application was filed.

(4) Interest will continue to accrue at the current county interest rate on the remaining unpaid delinquent taxes.

(5) When the property is disqualified for deferral, the deferred tax plus interest and the delinquent tax become due by August 15 of the year following the year disqualified.

*Example:* The taxpayer had received a delay of foreclosure when applying for the Senior Citizen Deferral program. The account was disqualified on July 15, 2008. The taxpayer has until August 15, 2009 to pay the county the amount due as a result of the delay of foreclosure.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 311.691

Hist.: RD 1-1995, f. 12-29-95, cert. ef. 12-31-95; REV 8-2000, f. & cert. ef. 8-3-00; REV 11-2009, f. 12-21-09, cert. ef. 1-1-10

## 150-311.706

### Requirements to Qualify for Senior Citizen's Special Assessment Deferral

(1) For the purposes of this rule, "registered domestic partnership" has the meaning given that term in section 3, chapter 99, Oregon Laws 2007, as amended by section 1, Oregon Laws 2009, chapter 561, and the partnership must meet the provisions of section 1 to 9 of the same 2007 Act, as amended.

(2) In addition to the filing of an application for Senior Citizen's Special Assessment Deferral, the applicant must meet the requirements of this rule:

(3) In the case of a husband, wife, or registered domestic partner filing an individual application for deferral, the husband, wife, or registered domestic partner who filed the application:

(a) Must be over 62 years of age;

(b) Must live on the property, except for qualifying absence; and

(c) Must individually, or with his or her spouse or registered domestic partner, either own the fee simple estate of record or be purchasing a fee simple estate under a recorded instrument of sale.

(4) In the case of joint owners other than a husband and wife or registered domestic partners, all joint owners:

(a) Must be over 62 years of age;

(b) Must together own or be purchasing the fee simple estate with a right of survivorship under a recorded instrument of sale, and

(c) Must live on the property except for qualifying absence; and

(d) Must apply for the deferral jointly.

(5) The combined household income is from all sources of all the owners and is determined for the calendar year immediately preceding the calendar year of the application.

(a) For calendar year 2009 (2010 application year), the total household income must be \$38,500 or less.

(b) For calendar years 2001 or later (2002 or later application years), the total household income limit may change each year based upon the U.S. City Average Consumer Price Index as provided in ORS 150-311.706(6). The Department of Revenue will publish the total household income limit annually.

(6) In order to confirm that the taxpayer continues to qualify for the program, the department may request additional written information relating to qualifications from the taxpayer or their representative. If the information is not provided as requested, the department will presume the property no longer qualifies for deferral and will give notice of disqualification and appeal rights to the taxpayer.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 311.706

Hist.: RD 10-1985, f. 12-26-85, cert. ef. 12-31-85; RD 9-1997, f. & cert. ef. 12-31-97; REV 2-2002, f. 6-26-02, cert. ef. 6-30-02; REV 11-2009, f. 12-21-09, cert. ef. 1-1-10

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## 150-358.505

### Determining Value of Historic Property Qualified for Special Assessment

- (1) For purposes of this rule,
  - (a) "Assessed Value" (AV) is defined in ORS 308.146.
  - (b) "Maximum Assessed Value" (MAV) is defined in ORS 308.146 without application of ORS 308.146(4).
  - (c) "Changed Property Ratio" (CPR) is the ratio described in OAR 150-308.156.
  - (d) "Internal ratio" (IR) is the quotient of MAV/RMV for an individual property, as if the property is not specially assessed. The ratio cannot be more than 1.0.
  - (e) "Maximum Specially Assessed Value" (MSAV) means maximum assessed value for property subject to special assessment.
  - (f) "Real Market Value" (RMV) is defined in ORS 308.205(1).
- (2) This rule applies to initial and second qualifying periods beginning on or after July 1, 2010, with application being made on or after September 28, 2009.

(3) When a property is subject to historic property special assessment, the county assessor must:

- (a) Include a "Historic property — potential additional tax" notation on the tax roll.
- (b) Maintain the RMV and a MAV as if the property were not specially assessed. The RMV and MAV as if the property were not specially assessed must be adjusted to include any changes in value as addressed in ORS 308.146, 308.149, 308.153, 308.156, and 308.159 (commonly referred to as exception value).
- (c) Calculate MSAV of the property annually while the property remains in the program.
- (4) Calculate first period values for SAV, MSAV and AV.
  - (A) Step 1: Calculate the property's SAV to be used throughout the entire first 10 year period of historic property special assessment.
  - (A) The SAV equals the AV of the property in the tax year in which application is submitted pursuant to ORS 358.487.

(B) If the property is specially assessed or exempt in the tax year during which an application is made, SAV equals the RMV for that tax year multiplied by the CPR for that tax year.

(b) Step 2: Calculate MSAV for the first year of special assessment by multiplying the SAV by the IR. The MSAV is recalculated in the second and subsequent years and equals the greater of:

- (A) The AV for the prior year multiplied by 103 percent; or
- (B) The MSAV for the prior year
- (c) Step 3: Calculate the AV, which is the lesser of the:
  - (A) SAV calculated in step 1;
  - (B) MSAV calculated in step 2; or
  - (C) The RMV.

*Example 1:* The State Historic Preservation Officer (SHPO), in January 2010, notifies the assessor that the owner of an old warehouse applied for historic property special assessment in October 2009 and qualified for that special assessment. The value of the warehouse as reflected on the 2009-10 tax roll is: RMV \$400,000; MAV \$302,380; AV \$302,380. The first year of special assessment is 2010-11. The RMV for 2010-11 is \$416,000.

(a) Step 1: Calculate the SAV. SAV = AV in the tax year the application is submitted = \$302,380

(b) Step 2: Calculate MSAV for first year of special assessment.

(A) 2010-11 MAV = AV x 1.03, \$302,380 x 1.03 = \$311,451

(B) IR = MAV / RMV, \$311,451 / \$416,000 = 0.749

(C) MSAV = SAV \* IR, \$302,380 \* 0.749 = \$226,482

(c) Step 3: Calculate the AV for the current year. It is the lesser of SAV (\$302,380), MSAV (\$226,482) or RMV (\$416,000). AV = \$226,482.

*Example 2:* SHPO, in January 2010, notifies the assessor that the owner of an old mansion no longer used by the Elks as a clubhouse that will be first disqualified from exemption for 2010-11 applied for historic property special assessment in October 2009 and that the property is qualified for special assessment for 2010-11. The CPR for this classification of property, had it been taxable in 2009-10, was 0.656, and the property's RMV for 2009-10 was \$300,000. The first year of special assessment is 2010-11. The RMV for 2010-11 is calculated at \$295,000 and the countywide CPR for this property classification for 2010-11 is 0.650. Other than the disqualification from exemption and the qualification for historic special assessment, there have been no changes to the property for 2010-11.

(a) Step 1: Calculate MAV for 2010-11 pursuant to ORS 308.156 as a result of disqualification from exemption.

(A) MAV = RMV x CPR, \$295,000 x 0.650 = \$191,750

(b) Step 2: Calculate SAV

(A) SAV = RMV x CPR from the tax year of application, \$300,000 x 0.656 = \$196,800

(c) Step 3: Calculate MSAV for first year of special assessment

(A) MSAV = SAV x IR, \$196,800 x (\$191,750 / \$295,000) = \$127,920

(d) Step 4: Calculate AV

(A) AV = lesser of SAV (step 2) or MSAV (step 3) or RMV. AV = \$127,920.

(5) Calculate Second period values for SAV, MSAV and AV.

(a) Step 1: Calculate SAV for the first year of a second qualifying period.

(A) The SAV equals the RMV of the property for the assessment year in which the application is made.

(B) The SAV will remain constant throughout the second ten-year period of special assessment.

(b) Step 2: Calculate the MSAV for the first year of the second qualifying period of special assessment by multiplying the SAV by the internal ratio. The MSAV is recalculated in the second and subsequent years and equals the greater of:

(A) The AV for the prior year multiplied by 103 percent; or

(B) The MSAV for the prior year

(c) Step 3: Calculate the AV, which is the lesser of the:

(A) SAV calculated in step 1;

(B) MSAV calculated in step 2; or

(C) The RMV.

*Example 3:* SHPO approves an application filed in March 2020 and qualifies a renovated chateau for a second 10 year period of special assessment beginning with the 2020-21 tax year. The first historic property special assessment period ended in the 2018-19 tax year. For 2020-21, the RMV is \$825,000, and MAV without special assessment would be \$509,850.

(a) Step 1: Calculate SAV. SAV = RMV for assessment year in which application made. SAV = \$825,000

(b) Step 2: Calculate MSAV for the first year of special assessment. MSAV = SAV x IR, \$825,000 x (\$509,850 / \$825,000) = \$509,850

(c) AV = lesser of SAV (step 1), MSAV (step 2), or RMV. AV = \$509,850.

(6) When a building that is certified for historic property special assessment is divided into condominium units:

(a) The original account is deleted and each condominium becomes a new account.

(b) Each new account is appraised to establish a new RMV and calculate a new MAV.

(c) SAV and MSAV of the original account are apportioned between the new accounts but the total SAV and MSAV does not change as a result of the conversion to condominiums.

(d) The initial sale of each condominium unit by the developer disqualifies that unit from special assessment.

(e) Upon disqualification, the condominium unit is immediately requalified without further application for the remaining term of the original building's current 10 year period of historic property special assessment.

(f) Upon requalification, the SAV of the condominium unit equals its RMV for the tax year in which the sale of the unit occurred multiplied by the CPR for that tax year.

(g) The MSAV for the condominium unit for the first year after initial sale are calculated as described in step 3, using the MAV and RMV of the unit to determine the IR.

(h) The AV for the condominium unit for the first year after initial sale is calculated based on the lower of the SAV, MSAV, or RMV of the unit for that year.

*Example 4:* An account with an old warehouse building is qualified by SHPO for historic property special assessment. Its RMV, MAV, MSAV, SAV, and AV have been calculated as described in previous examples. The building is then converted to condominium units. When the condominium conversion is complete and all approvals are in place, each condominium unit becomes a separate account. New RMV and MAV are calculated for each account. Existing SAV and MSAV of the original warehouse account are apportioned between the new accounts. Total SAV and MSAV do not change as a result of the condominium conversion.

Account (tax lot) 00100, old warehouse building, is in its fourth year of its historic property special assessment. Its most recent tax roll values are as follows: RMV = \$400,000; MAV if not specially assessed = \$300,000, SAV = \$225,000; MSAV = \$179,020; AV = \$179,020. CPR for this class of property is 0.750. The warehouse has now met all requirements for condominium and the 25 units worth \$1,000,000 each are certified for sale. Account 00100 is deleted and replaced with account (tax lot) 90001 through account (tax lot) 90025. All units are identical in this building and each account has an RMV of \$1,000,000. Total RMV of the building is now \$25,000,000 and MAV is \$18,750,000. Each account has a SAV of \$9,000 and a MSAV of \$7,160. Total value of the building and site as condominiums (account 00100 deleted):

RMV = unit value \* number of units, \$1,000,000 x 25 = \$25,000,000

MAV = RMV x CPR, \$25,000,000 x 0.750 = \$18,750,000

Value of each unit (each new account, 90001 through 90025):

RMV = \$1,000,000

MAV = RMV x CPR, \$1,000,000 x 0.750 = \$750,000

SAV = total building SAV apportioned by unit value, \$225,000 / (\$25,000,000 / \$1,000,000) = \$9,000

MSAV = total building MSAV apportioned by unit value, \$179,020 / (\$25,000,000 / \$1,000,000) = \$7,160

AV = \$7,160

*Example 5:* A condominium unit in the building described in example 4 is sold by the developer for \$1,000,000 on July 20, 2015. The unit is disqualified from the historic property special assessment due to the sale and then immediately requalified for the remaining term. Upon requalification, the SAV, MSAV, and AV are calculated for this unit. As of January 1, 2015 the individual unit had an RMV of \$1,000,000 and an MAV of \$750,000. Historic property special assessed values are reflected in an SAV of \$750,000 and an MSAV of \$562,500. The SAV calculated for the 2015-16 tax year will remain the same, frozen, throughout the remaining years of the building's 10 year term.

Unit values:

RMV = \$1,000,000

MAV = RMV \* CPR, \$1,000,000 \* 0.750 = \$750,000

SAV = RMV \* CPR, \$1,000,000 \* 0.750 = \$750,000

MSAV = SAV \* IR, \$750,000 \* (\$750,000 / \$1,000,000) = \$562,500

AV = \$562,500

The building was in its 4th year of its 10 year historic property special assessment term; the new SAV for the condominium unit will remain the same, \$750,000, for the remaining years of the building special assessment or until the building is otherwise disqualified.

The remaining accounts in the building are not affected by this sale.

# ADMINISTRATIVE RULES

Stat. Auth.: ORS 305.100, 358.505  
Stats. Implemented: ORS 358.505  
Hist.: REV 11-2009, f. 12-21-09, cert. ef. 1-1-10

## Department of Transportation Chapter 731

**Rule Caption:** Revisions to OARs governing the Oregon Innovative Partnerships Program.

**Adm. Order No.:** DOT 4-2009

**Filed with Sec. of State:** 12-22-2009

**Certified to be Effective:** 12-22-09

**Notice Publication Date:** 11-1-2009

**Rules Adopted:** 731-070-0245

**Rules Amended:** 731-070-0010, 731-070-0020, 731-070-0030, 731-070-0050, 731-070-0055, 731-070-0060, 731-070-0080, 731-070-0110, 731-070-0120, 731-070-0130, 731-070-0140, 731-070-0160, 731-070-0170, 731-070-0180, 731-070-0190, 731-070-0200, 731-070-0210, 731-070-0220, 731-070-0240, 731-070-0250, 731-070-0260, 731-070-0280, 731-070-0295, 731-070-0300, 731-070-0320, 731-070-0350, 731-070-0360

**Rules Repealed:** 731-070-0270

**Rules Ren. & Amend:** 731-070-0070 to 731-070-0195

**Subject:** ORS 367.800 established the Oregon Innovative Partnerships Program to develop partnerships with private entities or units of local government for expedited project delivery and innovation in transportation projects. These rules were revised to reflect the 2007 tolling legislation, incorporate a 2009 temporary rule and make certain technical clarifications intended to streamline the proposal process including:

- Addition of definitions of “local government,” “sensitive business, commercial or financial information,” and “tollway” in section 0010;
- Expanding ODOT’s discretion to consider and weigh factors, and the require or waive the requirement to include certain kinds of information in 0020 and throughout the rules;
- In 0050 and following, enabling competition based on unsolicited Detailed Proposals as well as unsolicited Conceptual Proposals placing responsibility for selection of proposals with the Director and leaving the Commission to approve or disapprove the Director’s selection;
- In 0210, changing the reporting requirements with regard to identifying Major Subcontractors;
- In 0250, changing the solicitation process by eliminating all of the process requirements that had been included and simply providing that ODOT can specify the proposal content and selection criteria in the solicitation itself; and
- In 0300, giving ODOT discretion to pay for work product developed in the course of developing a proposal.

**Rules Coordinator:** Lauri Kunze—(503) 986-3171

### 731-070-0010

#### Definitions for the Oregon Innovative Partnerships Program

As used in OAR 731-070-0005 to 731-070-0360:

- (1) “Agency” means any agency of the State of Oregon or any political subdivision thereof authorized by law to enter into public contracts, as defined in ORS 279A.010(1), and any public body created by intergovernmental agreement.
- (2) “Commission” or “OTC” means the Oregon Transportation Commission created by ORS 184.612 and any person or persons authorized or directed by the Commission to take any action or make any decision authorized by these rules on the Commission’s behalf.
- (3) “Competing Proposal” means a written submission to the Department that a proposer submits in response to a notice issued by the Department under OAR 731-070-0130.
- (4) “Conceptual Proposal” means a written submission to the Department satisfying the requirements set forth in OAR 730-070-0060.
- (5) “Department” or “ODOT” means the Oregon Department of Transportation created by ORS 184.615.
- (6) “Detailed Proposal” means a written submission to the Department satisfying the requirements set forth in OAR 730-070-0195.
- (7) “Director” means the Director of Transportation appointed under ORS 184.620 and any person or persons authorized or directed by the

Director to take any action or make any decision authorized by these rules on the Director’s behalf.

(8) “Local government” has the meaning given that term in ORS 174.116.

(9) “Major Partner” means, with respect to a limited liability company or joint venture, each firm, business organization or person that has an ownership interest therein in excess of 5%.

(10) “Major Subcontractor” is any subcontractor designated in the proposal to perform 10% or more of the scope of work for a proposed Project.

(11) “Program” or “OIPP” means the Oregon Innovative Partnerships Program established under ORS 367.800 to 367.826.

(12) “Public-Private Partnerships” or “PPP” means a nontraditional arrangement between the Department and one or more private or public entities that provides for the implementation of a Transportation Project that may include:

(a) Acceptance of a private contribution to a transportation system project or service in exchange for a public benefit concerning that project or service;

(b) Sharing of resources and the means of providing transportation system projects or services;

(c) Cooperation in researching, developing, and implementing transportation system projects or services;

(d) Use of innovative funding methods; or

(e) Expedited project delivery. The use of the word “partnership” to describe such an arrangement does not confer on the relationship formed any of the attributes or incidents of a partnership under common law or under ORS chapters 68 and 70.

(13) “Private Contribution” means resources supplied by a private entity to accomplish all or any part of the work on a transportation system project, including funds, financing, income, revenue, cost sharing, technology, staff, materials, equipment, expertise, data, or engineering, construction, or maintenance services, or other items of value.

(14) “Sensitive business, commercial or financial information that is not customarily provided to business competitors” includes records or information pertaining to activities of the proposer that are commercial in nature, are intended to be treated with a high degree of discretion and which would not be provided to the proposer’s competitors.

(15) “Tollway” means any roadway, path, highway, bridge, tunnel, railroad track, bicycle path or other paved surface or structure specifically designed as a land vehicle transportation route, the construction, operation or maintenance of which is wholly or partially funded with toll revenues resulting from an agreement with the Department pursuant to ORS 383.005 or with a city, county, or other local government pursuant to ORS 810.010 or other law.

(16) “Transportation Project” or “Project” has the meaning given that term in ORS 367.802.

(17) Terms not otherwise defined herein shall have the meaning given them in ORS 367.800 to 367.826.

Stat. Auth.: ORS 184.616, 184.619 & 367.824

Stat. Implemented: ORS 367.800 - 367.824

Hist.: DOT 5-2004, f. & cert. ef. 8-26-04; DOT 4-2009, f. & cert. ef. 12-22-09

### 731-070-0020

#### General Selection Policies

(1) The Department may exercise broad discretion, subject to the ultimate approval of the Commission, in evaluating proposals in accordance with the criteria stated in OAR 731-070-0010 to 731-070-0360. To conduct a meaningful evaluation of a proposal, ODOT may refine its examination of the proposal so that the features offered by a particular proposal are translated into, or examined in light of, the general criteria identified in section (3) of this rule.

(2) In light of the exemption from the public contracting requirements of ORS Chapters 279A, 279B and 279C contained in ORS 367.806(5), the Department may consider factors including public need, technical and financial feasibility, transportation efficiency, cost effectiveness, and acceleration of project delivery when evaluating proposals for Transportation Projects. The evaluation process must appreciate economy and potential savings to the public, but proposal selection will be determined on a best-value basis, taking into account the policies described in this rule and the applicable criteria identified in OAR 731-070-0110 and 731-070-0140, rather than on a lowest responsible bidder determination.

(3) In evaluating unsolicited proposals and in selecting projects for which to solicit proposals under OAR 731-070-0240, the Department may give precedence to proposals and projects that will satisfy one or more of the following policies:

(a) Projects that will address an urgent or state-identified transportation need in a manner that will materially advance the project delivery time-frame in light of current or anticipated levels of funding and existing transportation plans.

(b) Projects that use primarily rights-of-way and publicly-owned real property that already are owned or under the long-term control of ODOT or other public entities that have authority to put the real property to the use proposed.

# ADMINISTRATIVE RULES

(c) Projects for which planning, reliable feasibility determinations, comparable, successful prior projects or case studies demonstrate a strong potential to attract or generate a substantial contribution of non-state or non-tax resources to pay project cost items like capital, operation and maintenance, and provide a reasonable return on that investment in terms of:

- (A) A private partner's investment, if any; and
- (B) Transportation benefits to the public.

(d) Projects for which planning, reliable feasibility determinations, comparable, successful prior projects or case studies demonstrate a low risk of failure (in terms of the completion of infrastructure improvements and the attraction or generation of a substantial contribution of non-state or non-tax resources), practicable means of mitigating the risk of failure, or a high reward-to-risk ratio (in terms both of the benefits to the public and the private partner's investment incentive).

(e) Proposals that identify specific, reliable, confirmable and economically-viable, non-state or non-traditional sources of funding that will be available to supplement or replace state funding or other state resources for the project.

(f) Projects for which there is a demonstration of clear and substantial public support.

(g) Proposals that identify innovative construction approaches that will result in shorter build time, reduced construction cost or improved function in comparison to conventional approaches.

Stat. Auth.: ORS 184.616, 184.619 & 367.824

Stat. Implemented: ORS 367.800 - 367.824

Hist.: DOT 5-2004, f. & cert. ef. 8-26-04; DOT 4-2009, f. & cert. ef. 12-22-09

## 731-070-0030

### Conflict of Interest and Improper Proposer Conduct

(1) By submitting a proposal, the proposer certifies that the proposer, to the best of its knowledge, is not aware of any information bearing on the existence of any potential Organizational Conflict of Interest. If the proposer is aware of information bearing on whether a potential Organizational Conflict of Interest may exist, the proposer shall provide, as an exception to the certification, a disclosure statement describing this information, in a form suitable to ODOT, as part of its proposal. For purposes of this section, "Organizational Conflict of Interest" means that because of other activities or relationships with other persons or entities, including activities or relationships of its principal officers, its owners or its subcontractors, a firm is unable or potentially unable to render impartial assistance or advice to ODOT, or the person's objectivity in performing the proposed contract work is or might be otherwise impaired, or a person has an unfair competitive advantage.

(2) Warranty Against Contingent Fees. By submitting a proposal, the proposer warrants that the proposer, except for a bona fide employee or agency working solely for the proposer:

(a) Has not employed or retained any person or agency to solicit or obtain the contract that might result from submission of the proposal; and

(b) Has not paid upon agreement or understanding to any person or agency employed or retained to solicit or obtain a Transportation Project agreement any contingent fee. For breach or violation of this warranty, the Department shall have the right to annul this contract without liability or, in its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of the contingent fee.

(c) As used in this rule:

(A) "Bona fide agency" means an established commercial or selling agency, maintained by a proposer for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain federal or state contracts nor holds itself out as being able to obtain any federal or state contract or contracts through improper influence.

(B) "Bona fide employee" means a person or firm employed by a proposer and subject to the proposer's supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain federal or state contracts nor holds itself out as being able to obtain any federal or state contract or contracts through improper influence.

(C) "Contingent fee" means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a federal or state contract.

(D) "Improper influence" means any influence that induces or intends to induce a federal or state officer or employee to give consideration or to act regarding a federal or state contract on any basis other than the merits of the matter.

(3) By submitting a proposal, the proposer certifies, to the best of its knowledge and belief, that on or after December 23, 1989:

(a) No federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any federal contract, grant, loan, or cooperative agreement;

(b) If any funds other than federal appropriated funds (including profit or fee received under a covered federal transaction) have been paid, or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with its proposal, the proposer shall complete and submit, with its proposal, OMB standard form LLL, Disclosure of Lobbying Activities, to the Department; and

(c) The proposer shall include the language of this certification in all subcontract awards at any tier and require that all recipients of subcontract awards in excess of \$100,000 shall certify and disclose accordingly.

(4) Certification - Debarment, Suspension. Proposed Debarment and Responsibility Factors. By submitting a proposal, the proposer certifies, to the best of its knowledge and belief, that neither the proposer, a Major Partner, a Major Subcontractor, nor any principal officer of a proposer, Major Partner or Major Subcontractor, who is proposed to perform construction or design work on a proposed Transportation Project:

(a) Is presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any federal agency or agency of the State of Oregon;

(b) Has, within a three-year period preceding the submission of its proposal, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) contract or subcontract; violation of federal or state antitrust statutes relating to the submission of bids or proposals; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property;

(c) Is presently indicted for, or otherwise criminally or civilly charged by a governmental entity with the commission of any of the offenses enumerated in subsection (b) of this section; or

(d) Has had, within a three-year period preceding the submission of its proposal, one or more contracts terminated for default by any federal, state or local government agency.

(5) For the purposes of this rule, a "principal officer of a proposer, Major Partner or Major Subcontractor," means an officer, director, owner, and partner and any person having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a subsidiary, division, or business segment, and similar positions).

(6) In addition to requiring the certification of compliance with the foregoing provisions of this rule, in any Transportation Project that involves funding provided by or through the federal government, ODOT shall be entitled to require, as a requirement of any contract for a Transportation Project with a proposer, that proposer make such additional certifications, warranties or commitments as may be required by the laws, rules, regulations or policies that govern the funding source or which are conditions of the receipt of such funding.

Stat. Auth.: ORS 184.616, 184.619 & 367.824

Stat. Implemented: ORS 367.800 - 367.824

Hist.: DOT 5-2004, f. & cert. ef. 8-26-04; DOT 4-2009, f. & cert. ef. 12-22-09

## 731-070-0050

### Submission of Unsolicited Proposal

(1) Unless prequalification is required under OAR 731-070-0350, any private entity or unit of government may submit an unsolicited Conceptual or Detailed Proposal for a Transportation Project to ODOT for consideration under the OIPP. The proposer shall prominently label the proposal as either a Conceptual Proposal or Detailed Proposal, as appropriate.

(2)(a) A proposal review fee in the amount prescribed by OAR 731-070-0055(1)(a) must accompany any unsolicited Conceptual Proposal submitted by a private entity or unit of government.

(b) A proposal review fee in the amount prescribed by OAR 731-070-0055(1)(c) must accompany any unsolicited Detailed Proposal submitted by a private entity or unit of government.

(3) The proposer shall submit 20 copies, individually identified, of any unsolicited proposal in addition to the proposal bearing the signature of the authorized representative. The original proposal, required copies and processing fee shall be delivered to the Director or his designee.

(4) ODOT will consider an unsolicited proposal only if the proposal:

(a) Is unique or innovative in comparison with and is not substantially duplicative of other transportation system projects included in the state transportation improvement program within the Department or, if it is similar to a project in the state transportation improvement program, the project has not been fully funded by ODOT or any other public entity as of the date the proposal is submitted, or the proposal offers an opportunity to materially advance or accelerate the implementation of the project. Unique or innovative features which may be considered by ODOT in evaluating such a proposal may include but are not limited to unique or innovative financing, construction, design, schedule or other project components as compared with other projects or as otherwise defined by ODOT rules or regulations; and

(b) Includes all information required by and is presented in the format set out in OAR 731-070-0060. Such information shall include a list of any proprietary information included in the proposal that the proposer considers

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protected trade secrets or other information exempted from disclosure under ORS 367.803(5) and (6) and OAR 731-070-0280 and 0290.

(5) ODOT will not consider an unsolicited proposal for a project involving another state or local government unit of another state unless ODOT and the appropriate representative of the other state or of the local government unit of the other state have entered into an agreement that permits the acceptance of unsolicited proposals for such a project.

Stat. Auth.: ORS 184.616, 184.619 & 367.824

Stat. Implemented: ORS 367.800 - 367.824

Hist.: DOT 5-2004, f. & cert. ef. 8-26-04; DOT 4-2009, f. & cert. ef. 12-22-09

## 731-070-0055

### Fees to Accompany Unsolicited Proposals

(1) The proposal review fees required by OAR 731-070-0050(2) are as follows, unless otherwise specified in sections (2) or (3) of this rule:

(a) For Conceptual Proposals, as defined in OAR 731-070-0010(4):

(A) A \$5,000 non-refundable fee for a project under \$100 million; and

(B) A \$20,000 non-refundable fee for a project \$100 million or more.

(b) If ODOT invites Competing Conceptual Proposals as described in OAR 731-070-0130, each Competing Conceptual Proposal shall be accompanied by the fees described in (1)(a).

(c) For Detailed Proposals, as defined in OAR 731-070-0010(6):

(A) A \$10,000 non-refundable fee for a project under \$100 million; and

(B) A \$40,000 non-refundable fee for a project \$100 million or more.

(d) If ODOT invites Competing Detailed Proposals as described in OAR 731-070-0130, each Competing Detailed Proposal shall be accompanied by the fees described in (1)(c).

(2) If the cost of evaluating an unsolicited proposal exceeds the fees assessed under section (1) of this rule, the Director may assess additional fees that reflect the reasonable expected costs to be incurred by ODOT in evaluating the unsolicited proposal that exceed the amount deposited in section (1) of this rule.

(3) The Director may waive the fees specified in sections (1) and (2) of this rule if the interests of the state or the specific merits of the project would warrant such a waiver. In considering whether to grant a waiver the Director will consider the magnitude of costs versus benefits of such a waiver.

Stat. Auth.: ORS 184.616, 184.619, 367.822 & 367.824

Stat. Implemented: ORS 367.800 - 367.824

Hist.: DOT 6-2004(Temp), f. & cert. ef. 8-26-04 thru 2-21-05; DOT 1-2005, f. & cert. ef. 1-20-05; DOT 4-2009, f. & cert. ef. 12-22-09

## 731-070-0060

### Contents and Format of Conceptual or Competing Proposals

(1) An unsolicited Conceptual or Competing Proposal shall include the following information, except as expressly waived by the Department, separated by tabs as herein described:

(a) TAB 1: Qualifications and Experience.

(A) Identify the legal structure of the private entity or consortium of private entities or of private and public entities (the "Team") submitting the proposal. Identify the organizational structure of the Team for the Project, the Team's management approach and how each Major Partner and Major Subcontractor identified as being a part of the Team as of the date of submission of the proposal fits into the overall Team.

(B) Describe the experience of each private entity involved in the proposed Project. Describe the length of time in business, business experience, public sector transportation experience, PPP experience, development experience, design-build experience and other similarly sized engagements of each Major Partner and Major Subcontractor. The lead entity must be identified.

(C) Provide the names, addresses and telephone numbers of persons within the Team who may be contacted for further information.

(D) Provide financial information regarding the private entity or consortium and each Major Partner demonstrating their ability to perform the proposed Project.

(E) If the proposer is a limited liability company, all members and managers, if any (as those terms are defined in ORS 63.001), as well as any assignee of an ownership interest, regardless of whether the assignee has also acquired the voting and other rights appurtenant to membership.

(F) If the proposer is a trust, the trustee and all persons entitled to receive income or benefit from the trust.

(G) If the proposer is an association other than a limited liability company, all members, officers and directors of the association.

(H) If the proposer is a partnership or joint venture, all of the general partners, limited partners or joint venturers.

(I) On the written request of an entity that previously has been prequalified under OAR 731-070-00350 or 731-070-0360, ODOT may waive any requirement of this subsection (a) for which ODOT determines that the entity has provided sufficient information in the prequalification process.

(b) TAB 2: Project Characteristics.

(A) Provide a topographical map (1:2,000 or other appropriate scale) depicting the location of the proposed Project.

(B) Provide a description of the Transportation Project or Projects, including all proposed interconnections with other existing transportation facilities or known publicly identified projects.

(C) Describe the Project in sufficient detail so the type and intent of the Project, the general location of the Project, and the communities that may be affected by the Project are clearly identified. Describe the assumptions used in developing the Project.

(D) List the critical factors for the Project's success.

(E) If the proposed Project does not conform with the state and local transportation plans or local comprehensive plans, outline the proposer's approach for securing the Project's conformity with state and local transportation plans and local comprehensive plans or indicate the steps required for acceptance into such plans.

(F) When a proposed Project is sited, in whole or in part, within the jurisdiction of a metropolitan planning organization or area commission on transportation, identify applicable regional and local approvals required for the Project.

(G) Provide an explanation of how the proposed Transportation Project would impact local transportation plans of each affected locality.

(H) Provide a list of public transportation facilities and major apparent public utility facilities that will be crossed or affected by the Transportation Project and a statement of the proposer's plans to accommodate such facilities.

(I) Describe the role the proposer anticipates ODOT will have in the development, construction, operation, maintenance, financing, or any other aspect of the Transportation Project.

(c) TAB 3: Project Financing.

(A) Include a list and discussion of assumptions (user fees or toll rates, and usage of the facility) underlying all major elements of the proposed financing plan for the Project.

(B) Identify the probable risk factors relating to the proposed Project financing and methods for dealing with these factors.

(C) Identify any local, state or federal resources that the proposer contemplates requesting for the Project. Describe the total commitment (financial, services, property, etc.), if any, expected from governmental sources; the timing of any anticipated commitment; and its impact on project delivery.

(D) Identify any aspect of the financial model for the Transportation Project that implicates or potentially implicates the restrictions on use of highway-related revenues under Article IX, section 3a of the Oregon Constitution, and explain how the financial model avoids conflicting with those restrictions.

(E) Provide a conceptual estimate of the total cost of the Transportation Project.

(d) TAB 4: Public Support/Project Benefit/Compatibility.

(A) Describe the significant benefits of the Project to the community, region or state and identify who will benefit from the Project and how they will benefit. Identify any state benefits resulting from the Project including the achievement of state transportation policies or other state goals.

(B) Describe significant benefits of the Project to the state's economic condition. Discuss whether the Project is critical to attracting or maintaining competitive industries and businesses to the state or region.

(C) Identify any known or anticipated government support or opposition, or general public support or opposition, for the Project.

(D) Identify all major environmental, social and land use issues that the proposer knows or anticipates must be addressed.

(2) All pages of a Conceptual Proposal shall be numbered. Each copy of the proposal will be bound or otherwise contained in a single volume where practicable. All documentation submitted with the proposal will be contained in that single volume.

(3) A Conceptual Proposal submitted by a Private Entity must be signed by an authorized representative of the Private Entity submitting the unsolicited Conceptual Proposal.

(4) The proposer shall include a list of any proprietary information included in the proposal which the proposer considers protected trade secrets or other information exempted from disclosure under ORS 367.804 and OAR 731-070-0280 and 0290.

Stat. Auth.: ORS 184.616, 184.619 & 367.824

Stat. Implemented: ORS 367.800 - 367.824

Hist.: DOT 5-2004, f. & cert. ef. 8-26-04; DOT 4-2009, f. & cert. ef. 12-22-09

## 731-070-0080

### Additional Proposer Organizational Disclosure Requirements

(1) In addition to the disclosure requirements of OAR 731-070-0060(1)(a) and 731-070-0195(1)(a), the Director or the Director's designee may impose, after the submission of a proposal, any other special disclosure requirements the Director determines to be reasonably necessary to evaluate the expertise, experience, financial backing, integrity, ownership and control of any proposer.

(2) All proposers must provide all the information required by this rule and the Director. All proposers and Key Persons must complete and submit the required disclosure form, prescribed by ODOT, within the deadlines set by the Director or the Director's designee. All proposers and Key Persons must provide any documents required in the disclosure process, or other documents as determined by the Director, or their proposals may be rejected by ODOT.

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(3) ODOT may reject, or require the supplementation of, a proposal if the proposer has not provided all information required in the disclosure form or if any information provided is not accurate, current or truthful. The failure or refusal of any proposer to properly execute, fully complete, or accurately report any information required by the required disclosure shall be sufficient grounds for rejection of the proposal.

(4) Any change in the status of the proposer, in the identity of any of the Key Persons, or the addition of any Key Persons must be reported to the Department within 30 calendar days of the known change, and those whose status has changed or who have been added as Key Persons will be required to submit the required disclosure information. For purposes of this section, a "change in the status of a proposer" means a reorganization of the business structure or corporate structure of the proposer or a Major Partner, or a change in ownership of the proposer or a Major Partner amounting to a transfer of over twenty percent of the entity's ownership.

(5) The burden of satisfying ODOT's disclosure requirements, both in terms of producing the disclosures and assuring their accuracy and completeness, resides with each proposer.

(6) Each proposer, by submitting a proposal, thereby accepts all risk of adverse public notice, damages, financial loss, criticism or embarrassment that may result from any disclosure or publication of any material or information required or requested by the Department in connection with the proposer's submission of a proposal. In submitting a proposal, the proposer expressly waives, on behalf of itself, its partners, joint venturers, officers, employees and agents, any claim against the Director, the State of Oregon, the Oregon Transportation Commission, ODOT, and their officers and employees, for any damages that may arise therefrom.

(7) An Agency that submits a proposal may, prior to submission, request ODOT to waive the disclosure requirements of this rule with respect to the corporate public entity and its officers. However, if the Agency proposes to enter into or establish a partnership or joint venture with a private party to perform any substantial portion of the proposed Project (as opposed to the engagement of only a prime contractor or subcontractors), then disclosure of the private party must be made as if the private party is a proposer, in accordance with this rule.

Stat. Auth.: ORS 184.616, 184.619 & 367.824  
Stat. Implemented: ORS 367.800 - 367.824

Hist.: DOT 5-2004, f. & cert. ef. 8-26-04; DOT 4-2009, f. & cert. ef. 12-22-09

## 731-070-0110

### Initial Review of Unsolicited Proposals

(1) An unsolicited proposal submitted under OAR 731-070-0050 will be reviewed by an Initial Review Committee (IRC), which shall be appointed by the Director from Department personnel.

(2) The IRC will assess:

(a) Whether the proposal is complete;

(b) Whether the proposer is qualified;

(c)(A) If the proposal is submitted as a Conceptual Proposal, whether the proposal appears to satisfy the requirements of OAR 731-070-0060 for Conceptual Proposals; or

(B) If the proposal is submitted as a Detailed Proposal, whether the proposal appears to satisfy the requirement of OAR 731-070-0195 for Detailed Proposals;

(d) Whether the Project as proposed appears to be technically and financially feasible;

(e) Whether the Project as proposed appears to have the potential of enhancing the state transportation system; and

(f) Whether the Project as proposed appears to be in the public interest.

(3) The IRC will report the results of its assessment to the Director. Based on this assessment, the Director will determine whether the proposal satisfies the requirements of section (2) of this rule. If the Director determines that the proposal satisfies the requirements set out in section (2) of this rule, the Director will forward a recommendation concerning the proposal to the Commission for preliminary review and approval. The recommendation will not include sensitive business, commercial or financial information or trade secrets as described in 731-070-0290.

Stat. Auth.: ORS 184.616, 184.619, 367.824  
Stat. Implemented: ORS 367.800 - 367.824

Hist.: DOT 5-2004, f. & cert. ef. 8-26-04; DOT 4-2009, f. & cert. ef. 12-22-09

## 731-070-0120

### Commission Preliminary Review of Unsolicited Proposals

At the first regular meeting of the Oregon Transportation Commission following a determination by the Director under OAR 731-070-0110 that an unsolicited proposal merits further review, the Commission will review the recommendation and approve or disapprove the proposal for further evaluation and action by ODOT under ORS 367.800 to 367.826 and OAR chapter 731, division 70.

Stat. Auth.: ORS 184.616, 184.619 & 367.824  
Stat. Implemented: ORS 367.800 - 367.824

Hist.: DOT 5-2004, f. & cert. ef. 8-26-04; DOT 4-2009, f. & cert. ef. 12-22-09

## 731-070-0130

### Competing Proposals

(1) Within 30 calendar days of the Commission's preliminary approval of an unsolicited proposal under OAR 731-070-0120, ODOT shall provide public notice of the proposed Project. This notice shall:

(a) Be published in a newspaper of general circulation and upon such electronic website providing for general public access as ODOT may develop for such purpose;

(b) Be provided to any county, city, metropolitan service district, or transportation district in which the Project will be located;

(c) Be provided to any person or entity that expresses in writing to ODOT an interest in the subject matter of the unsolicited proposal and to any member of the Legislature whose House or Senate district would be affected by such proposal;

(d) Outline the general nature and scope of the unsolicited proposal, including the location of the Transportation Project and the work to be performed on the Project;

(e) Specify whether the Competing Proposal must satisfy the requirements for a Conceptual Proposal under OAR 731-070-0050 or for a Detailed Proposal under OAR 731-070-0195; and

(f) Specify the address to which any Competing Proposal must be submitted.

(2) Any entity that elects to submit a Competing Proposal for the proposed Project shall submit a written letter of intent to do so not later than 30 calendar days after ODOT's initial publication of notice. Any letter of intent received by ODOT after the expiration of the 30-calendar day period shall not be valid and any Competing Proposal submitted thereafter by a private or governmental entity that has not submitted a timely letter of intent shall not be considered by ODOT.

(3) An entity that has submitted a timely letter of intent must submit its Competing Proposal to ODOT not later than 90 calendar days after ODOT's initial publication of notice under section (1) of this rule, or such other time as ODOT states in the notice. The Competing Proposal must:

(a) Be signed by an authorized representative of the proposer;

(b) If the notice issued under paragraph (1) specifies that the Competing Proposal must satisfy the requirements for a Conceptual Proposal:

(A) Be accompanied by the processing fee for Conceptual Proposals required under OAR 731-070-0055(1); and

(B) Include the information and be organized in the manner required of an unsolicited Conceptual Proposal under OAR 731-070-0060.

(c) If the notice issued under paragraph (1) specifies that the Competing Proposal must satisfy the requirements for a Detailed Proposal:

(A) Be accompanied by the processing fee for Detailed Proposals required under OAR 731-070-0055(1); and

(B) Include the information and be organized in the manner required of an unsolicited Detailed Proposal under OAR 731-070-0195.

Stat. Auth.: ORS 184.616, 184.619 & 367.824

Stat. Implemented: ORS 367.800 - 367.824

Hist.: DOT 5-2004, f. & cert. ef. 8-26-04; DOT 4-2009, f. & cert. ef. 12-22-09

## 731-070-0140

### Evaluation of Unsolicited and Competing Proposals

(1) Evaluation Panel. An Evaluation Panel shall be appointed by the Director and shall consist of not fewer than five nor more than nine members, at least three of whom shall be employees of the Department.

(2) Evaluation Panel Review. After expiration of the time to submit Competing Proposals to an unsolicited Proposal, the Evaluation Panel will review the Competing Proposals to determine whether they satisfy the requirements of OAR 731-070-0050 and qualify for full evaluation.

(3) Competing or Non-Competing Proposals. As part of its initial review of Competing Proposals under section (2) of this rule, the Evaluation Panel shall make a preliminary assessment whether any of the Competing Proposals differ from the original unsolicited proposal in such a significant and meaningful manner that they should be treated as an original unsolicited proposal. If the Evaluation Panel believes that a proposal submitted as a Competing Proposal should be treated as an original unsolicited proposal and that it satisfies the requirements of OAR 731-070-0050, the Evaluation Panel shall forward the proposal to the Director, who shall determine whether the proposal should be submitted to the Commission for preliminary review and approval under OAR 731-070-0120, and the proposal shall thereafter be processed under these rules in the same manner as an unsolicited Proposal.

(4) Proposer Presentations. At any time during this evaluation process, the Evaluation Panel may request proposers to make presentations to the Evaluation Panel. Proposers shall be afforded not less than 10 business days following written notification from the Evaluation Panel to prepare such presentations. The format of these presentations will include a formal presentation by the proposer, followed by any questions the Evaluation Panel may have pertaining to the Project, proposal or the presentation. These meetings will allow the Evaluation Panel to seek clarification of Project elements and complete deliverable requirements, and provide proposers with the opportunity to further explain their proposed Projects. If there is an issue to which the proposer is unable to respond during the formal presentation, the Evaluation



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Panel may, at its discretion, grant the proposer a reasonable period of time in which to submit a written response.

(5) Evaluation Factors. When assessing any original unsolicited Proposal or qualifying Competing Proposal, the Evaluation Panel may take into consideration any or all of the following factors:

(a) Qualifications and Experience. Does the proposer propose a Team that is qualified, managed, and structured in a manner that will enable the Team to complete the proposed Project?

(A) Experience with Similar Infrastructure Projects. Have members of this Team previously worked together or in a substantially similar consortium or partnership arrangement constructing, improving or managing transportation infrastructure? Has the lead firm managed, or any of the member firms worked on, a similar privatization project?

(B) Demonstration of Ability to Perform Work. Does the Team possess the necessary financial, staffing, equipment, and technical resources to successfully complete the Project? Do the Team and/or member firms have competing financial or workforce commitments that may inhibit success and follow-through on the Project?

(C) Leadership Structure. Is one firm designated as lead on the Project? Does the organization of the Team indicate a well thought out approach to managing the Project? Is there an agreement/document in place between members?

(D) Project Manager's Experience. Is a Project Manager identified, and does this person work for the principal firm? If not, is there a clear definition of the role and responsibility of the Project Manager relative to the member firms? Does the Project Manager have experience leading this type and magnitude of project?

(E) Management Approach. Have the primary functions and responsibilities of the management team been identified? Have the members of the Team developed an approach to facilitate communication among the Project participants? Has the firm adequately described its approach to communicating with and meeting the expectations of the state?

(F) Financial Condition. Is the financial information submitted on the firms sufficient to determine the firms' capability to fulfill its obligations described in the proposal, and is that capability demonstrated by the submitted information?

(G) Project Ownership. Does the proposal identify the proposed ownership arrangements for each phase of the Project and clearly state assumptions on legal liabilities and responsibilities during each phase of the Project?

(H) Participation of Small Businesses and Businesses Owned by Women and Minorities. What is the level of commitment by the proposers to use small, minority-, and women-owned business enterprises in developing and implementing the Project?

(I) Competitive Subcontracting. To what extent have adequate and transparent procurement policies been adopted by the proposer to maximize opportunities for competitive procurement of work, services, materials and supplies that the proposer will outsource?

(b) Project Characteristics. Is the proposed transportation facility technically feasible?

(A) Project Definition. Is the Project described in sufficient detail to determine the type and size of the Project, the location, all proposed interconnections with other transportation facilities, the communities that may be affected, and alternatives (e.g. alignments) that may need to be evaluated?

(B) Proposed Project Schedule. Is the time frame for Project completion clearly outlined? Is the proposed schedule reasonable given the scope and complexity of the Project?

(C) Operation. Does the proposer present a reasonable statement setting forth plans for operation of the Project or facilities that are included in the Project?

(D) Technology. Is the proposal based on proven technology? What is the degree of technical innovation associated with the proposal? Will the knowledge or technology gained from the Project benefit other areas of the state or nation? Does the technology proposed maximize interoperability with relevant local and statewide transportation technology? Can the proposed Project upgrade relevant local technology?

(E) Conforms to Laws, Regulations, and Standards. Is the proposed Project consistent with applicable state and federal statutes and regulations, or reasonably anticipated modifications of state or federal statutes, regulations or standards? Does the proposed design meet applicable state and federal standards?

(F) Federal Permits. Is the Project outside the purview of federal oversight, or will it require some level of federal involvement due to its location on the National Highway System or Federal Interstate System or because federal permits are required? Does the proposal identify the primary federal permits and agencies that will be involved in review and oversight of the Project?

(G) Meets/Exceeds Environmental Standards. Is the proposed Project consistent with applicable state and federal environmental statutes and regulations? Does the proposed design meet applicable state environmental standards? Does the proposal adequately address air quality issues?

(H) State and Local Permits. Does the proposal list the required permits and provide a schedule for obtaining them? Are there known or foreseeable negative impacts arising from the Project? If so, is there a mitigation plan

identified? Are alternatives to standards or regulations needed to avoid those impacts that cannot be mitigated?

(I) Right of Way. Does the proposal set forth a method or plan to secure all property interests required for the Transportation Project?

(J) Maintenance. Does the proposer have a plan to maintain any facilities that are part of the proposed Transportation Project in conformance with Department standards? Does the proposal clearly define assumptions or responsibilities during the operational phase including law enforcement, toll collection and maintenance? Under the proposal, will maintenance and operation of any new facilities be consistent with standards applied throughout the highway system and use the same work-forces and methods?

(c) Project Financing. Has the proposer provided a financial plan which will allow for access to the necessary capital to make a substantial contribution of non-state, private-sector, or other innovative financing resources to the financing of the facility or Project?

(A) Financing. Did the proposer demonstrate evidence of its experience, ability and commitment to provide a sufficient private-sector contribution or other innovative financing contribution of funds or resources to the Project as well as the ability to obtain the other necessary financing?

(B) Financial Plan. Does the financial plan demonstrate a reasonable basis for funding Project development and operations? Are the assumptions on which the plan is based well defined and reasonable in nature? Are the plan's risk factors identified and dealt with sufficiently? Are the planned sources of funding and financing realistic? Is the proposer prepared to make a financial contribution to the Project? Does the proposer adequately identify sources of non-state funding that it anticipates including in the Project financing, and does the proposer provide adequate assurance of the availability of those funds and the reliability of the funding sources?

(C) Estimated Cost. Is the estimated cost of the Project reasonable in relation to the cost of similar projects?

(D) Life Cycle Cost Analysis. Does the proposal include an appropriately conducted analysis of projected rate of return and life-cycle cost estimate of the proposed Project and/or facility?

(E) Business Objective. Does the proposer clearly articulate its reasons for pursuing the Project? Do its assumptions appear reasonable?

(d) Public Support. Has the proposer demonstrated sufficient public support for the proposed Project or proposed a reasonable plan for garnering that support?

(A) Community Benefits. Will the Project bring a significant transportation and economic benefit to the community, the region, and/or the state? Are there ancillary benefits to the communities because of the Project?

(B) Community Support. What is the extent of known support or opposition for the Project? Does the Project proposal demonstrate an understanding of the national and regional transportation issues and needs, as well as the impacts the Project may have on those needs? Is there a demonstrated ability to work with the community? Have affected local jurisdictions expressed support for the Project?

(C) Public Involvement Strategy. What strategies are proposed to involve local and state elected officials in developing the Project? What level of community involvement is contemplated for the Project? Is there a clear strategy for informing and educating the public and for obtaining community input throughout the development and life of the Project?

(e) Project Compatibility. Is the proposed Project compatible with, or can it be made compatible with state and local comprehensive transportation plans?

(A) Compatibility with the Existing Transportation System. Does the Project propose improvements that are compatible with, or that can be made compatible with, the present and planned transportation system? Does the Project provide continuity with existing and planned state and local facilities?

(B) Fulfills Policies and Goals. Does the proposed Project help achieve performance, safety, mobility or transportation demand management goals? Does the Project improve connections among the transportation modes?

(C) Enhance Community-Wide Transportation System. Has the proposer identified the specific way in which the Project benefits affected community transportation systems? Does the Project enhance adjacent transportation facilities?

(D) Conformity with Local, Regional and State Transportation Plans. Does the Project conform with, or can it achieve conformity with, city and county comprehensive plans and regional transportation plans? Does the Project conform with, or can it achieve conformity with, plans developed by the Oregon Transportation Commission under ORS 184.618 and any applicable regional transportation plans or local transportation programs? If not, are the steps proposed under OAR 731-070-0060(1)(b) to achieve conformity with such plans adequate and appropriate to provide a high likelihood that the Project and the applicable plans can be brought into conformity?

(E) Economic Development. Will the proposed Project enhance the state's economic development efforts? Is the Project critical to attracting or maintaining competitive industries and businesses to the region, consistent with stated objectives?

(6) Factors for Proposals that Include Tolling. If the Project financing component of a proposal includes a plan to impose tolls, the Evaluation Panel shall specifically consider:

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(a) The opinions and interests of units of government encompassing or adjacent to the path of the proposed Tollway Project in having the Tollway installed;

(b) The probable impact of the proposed Tollway Project on local environmental, aesthetic and economic conditions and on the economy of the state in general;

(c) The extent to which funding other than state funding is available for the proposed Tollway Project and the extent to which resources other than tolls would be required to be established and/or maintained as necessary security to support such a financing;

(d) The likelihood that the estimated use of the Tollway Project will provide sufficient revenues to independently finance the costs related to the construction and future maintenance, repair and reconstruction of the Tollway Project, including the repayment of any loans to be made from moneys in the State Tollway Account or other accounts;

(e) With respect to Tollway Projects, any portion of which will be financed with state funds or department loans or grants:

(A) The relative importance of the proposed Tollway Project compared to other proposed Tollways; and

(B) Traffic congestion and economic conditions in the communities that will be affected by competing Tollway Projects;

(f) The effects of Tollway implementation on other major highways in the state system and on community and local street traffic;

(g) The amount and classification of the traffic using, or anticipated to use, the Tollway;

(h) The amount of the toll proposed to be established for each class or category of Tollway user and, if applicable, the different amounts of the toll depending on time and day of use;

(i) The extent of the Tollway, including improvements necessary for Tollway operation and improvements necessary to support the flow of traffic onto or off of the Tollway;

(j) The location of toll plazas or toll collection devices to collect the toll for the Tollway;

(k) The cost of constructing, reconstructing, improving, installing, maintaining, repairing and operating the Tollway;

(L) The amount of indebtedness incurred for the construction of the Tollway and debt service requirements, if any;

(m) The value of assets, equipment and services required for the operation of the Tollway;

(n) The period of time during which the toll will be in effect;

(o) The process for altering the amount of the toll during the period of operation of the Tollway;

(p) The method of collecting the toll;

(q) The rate of return that would be fair and reasonable for a private equity holder, if any, in the Tollway; and

(r) Tolling policies adopted by the Oregon Transportation Commission.

(7) Evaluation Panel Recommendation.

(a) For Conceptual Proposals. For any Conceptual Proposal that receives a favorable evaluation, the Evaluation Panel will prepare a written determination, based on facts and circumstances presented in the proposal or known to ODOT, that the proposal merits development into a Detailed Proposal.

(b) In its written determination regarding any Conceptual Proposal, the Evaluation Panel may specify conditions that it recommends the proposer be required to satisfy before proceeding to develop a Detailed Proposal. By way of example, such conditions may include, but are not limited to:

(A) Requiring the proposer to provide additional information or clarification concerning elements or parts of its Conceptual Proposal;

(B) Requiring the proposer to develop and submit additional information confirming the technical feasibility of the proposed Transportation Project;

(C) Requiring the proposer to develop and submit additional information confirming that the proposed Transportation Project complies with or can be brought into compliance with relevant local and state transportation plans, restrictions on property use, and environmental laws, or that the Transportation Project and the applicable plans, restrictions and environmental laws can otherwise be brought into conformity;

(D) Requiring the proposer to commit in writing, to ODOT, to undertake good faith efforts to modify or adjust in specific ways, in the Detailed Proposal, the Transportation Project that was the subject of the Conceptual Proposal to incorporate steps, characteristics or features that ODOT identifies as necessary or desirable to enhance the feasibility, public acceptance, transportation efficiency, or economy in execution or operation, of the Transportation Project;

(E) Otherwise requiring the proposer to develop and present revisions to, or alternatives within, the Detailed Proposal that will permit ODOT to obtain best value based on the requirements and evaluation criteria set forth in the notice or request for Conceptual Proposals and based on knowledge obtained by ODOT by virtue of its review and evaluation of the Conceptual Proposals; and

(F) Requiring the proposer to enter into an interim agreement, on terms satisfactory to the proposer and ODOT, under which the proposer will provide services to ODOT in connection with the development of the Detailed

Proposal or further development of the Project, including assistance to ODOT in obtaining any necessary regulatory approvals.

(c) The Evaluation Panel will report its assessments and recommendations to the Director. The Director will review the Evaluation Panel's assessments and recommendations and based on that review shall:

(A) Select one Conceptual Proposal for development of a Detailed Proposal and forward the selection to the Commission for approval or disapproval;

(B) Select one Conceptual Proposal for development of a Detailed Proposal subject to the proposer's satisfaction of specified conditions and forward the selection to the Commission for approval or disapproval;

(C) Select one Conceptual Proposal for direct negotiations under OAR 731-070-0240 and -0245; or

(D) Reject all Conceptual Proposals.

(d) For Detailed Proposals. For any Detailed Proposal that receives a favorable evaluation, the Evaluation Panel will prepare a written recommendation, based on facts and circumstances presented in the proposal or known to ODOT, that the proposal merits consideration for negotiation of a final agreement. The Evaluation Panel will report its assessments and recommendations to the Director. The Director will review the Evaluation Panel's assessments and recommendations and based on that review shall:

(A) Select one Detailed Proposal and forward the selection to the Commission with a recommendation that the Detailed Proposal constitutes an acceptable basis for an agreement to enter into a public-private partnership with the proposer; or

(B) Reject all Detailed Proposals.

Stat. Auth.: ORS 184.616, 184.619 & 367.824

Stat. Implemented: ORS 367.800 - 367.824

Hist.: DOT 5-2004, f. & cert. ef. 8-26-04; DOT 4-2009, f. & cert. ef. 12-22-09

## 731-070-0160

### Use of a Process that Permits ODOT Feedback and Ability of Proponents to Supplement/Refine Proposals after Initial Submission; ODOT Authority to Elect Competitive Negotiations.

(1) For Original Unsolicited Proposals: ODOT reserves the right, to be exercised in its sole and absolute discretion, to require or to permit proposers to submit, at any time, revisions, clarifications to, or supplements of their previously submitted proposals. ODOT may, in the exercise of this authority, require proposers to add features, concepts, elements, information or explanations that were not included in their initial proposals, and may require them to delete features, concepts, elements, information or explanations that were included in their initial proposals. A proposer will not be legally bound to accept a request to add to or delete from a proposal any feature, concept, element or information, but its refusal to do so in response to a request by ODOT shall constitute sufficient grounds for ODOT to elect to terminate consideration of its proposal.

(2) For Competing Proposals:

(a) After ODOT's opening and review of Competing Proposals, ODOT may issue or post on its website an addendum to the request for Competing Proposals that:

(A) Requires proposers to address or add physical features or elements, and information or explanations that were not included in their initial proposals; or

(B) Requires proposers to delete physical features or elements that were included in their initial proposals.

(b) ODOT will send any such addendum that it issues by a method other than posting on its website to all proposers who are eligible to compete under the particular Competing Proposal process.

(c) ODOT will issue or electronically post an addendum issued under this section. The addendum will contain a deadline by which the proposers must submit to ODOT any additions to, modifications of or deletions from their proposals.

(d) A proposer will not be legally bound to accept a request to add to or delete from a proposal any feature, element or information or explanation, but its refusal to do so in response to an addendum issued by ODOT shall constitute sufficient grounds for ODOT to elect to terminate consideration of the proposer's Competing Proposal and also may be considered by ODOT in determining the proposer to be selected as the result of the Competing Proposals process.

(3) ODOT Authority to Elect Competitive Negotiations:

(a) In addition to ODOT's ability to exercise any alternative selection or contracting process permitted under this rule or OAR 731-070-0270(2), ODOT may authorize, at its option, competitive negotiations with multiple proposers as a means of selecting from among Competing Proposals solicited under OAR 731-070-0130, or from among Detailed Proposals requested under OAR 731-070-0270(2)(b). Negotiations under this section are part of the proposal evaluation process and do not constitute the negotiation of a Transportation Project agreement.

(b) ODOT may announce its election to conduct competitive negotiations:

(A) In any notice issued for Competing Proposals under OAR 731-070-0130;

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(B) In any request for the submission of Detailed Proposals under OAR 731-070-0270(2); or

(C) By written notice, by mail or by electronic means, to the proposers, issued at any time following ODOT's receipt of proposals under OAR 731-070-0130 or 731-070-0270(2).

(c) In any communication under subsection (3)(b) of this rule, or by notice to the proposers issued by mail or by electronic means at any time after the receipt of proposals, ODOT may announce that it will initiate competitive negotiations with all proposers who submitted responsive proposals, or only with proposers who qualify to negotiate because ODOT has determined that their proposals fall within a competitive range.

(d) When ODOT elects to negotiate only with proposers within a competitive range, then after ODOT's evaluation of proposals in accordance with the criteria set forth in the notice or request for proposals, ODOT will determine the proposers in the competitive range.

(A) For purposes of this section (3), the proposers in the competitive range consist of those proposers whose proposals, as determined by ODOT in its discretion, have a reasonable chance of being determined the best proposal as the result of the preliminary evaluation conducted under subsection (3)(d). In determining which proposals fall within the competitive range, ODOT may consider whether its preliminary evaluation of proposals establishes a natural break in the preliminary scores of the proposals that suggests those proposals that are sufficiently competitive to be included in the competitive range.

(B) ODOT will provide written notice to all proposers, by mail or by electronic means, of the proposals ODOT determines to fall within the competitive range. A proposer whose proposal is not within the competitive range may submit a written protest of ODOT's evaluation and determination of the competitive range within 14 calendar days after the date of ODOT's notice. A proposer's written protest must state facts and argument that demonstrate how the competitive range determination was flawed or how ODOT's determination constituted an abuse of discretion. If ODOT receives no written protest concerning the proposed selection listing within the 14 calendar day period, then ODOT will proceed with negotiations with the proposers whose proposals fell within the competitive range.

(C) In response to a timely filed protest, ODOT will issue a written decision that resolves the issues raised in the protest. ODOT will make its written determination available, by mail or by electronic means, to the protesting proposer and to the proposers falling within the competitive range. ODOT's written decision under this subsection shall constitute a final order under ORS 183.484.

(e) The object of competitive negotiations, which ODOT may conduct concurrently with more than one proposer or serially, is to maximize ODOT's ability to obtain best value and to permit proposers to develop revised proposals. Therefore, the negotiations may include, but shall not be limited to:

(A) Informing proposers of deficiencies in their proposals;

(B) Notifying proposers of parts of their proposals for which ODOT would like additional information; and

(C) Otherwise allowing proposers to develop revised proposals that will permit ODOT to obtain the best proposal based on the requirements and evaluation criteria set forth in the notice or request for proposals.

(f) The scope, manner and extent of negotiations with any proposer are subject to the discretion of ODOT. To prevent the disclosure of proposal information to a proposer's competitors, ODOT may conduct negotiations with proposers before information about the subject proposals is shared with other government entities under ORS 367.804(5)(a). In conducting negotiations, ODOT:

(A) Shall treat all proposers fairly and shall not engage in conduct that favors any proposer over another;

(B) Shall not reveal to another proposer a proposer's unique technology, unique or innovative approaches to Transportation Project design, management or financing, or any information that would compromise the proposer's intellectual property, trade secrets or sensitive business information; or

(C) Shall not reveal to another proposer a proposer's price or pricing information, provided, however, that ODOT may inform a proposer that ODOT considers a proposer's price or pricing information to be too high or too low.

Stat. Auth.: ORS 184.616, 184.619 & 367.824

Stat. Implemented: ORS 367.800 - 367.824

Hist.: DOT 5-2004, f. & cert. ef. 8-26-04; DOT 4-2009, f. & cert. ef. 12-22-09

## 731-070-0170

### Commission Review and Selection of Proposals

(1) The Commission shall review the Conceptual Proposal selected and forwarded by the Director under OAR 731-070-0140(7)(c). Based on that review the Commission shall approve or disapprove the Director's selection for development of a Detailed Proposal under OAR 731-070-0190.

(2) The Commission shall review the Detailed Proposal selected and forwarded by the Director under OAR 731-070-0140(7)(d). Based on that review the Commission shall approve or disapprove the Detailed Proposal selected by the Director for negotiation of a final agreement under OAR 731-070-0200.

Stat. Auth.: ORS 184.616, 184.619 & 367.824

Stat. Implemented: ORS 367.800 - 367.824

Hist.: DOT 5-2004, f. & cert. ef. 8-26-04; DOT 4-2009, f. & cert. ef. 12-22-09

## 731-070-0180

### Protests of Rejection of Proposal/Award of Contract to Competitor in Competing Proposals Context

(1) At least 14 calendar days prior to the final selection of the successful proposer in any competitive proposal selection process, ODOT will give, electronically or otherwise, written notice to all participating proposers of ODOT's apparent selection of the successful proposer. A proposer who would be adversely affected by the selection announced in the notice may, within the 14-calendar day period, submit to ODOT a written protest of the selection of the apparent successful proposer.

(2) For purposes of this rule, a protesting proposer is adversely affected by a selection only if the proposer has submitted a responsive Competing Proposal and is next-in-line for selection. In other words, the protesting proposer must demonstrate that all higher-scoring proposers are ineligible for selection because either:

(a) The higher-scoring proposals were not responsive to the requirements stated in ODOT's notice requesting Competing Proposals; or

(b) ODOT committed a substantial violation of a provision in ODOT's notice requesting Competing Proposals, in these rules, or in ORS 367.800 to 367.826, or otherwise abused its discretion, in evaluating the Competing Proposals.

(3) A proposer's written protest must state facts and argument that demonstrate how the selection process was flawed or how ODOT's selection of the apparent successful proposer constituted an abuse of ODOT's discretion. If ODOT receives no written protest concerning the proposed selection listing within the 14-calendar day period, then the selection of the successful proposer automatically shall become effective on the 15th calendar day after ODOT first transmitted or otherwise delivered its written notice of the apparent successful proposer.

(4) In response to a proposer's timely filed protest that complies with this rule, ODOT will issue a written decision that resolves the issues raised in the protest. In considering a timely protest, ODOT may request further information from the protesting proposer and from the apparent successful proposer identified in ODOT's notice issued under subsection (1) of this rule. ODOT will make its written determination available, by mail or by electronic means, to the protesting proposer and to the apparent successful proposer identified in ODOT's notice issued under subsection (1) of this rule. ODOT's written decision under this subsection shall constitute a final order under ORS 183.484.

Stat. Auth.: ORS 184.616, 184.619 & 367.824

Stat. Implemented: ORS 367.800 - 367.824

Hist.: DOT 5-2004, f. & cert. ef. 8-26-04; DOT 4-2009, f. & cert. ef. 12-22-09

## 731-070-0190

### Detailed Proposal

(1) Upon the Commission's approval of the Director's selection of a Conceptual Proposal under OAR 731-070-0140(7)(c)(1) and on expiration of the protest period, ODOT shall notify the proposer to submit a Detailed Proposal complying with the requirements of OAR 731-070-0195.

(2) Upon the Commission's approval of the Director's provisional selection subject to satisfaction of conditions of a Conceptual Proposal under OAR 731-070-0140(7)(c)(2) for development of a Detailed Proposal and on expiration of the protest period, ODOT shall notify the proposer of the conditions. The proposer shall have 21 calendar days from receipt of ODOT's notification to elect to proceed under specified conditions. If the proposer elects to proceed, ODOT shall work with the proposer to develop a plan for satisfying the conditions. If the plan entails entry into an interim "agreement" within the meaning of ORS 367.802(1), the agreement will conform to all relevant requirements of ORS 367.800 to 367.826.

(3) After the Commission's approval of the Director's selection or provisional selection of a Conceptual Proposal and until submission of the Detailed Proposal, ODOT and the proposer may confer on any matter pertinent to development of the Detailed Proposal.

(4) The Evaluation Panel, as supplemented by consultants retained by ODOT, shall review the Detailed Proposal to ensure compliance with the requirements of ORS 731-070-0195. When reviewing a Detailed Proposal, the Evaluation Panel may take into consideration any or all of the factors set forth in ORS 731-070-0140(5) and any additional factors consistent with the intent and goals of the OIPP legislation, but the weighting of factors and final decision is in the sole discretion of the Evaluation Panel.

(5) Upon completion of its review of the Detailed Proposal, the Evaluation Panel will recommend to the Director whether the Detailed Proposal should be advanced to a final agreement.

(6) After receipt of the Evaluation Panel's recommendation, the Director shall either accept or reject the Evaluation Panel's recommendation, and if accepted, the Director shall submit to the Oregon Transportation Commission the Detailed Proposal, as modified, if applicable, with a recommendation that the Detailed Proposal constitutes an acceptable basis for an agreement to enter into a public-private partnership with the proposer.

# ADMINISTRATIVE RULES

(7) After receipt of the selection from the Director, the Oregon Transportation Commission shall either approve or disapprove the Detailed Proposal selected by the Director for negotiation of a final agreement.

Stat. Auth.: ORS 184.616, 184.619 & 367.824

Stat. Implemented: ORS 367.800 - 367.824

Hist.: DOT 5-2004, f. & cert. ef. 8-26-04; DOT 4-2009, f. & cert. ef. 12-22-09

## 731-070-0195

### Contents and Format of Detailed Proposal

(1) A Detailed Proposal shall include the following information, except as expressly waived by the Department, separated by tabs as herein described:

(a) TAB 1: Qualifications and Experience.

(A) Identify the legal structure of the private entity or consortium of private entities or of private and public entities (the "Team") submitting the proposal. Identify the organizational structure of the Team for the Project, the Team's management approach and how each Major Partner and Major Subcontractor identified as being a part of the Team as of the date of submission of the proposal fits into the overall Team.

(B) Describe the experience of each private entity involved in the proposed Project. Describe the length of time in business, business experience, public sector transportation experience, PPP experience, development experience, design-build experience and other similarly sized engagements of each Major Partner and Major Subcontractor. The lead entity must be identified.

(C) Provide the names, addresses and telephone numbers of persons within the Team who may be contacted for further information.

(D) Include the address, telephone number, and the name of a specific contact person at a public entity for which the private entity or the Team or the primary members of the Team have completed a development project, public-private partnership project or design-build project.

(E) Include the resumes for those managerial persons within the Team that will likely be associated in a significant way with the Project development and implementation.

(F) Provide financial information regarding the private entity or Team and each Major Partner that includes, if available, the most recent independently audited financial statement of the private entity or Team and of each Major Partner, and which demonstrates their ability to perform the work and Project as set forth in the Detailed Proposal, including ability to obtain appropriate payment and performance bonds.

(G) Submit executed disclosure forms, prescribed by ODOT, for the Team, each Major Partner and any Major Subcontractor.

(b) TAB 2: Project Characteristics.

(A) Provide a detailed description of the Transportation Project or Projects, including all proposed interconnections with other existing transportation facilities or known publicly identified projects. Describe the Project in sufficient detail so the type and intent of the Project, the general location of the Project, and the communities that may be affected by the Project are clearly identified. Describe the assumptions used in developing the Project.

(B) Identify any significant local, state or federal services or practical assistance that the proposer contemplates requesting for the Project. In particular, identify and describe any significant services that will need to be performed by the Department such as right-of-way acquisition or operation and maintenance of the completed Project.

(C) Include a preliminary list of all significant federal, state, regional and local permits and approvals required for the Project. Identify which, if any, permits or approvals are planned to be obtained by ODOT.

(D) List the critical factors for the Project's success.

(E) Identify the proposed preliminary schedule for implementation of the Project.

(F) Describe the assumptions related to ownership, law enforcement and operation of the Project and any facility that is part of the Project.

(G) Describe the payment and performance bonds and guarantees that the Team will provide for the Project.

(H) Identify any public improvements that will be part of the proposed Transportation Project that will constitute "public works" under ORS 279C.800(5), the workers on which must be paid in accordance with Oregon's Prevailing Rate of Wage Law, ORS 279C.800 to 279C.870, and any public improvements the workers on which must be paid in accordance with the federal Davis-Bacon Act, 40 USC sections 3141 to 3148.

(c) TAB 3: Project Financing.

(A) Provide a projected budget for the Project based on proposer's prior experience on other projects or other cost projection factors and information.

(B) Include a list and discussion of assumptions (e.g., user fees, toll rates and usage of the facility) underlying all major elements of the plan for the Project.

(C) Identify the proposed risk factors relating to the proposed Project financing and methods for dealing with these factors.

(D) Identify any significant local, state or federal resources that the proposer contemplates requesting for the Project. Describe the total commitment (financial, services, property, etc.), if any, expected from governmental sources; the timing of any anticipated commitment; and its impact on project delivery.

(E) Identify any aspect of the financial model for the Transportation Project that implicates or potentially implicates restrictions on the use of highway-related revenues under Article IX, section 3a of the Oregon Constitution, and explain how the financial model avoids conflicting with those restrictions.

(F) Identify the form of the Private Contribution and the members of the Team that will make the Private Contribution and the proposed compensation for such Private Contribution.

(G) Provide an explanation of how funds for the Transportation Project will be segregated, accounted for and expended in a manner that ensures that any moneys from the state highway fund will be expended exclusively for the construction, reconstruction, improvement, repair, maintenance, operation and use of public highways, roads, streets and roadside rest areas in Oregon, as required by Article IX, section 3a(1), of the Oregon Constitution.

(H) Identify, to the extent possible, proposed financing Team members, including banks, investment banks, equity investors, credit enhancement providers, bond trustees and legal counsel to the same.

(d) TAB 4: Public Support/Project Benefit/Compatibility.

(A) Identify who will benefit from the Project, how they will benefit and how the Project will benefit the overall transportation system.

(B) Identify any anticipated government support or opposition, or general public support or opposition, for the Project.

(C) Explain the strategy and plans that will be carried out to involve and inform the agencies and the public in areas affected by the Project.

(D) Describe the significant social and economic benefits of the Project to the community, region or state and identify who will benefit from the Project and how they will benefit. Identify any state benefits resulting from the Project including the achievement of state transportation policies or other state goals.

(f) TAB 5: Special Deliverables.

(A) Provide a statement setting out the plan for securing all necessary real property, including proposed timeline for any necessary acquisitions.

(B) Provide proposed design, construction and completion guarantees and warranties.

(C) Include traffic studies and/or forecasts and related materials that establish Project revenue assumptions, including, if any, user fees or toll rates, and usage of the facility.

(D) Provide such additional material and information as ODOT may reasonably request.

(2) All pages of a proposal shall be numbered. Each copy of the proposal will be bound or otherwise contained in a single volume where practicable. All documentation submitted with the proposal will be contained in that single volume.

(3) A proposal submitted by a Private Entity must be signed by an authorized representative of the Private Entity submitting the proposal.

(4) The proposer shall include a list of any proprietary information included in the proposal which the proposer considers protected trade secrets or other information exempted from disclosure under ORS 367.804 and OAR 731-070-0280 and 731-070-0290.

Stat. Auth.: ORS 184.616, 184.619 & 367.824

Stat. Implemented: ORS 367.800 - 367.824

Hist.: DOT 5-2004, f. & cert. ef. 8-26-04; Renumbered from 731-070-0195, DOT 4-2009, f. & cert. ef. 12-22-09

## 731-070-0200

### Negotiation of Agreement

(1) A Detailed Proposal approved by the Commission for negotiation of a final agreement shall be referred to a working group appointed by the Director. The working group shall be responsible for negotiating the final agreement with the proposer. Each final agreement will define the rights and obligations of ODOT and the respective proposer with regard to the Transportation Project. The final agreement must include provisions specifying at least the following:

(a) At what point in the Transportation Project public and private sector partners will enter the Project and which partners will assume responsibility for specific Project elements;

(b) How the partners will share management of the risks of the Project;

(c) How the partners will share the costs of development of the Project;

(d) How the partners will allocate financial responsibility for cost overruns;

(e) The penalties for nonperformance;

(f) The incentives for performance;

(g) The invoicing and payment procedures and schedules to be followed, and the accounting and auditing standards to be used to evaluate work on the Project; and

(h) Whether the Project is consistent with the plan developed by the Oregon Transportation Commission under ORS 184.618 and any applicable regional transportation plans or local transportation programs and, if not consistent, how and when the Project will become consistent with applicable plans and programs.

(2) If public moneys are used to pay any costs of construction of public works that is part of a Transportation Project, the construction contract shall contain provisions that require payment of workers under the contract in accordance with ORS 279C.520 and 279C.800 to 279C.870.

# ADMINISTRATIVE RULES

(3) An agreement for the construction of a public improvement as part of a Transportation Project shall approved for bonding, financial guarantees, deposits or the posting of other security to secure the payment of laborers, subcontractors and suppliers who perform work or provide materials as part of the Project.

(4) The working group shall consider whether to implement procedures to promote competition among subcontractors for any subcontracts to be let in connection with the Transportation Project. As part of its request for approval of the agreement by the Commission under OAR 731-070-0230, the working group shall report in writing to the Commission its conclusions regarding the appropriateness of implementing such procedures.

Stat. Auth.: ORS 184.616, 184.619 & 367.824

Stat. Implemented: ORS 367.800 - 367.824

Hist.: DOT 5-2004, f. & cert. ef. 8-26-04; DOT 4-2009, f. & cert. ef. 12-22-09

## 731-070-0210

### ODOT Objection to Subcontractors

(1)(a) Prior to the execution of any contract with a proposer, the proposer must provide ODOT a list of all Major Subcontractors identified in its proposal who will perform work in the construction, operation or maintenance of the Project. All subcontractors must be legally eligible to perform or work on public contracts under federal and Oregon law and regulations. No subcontractor will be accepted who is on the list of contractors ineligible to receive public works contracts under ORS 279C.860.

(b) During performance of the contract, the proposer shall promptly notify ODOT of the engagement or disengagement of any Major Subcontractor.

(2) If ODOT has reasonable objection to any proposed subcontractor, ODOT is authorized to require, before the execution of a contract, an apparently successful proposer to submit an acceptable substitute. In such case, the proposer must submit an acceptable substitute, and the contract may, at ODOT's discretion, be modified to equitably account for any difference in cost necessitated by the substitution. ODOT will permit a maximum of 14 calendar days from the date of ODOT's written demand for substitution which to make an acceptable substitution. A proposer's failure to make an acceptable substitution at the end of the 14-calendar day period will constitute sufficient grounds for ODOT to refuse to execute a contract without incurring any liability for the refusal. However, if the proposer had identified such a Major Subcontractor in its Detailed Proposal as an equity contributor to the Project, or the Major Subcontractor had committed other financial support that had been relied on by the proposer, then the proposer shall be granted a period of 60 business days to identify an acceptable substitute. Following such identification, the proposer shall be granted an additional 30 business days to conclude negotiations of acceptable terms and conditions with that substitute Major Subcontractor.

Stat. Auth.: ORS 184.616, 184.619 & 367.824

Stat. Implemented: ORS 367.800 - 367.824

Hist.: DOT 5-2004, f. & cert. ef. 8-26-04; DOT 4-2009, f. & cert. ef. 12-22-09

## 731-070-0220

### Legal Sufficiency Review of Final Agreement

On completion of a final agreement, the Attorney General will review it for legal sufficiency under ORS 291.047 and OAR chapter 137, division 045. When conducting that review, the Attorney General shall:

(1) Recognize that the agreement is the product of a partnership; and

(2) Defer to the business judgment of the Department and the Oregon Transportation Commission concerning the assignment of risks and the incentives provided within the agreement.

Stat. Auth.: ORS 184.616, 184.619 & 367.824

Stat. Implemented: ORS 367.800 - 367.824

Hist.: DOT 5-2004, f. & cert. ef. 8-26-04; DOT 4-2009, f. & cert. ef. 12-22-09

## 731-070-0240

### Commission Selection of Projects for Solicitation of Proposals

ODOT either may solicit proposals or, as approved by the Commission, enter into direct negotiations with a legal entity for a public-private partnership approach to planning, acquiring, financing, developing, designing, managing, constructing, reconstructing, replacing, improving, maintaining, repairing, leasing and/or operating a Transportation Project if the Commission has determined that such an approach has the potential to accelerate cost-effective delivery of the Project or promote innovative approaches to carrying out the Project.

Stat. Auth.: ORS 184.616, 184.619 & 367.824

Stat. Implemented: ORS 367.800 - 367.824

Hist.: DOT 5-2004, f. & cert. ef. 8-26-04; DOT 2-2009(Temp), f. & cert. ef. 7-29-09 thru 12-22-10; DOT 4-2009, f. & cert. ef. 12-22-09

## 731-070-0245

### Direct Negotiations

When ODOT chooses to enter into direct negotiations for a public-private partnership approach, it may include a request for a proposal from the entity and may specify requirements for proposal content, as well as criteria and procedures under which the proposal will be evaluated and selected for further negotiations towards a final agreement.

Stat. Auth.: ORS 184.616, 184.619 & 367.824

Stat. Implemented: ORS 367.800 - 367.824

Hist.: DOT 2-2009(Temp), f. & cert. ef. 7-29-09 thru 1-22-10; DOT 4-2009, f. & cert. ef. 12-22-09

## 731-070-0250

### Solicitation Documents

(1) In a solicitation for proposals, ODOT will specify requirements for proposal content, and for criteria and procedures under which the proposals will be evaluated and selected. These requirements, criteria and procedures will comply with the requirements of ORS 367.800 to 367.826. Examples include:

(a) Selecting a proposal for development into a final agreement based on a unitary proposal instead of a two-step Conceptual/Detailed Proposal process; and

(b) Evaluating Conceptual Proposals to rank proposers and select one to perform development services necessary to refine the ultimate character and scope of the Project, after which the highly ranked proposers would be asked to submit Detailed Proposals from which one would be selected for negotiation of a final agreement.

(2) These examples are offered for illustrative purposes only, and do not limit the scope of ODOT's discretion or authority to develop proposal and evaluation criteria and processes for any project as long as those criteria and processes comply with the requirements of ORS 367.800 to 367.826.

Stat. Auth.: ORS 184.616, 184.619 & 367.824

Stat. Implemented: ORS 367.800 - 367.824

Hist.: DOT 5-2004, f. & cert. ef. 8-26-04; DOT 4-2009, f. & cert. ef. 12-22-09

## 731-070-0260

### Public Notice of Solicitation

(1) Notice and Distribution Fee. ODOT will furnish notice to a sufficient number of entities for the purpose of fostering and promoting competition. The notice will indicate where, when, how, and for how long the Solicitation Document may be obtained and generally describe the work. The notice may contain any other appropriate information. ODOT may charge a fee or require a deposit for the Solicitation Document. ODOT may furnish notice using any method determined to foster and promote competition, including:

(a) Mail notice of the availability of Solicitation Documents ("notice") to Entities that have expressed an interest in ODOT's procurements;

(b) Place notice on the Oregon the Department of Administrative Services' electronic procurement system known as the Oregon Procurement Information Network ("ORPIN"); or

(c) Place notice on ODOT's internet web site.

(3) Posting Advertisement for Proposals. ODOT will post a copy of each advertisement for proposals at the principal business office of ODOT. A proposer may obtain a copy of the advertisement for proposals upon request from Contractor Plans Unit, Transportation Building, 355 Capitol Street NE, Salem, Oregon 97301-3871 or on the Internet at [www.odot.state.or.us](http://www.odot.state.or.us).

(4) Minority, Women Emerging Small Business. ODOT will provide timely notice of all solicitations to the Advocate for Minority, Women and Emerging Small Business if the estimated Project cost exceeds \$5,000.

Stat. Auth.: ORS 184.616, 184.619 & 367.824

Stat. Implemented: ORS 367.800 - 367.824

Hist.: DOT 5-2004, f. & cert. ef. 8-26-04; DOT 4-2009, f. & cert. ef. 12-22-09

## 731-070-0280

### Public Records Requests

(1) Upon written request and within a reasonable time, the Director or his designee will provide records relating to Transportation Project proposals for inspection in accordance with ORS Chapter 192, ORS 367.804 and these rules.

(2) ODOT may charge fees to cover its reasonable and actual costs in responding to public records requests. Such costs may include but are not limited to costs associated with locating records, separating exempt from nonexempt records, monitoring the requester's inspection of requested records, copying records and delivering copies of requested records. In accordance with OAR 731-001-0025, ODOT may charge fees calculated to reimburse it for its reasonable and actual costs as authorized by the relevant provisions of the Public Records Law.

(3) ODOT will prepare an estimate of the costs of responding to any request for public records as required by ORS 192.440(1)(c), and may prepare an estimate of costs in other circumstances. ODOT may require payment of all or a portion of the estimated costs before acting on the request.

(4) Records related to a proposal for a Transportation Project submitted to ODOT under the Oregon Innovative Partnerships Program are exempt from disclosure under the Oregon Public Records Law until:

(a) ODOT shares the records or the information contained in them with a local government, metropolitan planning organization or area commission on transportation as part of the consultation process described in OAR 731-070-0295; or

(b) ODOT completes its evaluation of the proposed Project and has selected the proposal for negotiation of an agreement.

(5) Notwithstanding section (4) of this rule, sensitive business, commercial or financial information that is not customarily provided to business competitors that is submitted to the Department in connection with a

# ADMINISTRATIVE RULES

Transportation Project is exempt from disclosure under the Oregon Public Records Law until the records or information contained in them is submitted to the Commission in connection with its review and approval of the final agreement for a Transportation Project under ORS 367.806(6) and OAR 731-070-0230.

(6) On ODOT's receipt of a request, under the Public Records Law, for the disclosure of records or information that have been submitted to ODOT by a proposer under the program authorized by ORS 367.800 to 367.826, ODOT will notify the proposer of the request and provide the proposer a reasonable opportunity to demonstrate that all or part of the requested records or information are exempt from disclosure under ORS 367.800 to 367.826, the Public Records Law, ORS 192.410 to 192.505, the Uniform Trade Secrets Act, ORS 646.461 to 646.475, or other applicable law recognizing the confidentiality of public records and information. In determining whether the information or records are exempt from disclosure, ODOT will consider the evidence and objections to disclosure presented by the proposer, but as custodian of the records or information, ODOT must make the initial determination of the records that may be withheld from disclosure.

(7) An affected proposer who seeks to demonstrate that public records pertaining to it are exempt from disclosure must respond to ODOT with its evidence and objections within four business days of ODOT's issuance of notice of the request to the proposer. After considering the proposer's evidence and objections, ODOT will inform the proposer of its disclosure decision, giving the proposer no fewer than three business days in which to institute appropriate proceedings in its own behalf to protect the proposer's interests in preventing the disclosure or maintaining the confidentiality of the records or information. The proposer shall be exclusively responsible for all costs, expenses and attorney fees incurred in taking any action to prevent the disclosure of information or records under this section.

Stat. Auth.: ORS 184.616, 184.619 & 367.824

Stat. Implemented: ORS 367.800 - 367.824

Hist.: DOT 5-2004, f. & cert. ef. 8-26-04; DOT 4-2009, f. & cert. ef. 12-22-09

## 731-070-0295

### Consultation with Local Government, Metropolitan Planning Organization or Area Commission on Transportation

As part of its evaluation of a proposal submitted under these rules, ODOT will consult with appropriate local governments, metropolitan planning organizations and area commissions on transportation. Consultation under this rule will occur in such manner and at such time as ODOT considers appropriate in the particular circumstance, and shall include:

(1) An informal information-sharing opportunity prior to completion of the Department's evaluation of the proposal;

(2) Solicitation of comments from the appropriate local governments, transportation district, metropolitan planning organization or area commission on transportation; and

(3) Any additional method(s) of consultation appropriate under the circumstances.

Stat. Auth.: ORS 184.616, 184.619 & 367.824

Stat. Implemented: ORS 367.800 - 367.824

Hist.: DOT 5-2004, f. & cert. ef. 8-26-04; DOT 4-2009, f. & cert. ef. 12-22-09

## 731-070-0300

### ODOT Rights Reserved

(1) ODOT reserves all rights available to it by law in administering these rules, including without limitation, the right in its sole discretion to:

(a) Reject any and all proposals at any time.

(b) Terminate evaluation of any and all proposals at any time.

(c) Suspend, discontinue and/or terminate agreement negotiations with any proposer at any time prior to the actual authorized execution of such agreement by all parties.

(d) Negotiate with a proposer without being bound by any provision in its proposal.

(e) Request or obtain additional information about any proposals.

(f) Issue addenda to and/or cancel any RFP.

(g) In accordance with the rule-making procedures of ORS chapter 183, revise, supplement or withdraw all or any part of these rules.

(h) Decline to return any and all fees required to be paid by proposers hereunder.

(i) Request revisions to proposals.

(2)(a) Except as otherwise provided for in a solicitation of proposals or in an order pertaining to an unsolicited proposal, neither the state, the Oregon Transportation Commission nor ODOT is liable for, or obligated to reimburse the costs incurred by proposers in developing proposals or in negotiating agreements. In its sole discretion, ODOT may, in a solicitation of proposals or in an order, provide for the possibility of payment for work product developed by a proposer in the course of developing a proposal.

(b) Any and all information ODOT makes available to proposers shall be as a convenience to the proposer and without representation or warranty of any kind. Proposers may not rely upon any oral responses to inquiries. If a proposer has a question regarding application of these rules, the proposer may submit the question in writing to the Director or his designee.

Stat. Auth.: ORS 184.616, 184.619 & 367.824

Stat. Implemented: ORS 367.800 - 367.824

Hist.: DOT 5-2004, f. & cert. ef. 8-26-04; DOT 4-2009, f. & cert. ef. 12-22-09

## 731-070-0320

### ODOT's Authority to Suspend, by "Order," the Acceptance of Specified Categories of Unsolicited Proposals

(1) ODOT may, at any time, suspend its receipt and consideration of all unsolicited proposals, of any class, category or description of unsolicited proposals, or of unsolicited proposals to undertake any class, category or description of Transportation Project (such as, by way of illustration only, proposals to perform the maintenance of existing ODOT transportation facilities, proposals within certain cost categories, proposals that relate to certain geographic areas or proposals to repair state secondary highway surfaces) by issuing a written order that:

(a) Declares that ODOT has suspended the acceptance and consideration of all unsolicited proposals or of unsolicited proposals for certain types of Projects;

(b) Describes the proposals or the class or character of the Projects that are subject to the suspension; and

(c) Specifies either the term of the suspension or that the suspension will continue until recalled by a subsequent order of ODOT.

(2) Commencing on the effective date of the suspension order, ODOT will refuse to accept unsolicited proposals or unsolicited proposals for Transportation Projects of the class, category or description contained in the order, and may, as stated in the order, cease further processing and consideration of any such unsolicited proposals then currently under consideration by ODOT.

(3) By submitting an unsolicited proposal, each proposer thereby waives and relinquishes every claim of right, entitlement or expectation that the processing and consideration of its proposal will not be subject to suspension under this rule.

(4) The State of Oregon, ODOT, the Oregon Transportation Commission, and their officers and employees, shall have no responsibility or liability of any nature for the preservation, confidentiality or safekeeping of any proposal that is subject to a suspension order under this rule and is submitted to ODOT while that suspension order is in effect.

Stat. Auth.: ORS 184.616, 184.619 & 367.824

Stat. Implemented: ORS 367.800 - 367.824

Hist.: DOT 5-2004, f. & cert. ef. 8-26-04; DOT 4-2009, f. & cert. ef. 12-22-09

## 731-070-0350

### Discretionary Order Requiring the Prequalification of Proposers — Unsolicited Proposals

(1) ODOT may, at any time, issue a written order that requires any entity that wishes to submit an unsolicited proposal to apply for prequalification to submit a proposal. The order must describe the character or class of the Project or Projects, and the size of the Projects in terms of estimated implementation or construction cost, that are subject to the prequalification requirement. The order also must provide that each proposer must be prequalified by ODOT in order to submit a proposal for the kind or kinds of Project described in the order, and that ODOT will reject proposals received for the kind or kinds of Projects described in the order from proposers who are not prequalified.

(2) The prequalification order also shall contain:

(a) The location at which interested entities may obtain prequalification applications, information about prequalification criteria and other related documents, if any; and

(b) The name, title, and address of the person designated to receive the prequalification applications.

(3) Each prequalification application shall be in writing and must substantially comply with the instructions given by ODOT in a prequalification application questionnaire or prequalification form issued by ODOT.

(4) ODOT may establish the criteria used to evaluate prequalification applications in light of the features and demands of the kind or kinds of Project for which prequalification is required as a condition of an entity's ability to submit an unsolicited proposal. The criteria may include, but shall not be limited to:

(a) The applicant's financial resources, including:

(A) Bonding capacity;

(B) Solvency; and

(C) Past payment history with employees, suppliers and subcontractors;

(b) The applicant's equipment and technology available to perform the Project, including whether the applicant has or reasonably can obtain, either itself, through subcontractors, or otherwise, all licenses and registrations necessary for use and operation of any technology or equipment involved in the Project, and all licenses and permits necessary to the lawful completion of the Project;

(c) The applicant's key personnel available to work on the Project, including:

(A) The specific capabilities of the applicant and its key personnel, as demonstrated by work on past projects which are comparable in size, nature, and technical and managerial complexity to the Project and to the scope of any construction services that may be required by the Project; and

(B) The identity and experience of the key personnel planned to be assigned to the Project;

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(d) The applicant's performance history on other projects or contracts, including the applicant's approach to comparable projects and the planning, phasing and scheduling techniques employed by the applicant in those projects in general, and to the extent possible, particularly as applicable to the kind or kinds of Project for which prequalification is required;

(e) The applicant's safety programs and safety record including, where applicable, evidence of the applicant's experience modifier issued by the Department of Consumer and Business Services, Workers' Compensation Division;

(f) The applicant's experience or ability to provide the services of key persons with experience in design-build projects and similar innovative approaches to project completion;

(g) References from owners, architects and engineers with whom the applicant has worked in the past;

(h) The histories of the applicant and its Major Partners concerning their involvement, within the five years immediately preceding the issuance date of the Department's prequalification order (or such shorter period as ODOT may specify in the order), in claims and litigation, including mediated or arbitrated construction claims and governmental administrative proceedings, arising out of past projects or under contracts to which they were parties in which the proceedings exceeded \$1,000,000 in liability exposure or claim amount;

(i) Information concerning whether the applicant, any Major Partner, and any key person of either has been, within the five years immediately preceding the issuance date of the Department's prequalification order (or such shorter period as ODOT may specify in the order):

(A) Convicted of any criminal offense as an incident in obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;

(B) Convicted under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty that currently, seriously and directly affects the person's responsibility as a contractor; or

(C) Convicted or determined to be liable under state or federal antitrust statutes.

(5) ODOT will, after receiving a prequalification application submitted in accordance with section (3) of this rule, notify the applicant whether the applicant is qualified to submit an unsolicited proposal for a Project of the kind or kinds described in ODOT's order issued under section (1) of this rule.

(6) If ODOT determines that the applicant is not qualified, ODOT shall provide the applicant written notice of that determination that contains a statement of the reason or reasons for that determination.

(7) An entity that ODOT determines not to be qualified may, within five (5) business days after its receipt of ODOT's written notice of that determination, submit to ODOT a written protest of the decision. The protest must state facts and argument to demonstrate that ODOT's decision was incorrect or constituted an abuse of ODOT's discretion.

(8) If an entity timely submits a protest that complies with section (7) of this rule, ODOT will issue a written decision that resolves the issues raised in the protest. ODOT's written decision under this subsection shall constitute a final order under ORS 183.484.

(9) Unless otherwise specified in ODOT's order issued under section (1) of this rule, an ODOT determination that an applicant is prequalified to submit proposals for any particular kind or kinds of Project shall have an effective term of three years from the date of ODOT's written notice of the determination.

(10) Notwithstanding any specification of a term during which an entity's prequalification is effective, ODOT may terminate or revise an entity's prequalified status upon ODOT's discovery of information that adversely reflects on the applicant's prequalified status. Prior to any termination or adverse revision of an applicant's prequalification, ODOT will provide the applicant written notice of that determination that contains a statement of the reason or reasons for that determination and advise that entity that it may protest the proposed action under section (7) of this rule.

(11) On the written request of an entity that previously has been prequalified for a Project or for kinds of Projects similar in size and character to the kind or kinds of Projects described in the order issued under section (1) of this rule (as determined in the discretion of ODOT), or on the written request of a unit of local government, ODOT may waive the requirement that the entity or unit of local government must submit a prequalification application under this rule.

Stat. Auth.: ORS 184.616, 184.619 & 367.824

Stat. Implemented: ORS 367.800 - 367.824

Hist.: DOT 5-2004, f. & cert. ef. 8-26-04; DOT 4-2009, f. & cert. ef. 12-22-09

## 731-070-0360

### Discretionary Notice Requiring the Prequalification of Proposers — Competing Proposals

(1) Prior to furnishing public notice of a request for Competing Proposals, ODOT may issue written notice that any entity that wishes to submit a Competing Proposal in response to that request must be prequalified by ODOT. The notice must provide that each proposer must be prequalified by

ODOT in order to submit a proposal in response to the particular request for Competing Proposals, and that ODOT will reject proposals received from proposers who are not prequalified.

(2) ODOT will publish each notice that prequalification is required in the same manner that it issues public notice of a solicitation under OAR 731-070-0260(2). Additionally, each notice shall contain:

(a) The location at which interested entities may obtain prequalification applications, information about prequalification criteria and other related documents, if any;

(b) The date and time by which entities must submit their prequalification applications to ODOT, which generally will be a reasonable time prior to ODOT's issuance of the request for Competing Proposals, and the location at which they must be filed; and

(c) The name, title, and address of the person designated to receive the prequalification applications.

(3) Each prequalification application shall be in writing and must substantially comply with the instructions given by ODOT in a prequalification application questionnaire or prequalification form issued by ODOT.

(4) ODOT will establish the criteria used to evaluate prequalification applications prior to the advertised notice of required prequalification. The criteria may include, but need not be limited to:

(a) The applicant's financial resources, including:

(A) Bonding capacity;

(B) Solvency; and

(C) Past payment history with employees, suppliers and subcontractors;

(b) The applicant's equipment and technology available to perform the Project, including whether the applicant has or can reasonably obtain, either itself, through subcontractors, or otherwise, all licenses and registrations necessary for use and operation of any technology or equipment involved in the Project, and all licenses and permits necessary to the lawful completion of the Project;

(c) The applicant's key personnel available to work on the Project, including:

(A) The specific capabilities of the applicant and its key personnel, as demonstrated by work on past projects which are comparable in size, nature, and technical and managerial complexity to the Project and the scope of any construction services that may be required by the Project; and

(B) The identity and experience of the key personnel planned to be assigned to the Project;

(d) The applicant's performance history on other projects or contracts, including the applicant's approach to comparable projects and the planning, phasing and scheduling techniques employed by the applicant on those projects in general, and to the extent possible, particularly as applicable to the kind or kinds of Project for which prequalification is required;

(e) The applicant's safety programs and safety record including, where applicable, evidence of the applicant's experience modifier issued by the Department of Consumer and Business Services, Workers' Compensation Division;

(f) The applicant's experience or ability to provide the services of key persons with experience in design-build projects and similar innovative approaches to project completion;

(g) References from owners, architects and engineers with whom the applicant has worked in the past;

(h) The histories of the applicant and its Major Partners concerning their involvement, within the five years immediately preceding the issuance date of the Department's prequalification notice (or such shorter period as ODOT may specify in the notice), in claims and litigation, including mediated or arbitrated construction claims and governmental administrative proceedings, arising out of past projects or under contracts to which they were parties in which the proceedings exceeded \$1,000,000 in liability exposure or claim amount;

(i) Information concerning whether the applicant, any Major Partner, and any key person of either has been, within the five years immediately preceding the issuance date of the Department's prequalification notice (or such shorter period as ODOT may specify in the notice):

(A) Convicted of any criminal offense as an incident in obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;

(B) Convicted under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty that currently, seriously and directly affects the person's responsibility as a contractor;

(C) Convicted or determined to be liable under state or federal antitrust statutes.

(5) ODOT will, after receiving a prequalification application submitted in accordance with section (3) of this rule, notify the applicant whether the applicant is qualified to submit a proposal in response to ODOT's request for Competing Proposals.

(6) If ODOT determines that the applicant is not qualified, ODOT will provide the applicant written notice of that determination that contains a statement of the reason or reasons for that determination.

# ADMINISTRATIVE RULES

(7) An entity whom ODOT determines not to be qualified may, within five business days after its receipt of ODOT's written notice of that determination, submit to ODOT a written protest of the decision. The protest must state facts and argument to demonstrate that ODOT's decision was incorrect or constituted an abuse of ODOT's discretion.

(8) If an entity timely submits a protest that complies with section (7) of this rule, ODOT will issue a written decision that resolves the issues raised in the protest. ODOT's written decision under this subsection shall constitute a final order under ORS 183.484.

(9) Unless otherwise specified in ODOT's notice issued under section (1) of this rule, an ODOT determination that an applicant is prequalified under this section for the Projects or kinds of Projects specified in the notice shall have an effective term of three years from the date of ODOT's written notice of the determination.

(10) Notwithstanding any specification of a term during which an entity's prequalification is effective, ODOT may terminate or revise an entity's prequalified status upon ODOT's discovery of information that adversely reflects on the applicant's prequalified status. Prior to any termination or adverse revision of an applicant's prequalification, ODOT will provide the applicant written notice of that determination that contains a statement of the reason or reasons for that determination and advise that entity that it may protest the proposed action under section (7) of this rule.

(11) On the written request of an entity that previously has been prequalified for a Project or for kinds of Projects similar in size and character to the Project or kinds of Projects described in the notice issued under section (1) of this rule (as determined in the discretion of ODOT), or on the written request of a unit of local government, ODOT may waive the requirement that the entity or unit of local government must submit a prequalification application under this rule.

Stat. Auth.: ORS 184.616, 184.619 & 367.824  
Stat. Implemented: ORS 367.800 - 367.824  
Hist.: DOT 5-2004, f. & cert. ef. 8-26-04; DOT 4-2009, f. & cert. ef. 12-22-09

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**Rule Caption:** Procurement Rules Addressing 2009 Legislative Changes for Public Contracting.

**Adm. Order No.:** DOT 5-2009(Temp)

**Filed with Sec. of State:** 12-22-2009

**Certified to be Effective:** 1-1-10 thru 6-30-10

**Notice Publication Date:**

**Rules Amended:** 731-005-0410, 731-005-0470, 731-005-0670, 731-007-0210, 731-007-0260, 731-007-0290, 731-146-0010, 731-147-0010, 731-148-0010, 731-149-0010

**Subject:** The 2009 Oregon Legislature passed bills affecting public procurements of goods and services, including HB 2867 (Ch 880 OL 2009) and SB 479 (Ch 235 OL 2009). ODOT is adopting the Attorney General's model public contracting rules that implement the legislative changes affecting public contracting. The adopted changes reflect the requirements related to contracting with disabled veterans, revisions to clarify several defined terms (see OAR Chapter 137, Division 46); revisions to implement HB 2867, including feasibility and cost analysis, good cause for not requiring contractors to meet highest performance standards, consequences of contractors failing to meet performance standards, provisions dealing with Competitive Sealed Bidding and Proposals, Procedures for Competitive Range and Discussions and Negotiations for Multi-tiered and Multistep Proposals, Small Procurements, Bids or Proposals as Offers, Late Offers, Late Withdrawals and Late Modifications, Prequalification of Prospective Offerors, Pre-negotiation of Contract Terms and Conditions, Offer Evaluation and Award, Availability of Award Decisions, Amendments to Contracts and Price Agreements, revisions to simplify and clarify other provisions (see OAR Chapter 137, Division 47); 2009 legislative changes affecting procurements of Architectural, Engineering and Land Surveying Services and Related Services, including, Applicable Selection Procedures, Pricing Information, Disclosure of proposals, increase in the small estimated fee amount to \$50,000, revisions to clarify the defined terms "Procurement" and "Consultant" and to simplify several provisions (see OAR Chapter 137, Division 48); providing clarity regarding when the first-tier subcontractor disclosure form is required, requirements for determining an Offeror's responsibility, form and manner of withholding retainage and other clarifications to existing rules (see OAR Chapter 137, Division 49.)

**Rules Coordinator:** Lauri Kunze—(503) 986-3171

## 731-005-0410

### Effective Date

OAR 731-005-0400 through 731-005-0790 as amended become effective on January 1, 2010 and apply to Public Improvement Contracts first advertised, but if not advertised then entered into, on or after January 1, 2010.  
Stat. Auth.: ORS 184.616, 184.619, 279A.050 & 279A.065  
Stats. Implemented: ORS 279A.005 & Sec. 335 & 337, Ch. 794, OL 2003  
Hist.: DOT 2-2005, f. 2-16-05, cert. ef. 3-1-05; DOT 5-2009(Temp), f. 12-22-09, cert. ef. 1-1-10 thru 6-30-10

## 731-005-0470

### Solicitation Methods

(1) Policy. It is the policy of the State of Oregon to encourage open and impartial competition in public contracting. ODOT may establish Competition by comparing price, product and service quality, product performance, and an Entity's ability to perform, technical competence and ability to make timely deliveries. ODOT must make every effort to construct Public Improvements at the least cost to ODOT.

(2) Solicitation Methods. ODOT may encourage meaningful competition through a variety of solicitation methods. ODOT shall choose the solicitation method that is most likely to encourage Offers representing optimal value to ODOT:

(a) ODOT may use an Invitation to Bid if ODOT believes it will receive optimal value by selecting the lowest priced Offer that meets the technical requirements of ODOT's Specifications;

(b) ODOT may use a Request for Proposal if ODOT believes it will receive optimal value:

(A) By selecting an Offer using both price and non-price related factors;

or

(B) By selecting an Offer using both price and non-price related factors and permitting negotiations pursuant to OAR 731-005-0650.

(c) ODOT may permit negotiations under a Request for Proposal pursuant to OAR 731-005-0650 if:

(A) ODOT intends to consider alternative terms and conditions to reduce Agency cost or enhance the value of the product or service requested; or

(B) ODOT finds negotiation is required to effect a successful procurement (e.g. the Specifications are complex and ODOT expects numerous queries as to the proper interpretation of the Specification; the Work requires a high level of technical or managerial competence that cannot be defined adequately in the Specifications; or ODOT believes negotiations are necessary to gauge the Proposer's understanding of complex Specifications).

(3) Solicitation Documents. The Solicitation Document shall include the following:

(a) General Information:

(A) Notice of any pre-Offer conference as follows:

(i) The time, date and location of any pre-Offer conference;

(ii) Whether attendance at the conference will be mandatory or voluntary; and

(iii) That statements made by ODOT's representatives at the conference are not binding upon ODOT unless confirmed by Written Addendum.

(B) The deadline for submitting mandatory prequalification applications and the class or classes of Work for which Offerors must be prequalified if prequalification is a requirement;

(C) The name and title of the authorized Agency person designated for receipt of Offers and contact person (if different);

(D) Instructions and information concerning submission requirements including the address of the office to which Offers must be delivered and any other special information, e.g., whether Offers may be submitted by Facsimile, Electronic Data Interchange or Electronic Procurement (See OAR 731-005-0500, 731-005-0505 and 731-005-0510 for required provisions for Facsimile, Electronic Data Interchange or Electronic Procurement);

(E) The time, date and place of Opening;

(F) The time and date of Closing after which ODOT will not accept Offers, which time shall be not less than five Days after the date of the last publication of the advertisement. The interval between the date of issuance of the Solicitation Document and a Closing should not be less than 14 Days for an ITB and not less than 30 Days for an RFP unless ODOT finds a shorter interval is in the public's interest. If ODOT is issuing an ITB that may result in a Contract for a Public Improvement with a value in excess of \$75,000, ODOT shall not designate a time of Closing that falls when ODOT is closed to the public or after 12 noon on Friday (see also, OAR 731-007-0260; for timing issues relating to Addenda see OAR 731-005-0580(3));

(G) The form and submission of Offers and any information required therein, including Bid or Proposal security, if any;

(H) The office where the plans and Specifications for the Work or goods may be reviewed;

(I) A statement that each Offeror to an ITB or RFP must identify whether the Bidder or Proposer is a "resident bidder," as defined in ORS 279A.120;

(J) If the Contract resulting from a Solicitation will be a Contract for a Public Work subject to ORS 279C.800 to 279C.870 or the Davis-Bacon Act (40 U.S.C. 276a), a statement that no Offer will be received or considered by ODOT unless the Offer contains a statement by the Offeror as a part of its



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Offer that "Contractor agrees to be bound by and will comply with the provisions of ORS 279C.830 or 40 U.S.C. 276a;"

(K) If the Work so requires, a statement that ODOT will not receive or consider an Offer from an Entity when the Entity is not registered with the Construction Contractors Board or is not licensed by the State Landscape Contractors Board as required by ORS 671.530;

(L) Whether a Contractor or a subcontractor under the Contract must be licensed under ORS 468A.720;

(M) Contractor's certification of nondiscrimination in obtaining required subcontractors in accordance with ORS 279A.110. (See OAR 731-005-0670(3)); and

(N) How ODOT will notify Offerors of Addenda and how ODOT will make Addenda available. See OAR 731-005-0580.

(b) Agency Need. The character of the Work or goods ODOT is purchasing including, if applicable, a description of the acquisition, Specifications, delivery or performance schedule, inspection and acceptance requirements;

(c) Evaluation process:

(A) A statement that ODOT may reject any Offer not in compliance with all prescribed solicitation bidding procedures and requirements and other applicable laws, including the requirement to demonstrate the Bidder's responsibility under ORS 279C.375(3)(b), and that ODOT may reject for good cause any or all Offers after finding that doing so is in the public interest;

(B) The anticipated solicitation schedule, deadlines, protest process, and evaluation process, if any;

(C) Evaluation criteria, including the relative value applicable to each criterion, that ODOT will use to determine the Responsible Bidder with the lowest Responsive Bid or the Responsible Proposer with the best Responsive Proposal and the evaluation criteria ODOT will use to determine acceptability of any Work or goods to be purchased:

(i) If Contract award is to be based upon low Bid, ODOT shall set forth objective evaluation criteria in the Solicitation Document. Examples of such criteria that may be used in determining low Bid include, but are not limited to, conversion costs, transportation cost, volume weighing, trade-in allowances, cash discounts, depreciation allowances, cartage penalties, ownership or life-cycle cost formulas, performance history on other private and public Contracts, experience of key personnel, adequacy of equipment and physical plant, financial wherewithal, sources of supply, references and warranty provisions. Evaluation criteria need not be precise predictors of actual future costs. However, to the extent possible, such evaluation factors shall be reasonable estimates based upon information ODOT has available concerning future use;

(ii) If the Solicitation Document is a Request for Proposal, ODOT shall set forth selection criteria in the Solicitation Document. Examples of evaluation criteria include price or cost, quality of a product or service, past performance, management, capability, personnel qualification, prior experience, compatibility, reliability, operating efficiency, expansion potential, experience of key personnel, adequacy of equipment or physical plant, financial wherewithal, sources of supply, references and warranty provisions. Evaluation factors need not be precise predictors of actual future costs and performance, but to the extent possible, such factors shall be reasonable estimates based on information available to ODOT; or

(iii) If the Solicitation Document is a Request For Proposal and ODOT is willing to negotiate terms and conditions of the Contract, ODOT must identify the specific terms and conditions in the Solicitation Document that are subject to negotiation and authorize Offerors to propose certain alternative terms and conditions in lieu of the terms and conditions ODOT has identified as authorized for negotiation. ODOT must describe the evaluation and negotiation process in accordance with OAR 731-005-0650, including the Competitive Range; and

(D) Reference to statutory preference for materials and supplies manufactured from recycled materials under ORS 279A.125.

(d) Terms and conditions. ODOT shall include all Contract terms and conditions, including warranties and bonding requirements, ODOT considers necessary. Without limiting the preceding sentence, ODOT must include all applicable Contract provisions required by ORS 279C.500 through 279C.870 as follows:

(A) Payment of all Entities furnishing labor or material, contributions to Industrial Accident Fund, liens and withholding taxes (ORS 279C.505);

(B) If the Contract is for a Public Improvement, a condition that the Contractor shall demonstrate it has established a drug-testing program for its employees;

(C) If the Contract calls for demolition Work described in ORS 279C.510, a condition requiring the Contractor to salvage or recycle construction and demolition debris, if feasible and cost-effective;

(D) If the Contract calls for lawn or landscape maintenance, a condition requiring the Contractor to compost or mulch yard waste material at an approved site, if feasible and cost effective (ORS 279C.510);

(E) Payment of claims by public officers (ORS 279C.515);

(F) Contractor and first-tier subcontractor liability for late payment on Public Improvement Contracts pursuant to ORS 279C.515;

(G) Entity's right to file a complaint with the Construction Contractors Board for all Contracts related to a Public Improvement Contract (ORS 279C.515);

(H) Hours of labor in compliance with ORS 279C.520 and 279C.540;

(I) Environmental and natural resources regulations (ORS 279C.525);

(J) Payment for medical care and providing workers' compensation (ORS 279C.530);

(K) Maximum hours and overtime (ORS 279C.540);

(L) Claims for overtime (ORS 279C.545);

(M) Prevailing wage rates (ORS 279C.800 to 279C.870);

(N) Retainage (ORS 279C.550 through 279C.570);

(O) Prompt payment policy (ORS 279C.570);

(P) Contractor's relations with subcontractors (ORS 279C.580);

(Q) Notice of claim (ORS 279C.605);

(R) With respect to state Agencies, provisions regarding use of recovered resources and recycled materials and to the extent economically feasible, use of recycled paper and PETE products (ORS 279A.150 and 279A.155);

(S) Contractor's certification of compliance with the Oregon tax laws in accordance with ORS 305.385;

(T) A Contract provision substantially as follows: "All employers, including Contractor, that employ subject workers who work under this Contract in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. Contractor shall ensure that each of its subcontractors complies with these requirements." (ORS 279C.530);

(U) Contractor's certification that all subcontractors performing Work described in ORS 701.005 (i.e., construction Work) will be registered with the Construction Contractors Board or licensed by the State Landscape Contractors Board in accordance with ORS 701.035 to 701.055 before the subcontractors commence Work under the Contract; and

(V) Price escalation and de-escalation Contract Provision relating to steel materials. As used in this paragraph, "steel material" includes any steel products used for and permanently incorporated in the construction, reconstruction or major renovation of a road or highway. "Escalation and de-escalation" relate to and shall be applied to the raw steel in the steel materials listed in the Contract Provision.

(e) If federal funds are involved, the federal laws, rules and regulations applicable to the fund requirements shall govern in the event they conflict with a provision required by ORS 279A.120 to 279A.155;

(f) Unless otherwise provided in the Contract, the Contractor shall not assign, sell, dispose of, or transfer rights, nor delegate duties under the Contract, either in whole or in part, without ODOT's prior Written consent. Unless otherwise agreed by ODOT in Writing, such consent shall not relieve the Contractor of any obligations under the Contract. Any assignee or transferee shall be considered the agent of the Contractor and be bound to abide by all provisions of the Contract. If ODOT consents in Writing to an assignment, sale, disposal or transfer of the Contractor's rights or delegation of Contractor's duties, the Contractor and its surety, if any, shall remain liable to ODOT for complete performance of the Contract as if no such assignment, sale, disposal, transfer or delegation had occurred unless ODOT otherwise agrees in Writing.

Stat. Auth.: ORS 184.616, 184.619, 279A.050 & 279A.065

Stats. Implemented: ORS 279A.030, 279A.120, 279C.300, 279C.345, 279C.365, 279C.375, 279C.390, 279C.500 - 279C.870, 305.385, 701.005 & 701.055

Hist.: DOT 2-2005, f. 2-16-05, cert. ef. 3-1-05; DOT 4-2006, f. & cert. ef. 2-16-06; DOT 4-2007, f. & cert. ef. 5-23-07; DOT 5-2009(Temp), f. 12-22-09, cert. ef. 1-1-10 thru 6-30-10

## 731-005-0670

### Rejection of an Offer

(1) Rejection of an Offer.

(a) ODOT may reject any Offer upon finding that to accept the Offer may impair the integrity of the procurement process or that rejecting the Offer is in the public interest.

(b) ODOT shall reject an Offer upon ODOT's finding that the Offer:

(A) Is contingent upon ODOT's acceptance of terms and conditions (including Specifications) that differ from the Solicitation Document;

(B) Takes exception to terms and conditions (including Specifications);

(C) Attempts to prevent public disclosure of matters in contravention of the terms and conditions of Solicitation Document or in contravention of applicable law;

(D) Offers Work or goods that fail to meet the Specifications of the Solicitation Document;

(E) Is late;

(F) Is not in substantial compliance with the Solicitation Documents; or

(G) Is not in substantial compliance with all prescribed public solicitation procedures.

(c) ODOT shall reject an Offer upon ODOT's finding that the Offeror:

(A) Has not been prequalified under ORS 279C.430 and ODOT required mandatory prequalification;

(B) Has been Disqualified;

(C) Has been declared ineligible under ORS 279C.860 by the Commissioner of Bureau of Labor and Industries has declared and the Contract is for a Public Work;

(D) Is listed as not qualified by the Construction Contractors Board;

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(E) Has not met the requirements of ORS 279A.105 if required by the Solicitation Document;

(F) Has not submitted properly executed Bid or Proposal security as required by the Solicitation Document;

(G) Has failed to provide the certification required under section (3) of this rule; or

(H) Is nonresponsible. Offerors are required to demonstrate their ability to perform satisfactorily under a Contract. ODOT uses a prequalification process as described in OAR 734 division 10 to determine if a Contractor is responsible. Before awarding a Contract, ODOT must have information that indicates that the Offeror meets the applicable standards of responsibility. To be a Responsible Offeror, ODOT must determine that the Offeror:

(i) Has available the appropriate financial, material, equipment, facility and personnel resources and expertise, or ability to obtain the resources and expertise, necessary to demonstrate the capability of the Offeror to meet all contractual responsibilities;

(ii) Has completed previous contracts of a similar nature with a satisfactory record of performance. A satisfactory record of performance means that to the extent the costs associated with and time available to perform a previous contract were within the Offeror's control, the Offeror stayed within the time and budget allotted for the procurement and otherwise performed the contract in a satisfactory manner. ODOT should carefully scrutinize an Offeror's record of Contract performance if the Offeror is or recently has been materially deficient in Contract performance. In reviewing the Offeror's performance, ODOT should determine whether the Offeror's deficient performance was expressly excused under the terms of Contract, or whether the Offeror took appropriate corrective action. ODOT may review the Offeror's performance on both private and public Contracts in determining the Offeror's record of Contract performance. ODOT shall make its basis for determining an Offeror nonresponsible under this paragraph part of the solicitation file;

(iii) Has a satisfactory record of integrity. An Offeror may lack integrity if ODOT determines the Offeror demonstrates a lack of business ethics such as violation of state environmental laws or false certifications made to ODOT. ODOT may find an Offeror nonresponsible based on the lack of integrity of any Entity having influence or control over the Offeror (such as a key employee of the Offeror that has the authority to significantly influence the Offeror's performance of the Contract or a parent company, predecessor or successor Entity). ODOT may find an Offeror non-responsible based on previous convictions of offenses related to obtaining or attempting to obtain a Contract or subcontract or in connection with the Offeror's performance of a contract or subcontract. The standards for Conduct Disqualification under OAR 731-005-0710 may be used to determine an Offeror's integrity. ODOT shall make its basis for determining that an Offeror is nonresponsible under this paragraph part of the solicitation file;

(iv) Is legally qualified to Contract with ODOT; and

(v) Has supplied all necessary information in connection with the inquiry concerning responsibility. If the Offeror fails to promptly supply information requested by ODOT concerning responsibility, ODOT shall base the determination of responsibility upon any available information, or may find the Offeror nonresponsible.

(2) Form of Business Entity. For purposes of this rule, ODOT may investigate any Entity submitting an Offer. The investigation may include that Entity's officers, directors, owners, affiliates, or any other Entity acquiring ownership of the Entity to determine application of this rule or to apply the disqualification provisions of ORS 279C.440 to 279C.450 and OAR 731-005-0710.

(3) Certification of Non-Discrimination. The Offeror shall certify and deliver to ODOT Written certification, as part of the Offer, that the Offeror has not discriminated against minority, women or emerging small business enterprises in obtaining any required subcontracts.

Stat. Auth.: ORS 184.616, 184.619, 279A.050 & 279A.065  
Stats. Implemented: ORS 279A.105, 279A.110, 279C.375 & 279C.395  
Hist.: DOT 2-2005, f. 2-16-05, cert. ef. 3-1-05; DOT 5-2009(Temp), f. 12-22-09, cert. ef. 1-1-10 thru 6-30-10

## 731-007-0210

### Effective Date

OAR 731-007-0200 through 731-007-0400 as amended become effective on January 1, 2010 and apply to Public Contracts first advertised, but if not advertised then entered into, on or after January 1, 2010.

Stat. Auth.: ORS 184.616, 184.619, 279A.050 & 279A.065  
Stats. Implemented: ORS 279A.005 & Sec. 335 & 337, Ch. 794, OL 2003  
Hist.: DOT 2-2005, f. 2-16-05, cert. ef. 3-1-05; DOT 5-2009(Temp), f. 12-22-09, cert. ef. 1-1-10 thru 6-30-10

## 731-007-0260

### Disclosure and Substitution of First-Tier Subcontractors

(1) Required Disclosure. Within two working hours of the Bid Closing on an ITB for a Public Improvement having a Bid price exceeding \$100,000, a Bidder shall submit to ODOT a disclosure form as described by this rule. The disclosure form shall identify any first-tier subcontractors (those Entities that would be contracting directly with the prime Contractor) that will be furnishing labor or labor and materials on the Contract, if awarded, whose subcontract value would be equal to or greater than:

(a) Five percent of the total Contract Bid, but at least \$15,000; or

(b) \$350,000 regardless of the percentage of the total Bid.

(2) Disclosure Deadline and Bid Opening. For each Bid Proposal or ITB to which this rule applies, ODOT shall:

(a) Receive bids until the time identified as Closing time and at the location described in the ITB and immediately thereafter publicly open the bids;

(b) Set the Bid Opening at the time and place identified in the ITB; and

(c) Consider for Contract award only those Bids for which the required disclosure has been submitted by the announced deadline on forms prescribed by the Agency.

(3) Bidder Instructions and Disclosure Form. For the purposes of this rule, ODOT in its solicitation shall:

(a) Prescribe the disclosure form that must be utilized; and

(b) Provide instructions in a notice substantially similar to the following:

(A) "Instructions for First-Tier Subcontractor Disclosure. Bidders are required to disclose information about certain first-tier subcontractors (see ORS 279C.370). Specifically, when the Bid of a first-tier subcontractor is greater than or equal to:

(i) 5% of the project Bid, but at least \$15,000; or

(ii) \$350,000 regardless of the percentage, you must disclose the following information about that subcontract within two (2) working hours of Bid Closing:

(aa) The subcontractor's name;

(bb) The category of work the subcontractor will be performing; and

(cc) The dollar value of the subcontract.

(B) If you will not be using any subcontractors that are subject to the above disclosure requirements, you are required to indicate "NONE" on the accompanying form.

ODOT MUST REJECT THE BID(S) OF A BIDDER WHO, IF REQUIRED TO SUBMIT THIS DISCLOSURE FORM, FAILS TO SUBMIT THE DISCLOSURE FORM WITH THE REQUESTED INFORMATION BY THE STATED DEADLINE. (See OAR 731-007-0270).

(4) To determine disclosure requirements, ODOT recommends that you disclose subcontract information for any subcontractor as follows:

(a) Determine the lowest possible Bid. That will be the base Bid amount less all alternate deductive Bid amounts (exclusive of any options that can only be exercised after Bid award).

(b) Provide the required disclosure information for any first-tier subcontractor whose potential Contract services (i.e., subcontractor's base Bid amount plus all alternate additive Bid amounts, exclusive of any options that can only be exercised after Contract award) are greater than or equal to:

(A) 5% of the lowest Bid amount, but at least \$15,000; or

(B) \$350,000, regardless of the percentage. Total all possible Work for each subcontractor in making this determination (e.g., if a subcontractor will provide \$15,000 worth of services on the base Bid and \$40,000 on an additive alternate, then the potential amount of subcontractor's services is \$55,000. Assuming that \$55,000 exceeds 5% of the lowest Bid, provide the disclosure for both the \$15,000 services and the \$40,000 services).

(5) For determination of compliance with the disclosure requirements, ODOT will use the total Bid amount submitted by the contractor as verified by ODOT."

(6) Submission. A Bidder shall submit the disclosure form required by this rule within two working hours of Bid Closing in the manner specified by the ITB.

(7) Late Submission. Compliance with the disclosure and submittal requirements of ORS 279C.370 and this rule is a matter of Responsiveness. Bids that are submitted by Bid Closing, but for which the separate disclosure submittal has not been made by the specified deadline, are not Responsive and shall not be considered for Contract award.

(8) Substitution. Substitution of affected first-tier subcontractors shall be made only in accordance with ORS 279C.585. ODOT does not have a statutory role or duty to review, approve or resolve disputes concerning such substitutions. However, ODOT is not precluded from making related inquiries or investigating complaints in order to enforce Contract provisions that require compliance generally with laws, rules and regulations.

Stat. Auth.: ORS 184.616, 184.619, 279A.050 & 279A.065  
Stats. Implemented: ORS 279C.370 & 279C.585  
Hist.: DOT 2-2005, f. 2-16-05, cert. ef. 3-1-05; DOT 5-2009(Temp), f. 12-22-09, cert. ef. 1-1-10 thru 6-30-10

## 731-007-0290

### Retainage

(1) Withholding of Retainage. ODOT may retain payment but shall not retain an amount in excess of 5 percent of the Contract Price for Work completed. If the Contractor has performed at least 50 percent of the Contract Work and is progressing satisfactorily or if all Work on a subcontract is complete, upon the Contractor's submission of Written application containing the surety's Written approval, ODOT may, in its discretion, reduce or eliminate retainage on any remaining progress payments. ODOT shall respond in Writing to all such applications within a reasonable time. When the Contract Work is 97-1/2 percent completed, ODOT may, at its discretion and without application by the Contractor, reduce the retained amount to 100 percent of the value of the remaining unperformed Contract Work. ODOT may at any

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time reinstate retainage. Retainage shall be included in the final payment of the Contract Price.

(2) Form of Retainage. Unless a Contracting Agency that reserves an amount as retainage finds in writing that accepting a bond or instrument described in part (a) or (b) of this section poses an extraordinary risk that is not typically associated with the bond or instrument, the Contracting Agency, in lieu of withholding moneys from payment, shall accept from the Contractor:

(a) Bonds, securities or other instruments that are deposited and accepted as provided in subsection (4)(a) of this rule; or

(b) A surety bond deposited as provided in subsection (4)(b) of this rule.

(3) Deposit in interest-bearing accounts. ODOT shall deposit cash retainage in an interest-bearing account through the State Treasurer, for the benefit of ODOT. Earnings on such account shall accrue to the Contractor.

(4) Alternatives to cash retainage. In lieu of cash retainage to be held by ODOT, the Contractor may substitute one of the following:

(a) Deposit of bond, securities or other instruments:

(A) The Contractor may deposit bonds, securities or other instruments with ODOT or in any bank or trust company to be held for the benefit of ODOT. If ODOT accepts the deposit, ODOT shall reduce the cash retainage by an amount equal to the value of the bonds and securities, and reimburse the excess to the Contractor.

(B) Bonds, securities or other instruments deposited or acquired in lieu of cash retainage must be of a character approved by the Oregon Department of Administrative Services, including but not limited to:

(i) Bills, certificates, notes or bonds of the United States.

(ii) Other obligations of the United States or agencies of the United States.

(iii) Obligations of any corporation wholly owned by the Federal Government.

(iv) Indebtedness of the Federal National Mortgage Association.

(v) General obligation bonds of the State of Oregon or a political subdivision of the State of Oregon.

(vi) Irrevocable letters of credit issued by an insured institution, as defined in ORS 706.008.

(C) Upon ODOT's determination that all requirements for the protection of ODOT's interests have been fulfilled, it shall release to the Contractor all bonds and securities deposited in lieu of retainage.

(b) Deposit of surety bond: ODOT, at its discretion, may allow the Contractor to deposit a surety bond in a form acceptable to ODOT in lieu of all or a portion of funds retained or to be retained. ODOT requires that the first \$10,000 of retainage be held as cash, before the retainage bond takes effect. A Contractor depositing such a bond shall accept surety bonds from its subcontractors and suppliers in lieu of retainage. In such cases, retainage shall be reduced by an amount equal to the value of the bond, and the excess shall be reimbursed.

(5) Recovery of costs. ODOT may recover from the Contractor all costs incurred in the proper handling of retainage by reduction of the final payment.

Stat. Auth.: ORS 184.616, 184.619, 279A.050 & 279A.065

Stats. Implemented: ORS 279C.560, 279C.570 & 701.420

Hist.: DOT 2-2005, f. 2-16-05, cert. ef. 3-1-05; DOT 5-2009(Temp), f. 12-22-09, cert. ef. 1-1-10 thru 6-30-10

## 731-146-0010

### Application

(1) The Oregon Department of Transportation (ODOT) adopts OAR 137-046-0100 through 137-046-0480 (effective January 1, 2010), the Department of Justice Model Rules, General Provisions Related to Public Contracting including the additional provisions provided in these rules.

(2) Unless the context of a specifically applicable definition in the Code or Model Rules requires otherwise, capitalized terms used in ODOT's public contracting rules (ODOT's Rules) will have the meaning set forth in the division of ODOT's Rules in which they appear, and if not defined there, the meaning set forth in Code or Model Rules.

(3) This rule applies retroactively to January 1, 2010.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.030 & 279A.065

Hist.: DOT 3-2005(Temp), f. 2-16-05, cert. ef. 3-1-05 thru 8-27-05; DOT 5-2005, f. & cert. ef. 8-23-05; DOT 5-2006(Temp), f. & cert. ef. 5-25-06 thru 11-20-06; DOT 7-2006, f. & cert. ef. 11-17-06; DOT 5-2009(Temp), f. 12-22-09, cert. ef. 1-1-10 thru 6-30-10

## 731-147-0010

### Application

(1) The Oregon Department of Transportation adopts OAR 137-047-0000 through 137-047-0810 (effective January 1, 2010) with the exception of 137-047-0270(3) and 137-047-0275, the Department of Justice Model Rules, Public Procurements for Goods or Services General Provisions including the additional provisions provided in these rules.

(2) This rule applies retroactively to January 1, 2010.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279B.015

Hist.: DOT 3-2005(Temp), f. 2-16-05, cert. ef. 3-1-05 thru 8-27-05; DOT 5-2005, f. & cert. ef. 8-23-05; DOT 5-2006(Temp), f. & cert. ef. 5-25-06 thru 11-20-06; DOT 7-2006, f. & cert. ef. 11-17-06; DOT 5-2009(Temp), f. 12-22-09, cert. ef. 1-1-10 thru 6-30-10

## 731-148-0010

### Application

(1) The Oregon Department of Transportation adopts OAR 137-048-0100 through 137-048-0320 (effective January 1, 2010), the Department of Justice Model Rules, Consultant Selection: Architectural, Engineering, Land Surveying, and Related Services Contracts including the additional provisions provided in these rules.

(2) This rule applies retroactively to January 1, 2010.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065

Hist.: DOT 3-2005(Temp), f. 2-16-05, cert. ef. 3-1-05 thru 8-27-05; DOT 5-2005, f. & cert. ef. 8-23-05; DOT 5-2006(Temp), f. & cert. ef. 5-25-06 thru 11-20-06; DOT 7-2006, f. & cert. ef. 11-17-06; DOT 5-2009(Temp), f. 12-22-09, cert. ef. 1-1-10 thru 6-30-10

## 731-149-0010

### Application

(1) The Oregon Department of Transportation adopts OAR 137-049-0100 through 137-049-0910 (effective January 1, 2010), the Department of Justice Model Rules, General Provisions Related to Public Contracts for Construction Services. The adoption of the Department of Justice Model Rules by this rule does not apply to any contracts that are subject to OAR chapter 731, division 5 or 7.

(2) The Public Improvements Contracts as well as the Public Contracts for ordinary construction Services that are not Public Improvements shall also comply with OAR 731-007-0335.

(3) This rule applies retroactively to January 1, 2010.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065

Hist.: DOT 3-2005(Temp), f. 2-16-05, cert. ef. 3-1-05 thru 8-27-05; DOT 5-2005, f. & cert. ef. 8-23-05; DOT 5-2006(Temp), f. & cert. ef. 5-25-06 thru 11-20-06; DOT 7-2006, f. & cert. ef. 11-17-06; DOT 5-2009(Temp), f. 12-22-09, cert. ef. 1-1-10 thru 6-30-10

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

**Rule Caption:** Describes Circumstances Under Which DMV will Provide a Receipt Notice of Sale or Transfer of a Vehicle.

**Adm. Order No.:** DMV 21-2009

**Filed with Sec. of State:** 12-22-2009

**Certified to be Effective:** 1-1-10

**Notice Publication Date:** 11-1-2009

**Rules Amended:** 735-020-0080

**Subject:** This rulemaking was needed to implement legislation enacted by the 2009 Legislative Assembly. Chapter 551, Oregon Laws 2009 amends ORS 803.113 and 803.117, respectively. As amended, ORS 803.113 gives DMV rulemaking authority to specify when it will issue a receipt that notice of transfer of an interest in a vehicle has been submitted to DMV. DMV proposes to amend OAR 735-020-0080 to specify when a receipt will be issued.

**Rules Coordinator:** Lauri Kunze—(503) 986-3171

## 735-020-0080

### Notice of Transfer of Interest in a Vehicle

(1) This rule specifies the requirements for a notice of transfer of interest in a vehicle covered by an Oregon title, under ORS 803.112 and 803.117, and when DMV will provide a receipt that the notice has been submitted.

(2) Notice submitted under ORS 803.112 and 803.117 must contain the following information:

(a) The vehicle identification number (VIN);

(b) The vehicle registration plate number;

(c) The full name of the person who transferred an interest in the vehicle (seller/transferor); and

(d) The full name of the transferee (new owner/buyer).

(3) Notice meeting the requirements of section (2) of this rule must be submitted to DMV:

(a) In writing, and includes a Notice of Sale or Transfer of a Vehicle form (DMV Form 6890), a completed seller notice on the back of the vehicle's registration card or any other written document that contains the required information. Written notice may be delivered to any DMV office or mailed to DMV Headquarters; or

(b) Electronically, using DMV's online Notice of Sale or Transfer form as set forth in OAR 735-018-0120.

(4) At DMV's discretion, notice meeting the requirements of section (2) of this rule may be faxed or submitted by telephone.

(5) For purposes of ORS 803.112, notice meeting the requirements of sections (2) and (3) of this rule must be submitted within 10 days of the date of a transfer of interest in the vehicle.

(6) DMV will provide a receipt showing a notice as described in sections (2) and (3) of this rule has been submitted to DMV:

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(a) At the request of a person who submits the notice in-person at a DMV field office.

(b) Electronically, if the notice is submitted as set forth in OAR 735-018-0120 and the electronic submission is successfully completed.

(7) DMV will not provide a receipt showing a notice as described in sections (2) and (3) of this rule has been submitted to DMV, if the notice is mailed or faxed to DMV or submitted to DMV by telephone.

Stat. Auth.: ORS 184.616, 184.619, 803.112, 803.113, 803.117 & ch 579, OL 2009  
Stat. Implemented: ORS 803.112, 803.113, 803.117 & ch 579, OL 2009  
Hist.: DMV 27-2003(Temp), f. 12-15-03 cert. ef. 1-1-04 thru 6-28-04; DMV 12-2004, f. & cert. ef. 6-24-04; DMV 21-2009, f. 12-22-09, cert. ef. 1-1-10

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**Rule Caption:** Updates DMV Rules Relating to Abandoned Vehicles and Vehicle Appraisers.

**Adm. Order No.:** DMV 22-2009(Temp)

**Filed with Sec. of State:** 12-22-2009

**Certified to be Effective:** 1-1-10 thru 6-30-10

**Notice Publication Date:**

**Rules Amended:** 735-024-0075, 735-024-0130, 735-158-0000, 735-158-0005, 735-158-0010

**Rules Suspended:** 735-024-0080

**Subject:** This rulemaking is needed to implement legislation enacted by the 2009 Legislative Assembly. In part, chapter 371, Oregon Laws 2009 (HB 2738) amends and repeals many of the statutes pertaining to disabled or abandoned vehicles taken into custody by a public body, including disposal of such vehicles. These statutory changes are effective on January 1, 2010. This temporary rulemaking updates OAR 735-024-0075, 735-024-0130, 735-158-0000, 735-158-0005 and 735-158-0010 to bring these administrative rules into compliance with these law changes and to remove citations and references to statutes that have been repealed. As proposed, OAR 735-024-0080 is temporarily suspended because ORS 819.220, the statutory authority for the rule, is repealed.

**Rules Coordinator:** Lauri Kunze—(503) 986-3171

## 735-024-0075

**Notification of Disposal of Abandoned Vehicle Appraised at \$500 or Less**

(1) This rule designates the form of notice that must be submitted to DMV for the disposal of an abandoned vehicle appraised at a value of \$500 or less under the provisions of ORS 819.215.

(2) For purposes of this rule the following definitions apply:

(a) "An authority" means a law enforcement or government agency, as described in ORS 819.140, authorized to take a vehicle into custody;

(b) "Dismantler" means a person who is the holder of a valid dismantler certificate issued under ORS 822.110; and

(c) "Tower" means the towing business that tows a vehicle at the request of an authority.

(3) A completed and signed Abandoned Vehicle Certificate (DMV Form 271) must be submitted to DMV when a tower disposes of an abandoned vehicle under ORS 819.215(1).

(4) DMV will not accept an Abandoned Vehicle Certificate:

(a) That does not contain the make, plate number, registration state, vehicle identification number, name of the dismantler to whom the vehicle will be disposed, and the certification, including the name, address and authorized signature of the tower disposing of the vehicle;

(b) Shows an appraised value of more than \$500; or

(c) That has a form revision date before December 1998.

[ED. NOTE: Form referenced is available from the agency.]

Stat. Auth.: ORS 184.616, 184.619, 802.010 & 819.215

Stat. Implemented: ORS 819.215

Hist.: DMV 12-2005, f. 5-19-05, cert. ef. 6-1-05; 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 22-2009(Temp), f. 12-22-09, cert. ef. 1-1-10 thru 6-30-10

## 735-024-0080

**Abandoned Vehicles Sold Under ORS 819.220**

(1) This rule defines terms and establishes procedures and requirements for the sale and purchase of abandoned vehicles under ORS 819.220. As used in this rule:

(a) "Authority" means an agency authorized under ORS 819.140 to take custody of and dispose of abandoned vehicles.

(b) "Purchaser" means a person to whom the authority sold a vehicle under the provisions of ORS 819.220 but does not include a dismantler.

(2) In addition to all other applicable requirements of ORS 819.220, an authority must provide the purchaser a certificate of sale and a Notice of Vehicle to be Dismantled/Proof of Compliance (DMV Form 735-6017).

(3) The purchaser must:

(a) Submit Form 735-6017 to DMV seven days before the date of taking any action to wreck, dismantle, disassemble or substantially alter the form of the vehicle; and

(b) Submit a second Form 735-6017 to DMV along with the title or primary ownership document (e.g., sheriff's certificate of sale), within 30 days from the date the vehicle was wrecked, dismantled, disassembled or substantially altered, if the vehicle is exempt from salvage title requirements under ORS 819.016 or OAR 735-024-0130.

(4) Except as otherwise provided in ORS 819.016 and OAR 735-024-0130, a purchaser must apply to DMV for a salvage title.

(5) Even if other provisions of this rule apply, a purchaser who purchased a vehicle under ORS 819.220 before January 1, 1992, is not required to apply for salvage title unless:

(a) The vehicle is repaired. If the vehicle is repaired, the applicant may apply for a salvage title or a branded certificate of title showing the vehicle as assembled, reconstructed or a replica, whichever applies;

(b) The vehicle is wrecked, dismantled, disassembled or substantially altered in form; or

(c) The purchaser transfers ownership of the frame or unibody.

Stat. Auth.: ORS 184.616, 184.619 & 802.010

Stats. Implemented: ORS 819.140 & 819.220

Hist.: MV 32-1991, f. 12-30-91, cert. ef. 1-1-92; 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; Suspended by DMV 22-2009(Temp), f. 12-22-09, cert. ef. 1-1-10 thru 6-30-10

## 735-024-0130

**Salvage Title — Vehicles Subject and When/Who Required to Apply**

(1) An Oregon salvage title is an ownership document that is used to assign interest and to make an odometer disclosure on a vehicle, from the time that the certificate of title is required to be surrendered to DMV until:

(a) The vehicle is repaired, rebuilt or is issued a certificate of title; or

(b) It is determined that:

(A) The vehicle will not be rebuilt or repaired; and

(B) The frame or unibody of the vehicle will not be used to repair or construct another vehicle.

(2) Vehicle types subject to the issuance of salvage titles, include any vehicle:

(a) Of the type required to be titled or registered in this state, if operated over the highways;

(b) Snowmobiles required to be titled and registered by DMV; and

(c) Any other vehicle that has been issued a certificate of title by DMV, or some other jurisdiction.

(3) An application for a salvage title is required on a subject vehicle that is:

(a) Wrecked, dismantled, disassembled, or where the form of the vehicle is substantially altered, as covered in ORS 819.010 and OAR 735-024-0050; or

(b) Determined to be a totaled vehicle, and the title is required to be surrendered to DMV under ORS 819.012 or 819.014; or

(c) An abandoned vehicle that is acquired under the provisions of ORS 819.215.

(4) When a salvage title is required, application must be made:

(a) For a vehicle that is declared a total loss by an insurer that is obligated to cover the loss, or that the insurer takes possession of or title to:

(A) The insurer must apply for the salvage title if the insurer obtains the title as provided under ORS 819.014, unless a salvage title has already been issued; or

(B) The owner must apply for the salvage title if the vehicle owner does not surrender the title to the insurer.

(b) By the owner for a vehicle that is totaled due to damage when the loss is not covered by an insurer; or

(c) By any person who acquires an abandoned vehicle under ORS 819.215; or

(d) By any person who receives or purchases a vehicle subject to salvage title requirements unless:

(A) A salvage title or similar document has already been issued by Oregon or some other jurisdiction, and the person is not required to apply for salvage title in his or her name under OAR 735-024-0170; or

(B) A totaled vehicle that was purchased before January 1, 1992, and is not subject until the vehicle, frame or unibody is transferred, or the vehicle is wrecked, dismantled, disassembled, or substantially altered in form.

(5) The term "receive" as used in section (4) of this rule and ORS 819.012, does not apply to auctions or other parties who as an agent of another, take possession or control of a vehicle, but who do not actually acquire an interest in the vehicle or vehicle salvage. This section does not:

(a) Relieve insurers or persons who are actually transferring interest in the vehicle or vehicle salvage, from the responsibility to apply for and provide any purchaser with a salvage title, as required under ORS 819.012 through 819.018 and this rule; or

(b) Prevent parties from entering into agreements to allow agents to apply for and provide salvage titles to any purchaser on behalf of another.

(6) An odometer disclosure is required when application is made for the issuance or transfer of a salvage title for motor vehicles, except those exempt from disclosure requirements under OAR 735-028-0010.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 803.140, 819.012, 819.014, 819.016 & 819.018  
Stats. Implemented: ORS 803.140, 819.010, 819.012, 819.014, 819.016, 819.018, 819.030, 819.040 & 49 CFR Part 580

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Hist.: MV 32-1991, f. 12-30-91, cert. ef. 1-1-92; DMV 11-2005, f. 4-25-05, cert. ef. 5-1-05; 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 22-2009(Temp), f. 12-22-09, cert. ef. 1-1-10 thru 6-30-10

## 735-158-0000

### Vehicle Appraiser Certificate

(1) An applicant for a vehicle appraiser certificate or renewal under ORS 819.480 must submit the following to the DMV Business Regulation Section:

(a) A completed and signed DMV Application for Vehicle Appraiser Certificate (DMV Form 735-6610);

(b) All applicable fees; and

(c) Except as provided in section (2) of this rule, proof of two years combined work experience as a vehicle appraiser:

(A) For a new or used car business, tow business, insurance company, vehicle body repair business, law enforcement agency or any other state or local jurisdiction; or

(B) In the operation or employment of a certified vehicle dismantler business.

(2) A qualified applicant for a vehicle appraiser certificate may substitute a certificate of completion of the Vehicle Appraiser Education Program established under OAR 735-152-0010 for proof of work experience required under subsection (1)(c) of this rule. For purposes of 735-158-0010 and this section, "qualified applicant" means an individual who, as a condition of employment, is:

(a) Required to conduct vehicle appraisals under ORS 819.210, 819.215 or 819.280; and

(b) Required to conduct vehicle appraisals as an employee of a towing business that holds a valid towing business certificate issued under ORS 822.205 and OAR chapter 735, division 154; or

(c) Employed by a public agency authorized to take a vehicle into custody and tow the vehicle as described under ORS 819.140. This includes state, city and county law enforcement agencies and other agencies responsible for enforcing laws relating to abandoned vehicles and vehicles that constitute a roadside hazard.

(4) DMV will not process an application that is incomplete. An incomplete application and the fees submitted with the application will be returned to the applicant.

(5) When DMV denies issuance or renewal of a vehicle appraiser certificate, DMV will retain the fees submitted with the application to cover the cost of processing the application.

(6) In addition to any other penalty provided by law, DMV may suspend, revoke, or refuse to issue or renew a vehicle appraiser certificate on the following grounds:

(a) Making a false or misleading statement or misrepresentation, including by act of omission, pertaining to:

(A) An application for a vehicle appraiser certificate;

(B) A vehicle appraiser report;

(C) Any document required by DMV; or

(D) Any investigation by DMV or law enforcement.

(b) Failure to comply with any applicable statute or rule pertaining to a vehicle appraiser certificate.

(c) DMV determines the applicant was convicted of a felony or misdemeanor related to fraud or dishonesty, if the conviction occurred less than three years before the date of application.

(7) A vehicle appraiser or applicant for a vehicle appraiser certificate who is subject to suspension, revocation or refusal to issue or renew the vehicle appraiser certificate is entitled to a contested case hearing as provided in the Oregon Administrative Procedures Act, ORS Chapter 183.

Stat. Auth.: ORS 184.616, 184.619, 802.010 & 819.480

Stats. Implemented: ORS 819.210, 819.215, 819.480, 819.482 & 822.700

Hist.: MV 25-1981(Temp), f. & ef. 12-1-81; MV 13-1982, 5-28-82, ef. 6-1-82; MV 27-1986, f. 12-31-86, ef. 1-1-87; Administrative Renumbering 3-1988, Renumbered from 735-071-0078; DMV 7-2002(Temp), f. 3-14-02, cert. ef. 3-18-02 thru 9-13-02; DMV 13-2002, f. & cert. ef. 6-24-02; DMV 16-2006, f. & cert. ef. 11-17-06; DMV 13-2007, f. & cert. ef. 11-30-07; DMV 8-2009, f. & cert. ef. 3-20-09; DMV 22-2009(Temp), f. 12-22-09, cert. ef. 1-1-10 thru 6-30-10

## 735-158-0005

### Vehicle Appraiser Education Program

(1) Training Requirements. The Vehicle Appraiser Education Program is a non-vocational training program designed for individuals who need a vehicle appraiser certificate as a condition of employment, as described in OAR 735-158-0000(2). The training, conducted by DMV-approved instructors, provides education on the basic skills and minimum knowledge required to appraise vehicles in Oregon. The training is a minimum of four hours and covers:

(a) Oregon laws and administrative rules applicable to certified vehicle appraisers and the appraisal of vehicles, including but not limited to:

(A) Privileges granted by an appraiser certificate and certificate renewal;

(B) Reporting requirements and appraisal-related forms; and

(C) Procedures and requirements regarding the towing of vehicles from a public right-of-way or private property, and the disposition of vehicles when towed.

(b) Accepted appraisal methods, determining vehicle value and how to recognize high-value vehicles and collector cars; and

(c) Resources of information relating to vehicle appraisers and the appraisal of vehicles. For example, information may be obtained from associations, car clubs, publications, vehicle valuation guides, seminars, or websites.

(2) Individuals who successfully complete the training program will receive a statement of completion from the training instructor. The statement may be submitted to DMV as proof of work experience required under OAR 735-158-0010 when applying for a vehicle appraiser certificate.

Stat. Auth.: ORS 184.616, 184.619, 802.010 & 819.480

Stats. Implemented: ORS 819.210, 819.215, 819.480, 819.482 & 822.700

Hist.: DMV 8-2009, f. & cert. ef. 3-20-09; DMV 22-2009(Temp), f. 12-22-09, cert. ef. 1-1-10 thru 6-30-10

## 735-158-0010

### Vehicle Appraiser Education Program; Instructor Qualifications; Requirements

(1) A person who wishes to become a DMV-approved Vehicle Appraiser Education Program instructor must:

(a) Hold a valid Oregon Vehicle Appraiser Certificate;

(b) Have a minimum of five consecutive years experience as a certified vehicle appraiser in Oregon; and

(c) Submit a written request to become an instructor to DMV Business Regulation Section, 1905 Lana Ave. NE, Salem Oregon 97314. The request must include the following information for the person making the request:

(A) Name, mailing address and telephone number;

(B) A copy of the person's current Vehicle Appraiser Certificate. The copy must show the certificate number, date of issuance and date of expiration; and

(C) An outline of the curriculum the instructor plans to use for the training. At a minimum, the curriculum must cover all topics described under OAR 735-158-0005(1) and include a least four hours of training.

(2) DMV will notify a person who submits a request to become a Vehicle Appraiser Education Program instructor upon approval or denial of their request.

(3) A DMV-approved instructor may conduct training classes at any time. However, the instructor must submit the following to DMV within seven business days of completing a training:

(a) The date and time of the training; and

(b) For each person who successfully completes the training:

(A) The person's name, mailing address and telephone number; and

(B) The name, mailing address and telephone number of the tow company or public agency with whom the person is employed.

Stat. Auth.: ORS 184.616, 184.619, 802.010 & 819.480

Stats. Implemented: ORS 819.210, 819.215, 819.480, 819.482 & 822.700

Hist.: DMV 8-2009, f. & cert. ef. 3-20-09; DMV 22-2009(Temp), f. 12-22-09, cert. ef. 1-1-10 thru 6-30-10

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**Rule Caption:** Motor Vehicle Insurance Issues — Verification and Proof of Good Faith Belief; Future Financial Responsibility Certificate.

**Adm. Order No.:** DMV 23-2009

**Filed with Sec. of State:** 12-22-2009

**Certified to be Effective:** 1-1-10

**Notice Publication Date:** 11-1-2009

**Rules Amended:** 735-050-0050, 735-050-0060, 735-050-0062, 735-050-0064, 735-050-0070, 735-050-0080, 735-050-0120

**Subject:** Chapter 257, Oregon Laws 2009 (SB 127) amended statutes relating to financial responsibility requirements for motor vehicles. DMV amended its administrative rules to implement these changes and to clarify language.

OAR 735-050-0050 deals with the content of a uniform financial responsibility certificate (SR-22). The SR-22 is a standard form used nationwide by insurance carriers when they are required to file a certificate of insurance with the state on behalf of an insured. The amendments to OAR 735-050-0050 update requirements for the SR-22 to implement SB 127 and recognize an additional standard form issued by the American Association of Motor Vehicle Administrators (AAMVA).

OAR 735-050-0060 was amended to update the title of the Unit that initially determines if a person had a reasonable and good faith belief of compliance with financial responsibility requirements.

The other rules were amended to clarify and update terms.

**Rules Coordinator:** Lauri Kunze—(503) 986-3171

# ADMINISTRATIVE RULES

## 735-050-0050

### Content of Uniform Financial Responsibility Certificate and Procedure for Processing

(1) A person required to file a certificate of insurance, for purposes of proving future responsibility, must submit a Uniform Financial Responsibility Certificate (SR-22).

(2) An SR-22 will not be accepted unless it contains:

(a) The insured's complete name and address. If two names are on the certificate, it will not be accepted. The only exception is an "on-behalf-of" certificate. An "on-behalf-of" certificate is filed by an owner of a motor vehicle, showing proof of financial responsibility on behalf of their employee or a member of their immediate family in lieu of the driver furnishing such proof. The filing of this type of certificate only permits the person to operate a motor vehicle covered by the proof;

(b) The insured's driver license number and date of birth;

(c) The insurance carrier name, not the name of the insurance producer (agent). The carrier name is acceptable if preprinted on the back of the form, or typed on the front;

(d) The policy number;

(e) The effective date of the certification;

(f) A box must be checked to show whether the policy is for an operator or an owner;

(g) Information showing that the certificate is issued as proof of financial responsibility in Oregon;

(h) A certification by an authorized representative of the insurance carrier that a motor vehicle liability policy as required by the financial responsibility laws of Oregon, and in effect on the effective date of the certification, has been issued to the insured named on the SR-22;

(i) The date the SR-22 was issued. An SR-22 received by DMV more than 30 days after the date it was issued will not be accepted;

(j) The signature of the authorized representative of the insurance carrier. An electronic signature as described in OAR 735-018-0010(3) and 735-018-0060 constitutes a signature for purposes of this rule; and

(k) A secured internet Web site address at the bottom of the form if the SR-22 is provided to DMV in Web site format.

(3) The certification in subsection (2)(h) of this rule is a declaration of the issuing insurance carrier that:

(a) The policy covers all vehicles that are registered in the name of or operated by the named insured, except as provided in ORS 806.270(2); and

(b) If applicable, it has assumed the higher liability limits required for a Driving Under the Influence of Intoxicants conviction under the financial responsibility laws of Oregon as required by ORS 806.075.

(4) The insurer issuing the certificate must be authorized by the Insurance Division of the Oregon Department of Consumer and Business Services to do business in Oregon, unless the insurer is an eligible surplus lines insurer of a risk retention group.

Stat. Auth.: ORS 184.616, 184.619 & 802.010

Stats. Implemented: ORS 806.075, 806.240 & 806.270

Hist.: MV 15-1984, f. & ef. 11-1-84; Administrative Renumbering 3-1988, Renumbered from 735-033-0045; MV 21-1987, f. 9-21-87, ef. 9-27-87; DMV 23-2009, f. 12-22-09, cert. ef. 1-1-10

## 735-050-0060

### Good Faith Belief of Compliance with Financial Responsibility Requirements — Purpose and Definitions

(1) The Driver and Motor Vehicle Services Division of the Department of Transportation (DMV) will terminate future responsibility filing requirements and rescind a financial responsibility suspension of a person's driving privileges as allowed by ORS 806.245, 809.380 and 809.450 when the person:

(a) Is currently in compliance with financial responsibility requirements; and

(b) Reasonably and in good faith believed he or she was in compliance at the time of the accident or DMV's letter of verification.

(2) For purposes of OAR 735-050-0060 through 735-050-0064 "good faith" means a state of mind of honesty in purpose and freedom from intent to defraud. Failure of a person to inquire further when the person could reasonably be expected to do so constitutes absence of good faith.

(3) For purposes of OAR 735-050-0060 through 735-050-0064, "reasonably believed" or "reasonable belief" means a belief based on the combinations of facts that existed and the circumstances that a person knew, or with ordinary diligence should have known, which would give cause for a rational person to believe.

(4) It is presumed that a person has knowledge of the contents of his or her motor vehicle liability insurance policy.

(5) DMV will rescind a suspension under this rule if DMV is presented with evidence that the person reasonably and in good faith believed that the person was in compliance with financial responsibility requirements. Evidence for the above may be presented to the Accident Reporting and Insurance Verification Unit or at a hearing requested by the person. In either case, examples of such evidence include, but are not limited to, the following:

(a) Copies of cancelled checks, money orders or receipts for cash that show payment was received for an automobile liability insurance policy;

(b) Written verification on agency or company letterhead or sworn testimony from the insurance carrier or insurance producer (agent);

(c) Copies of insurance policies, binders, declarations or applications; and

(d) Notarized written statements or sworn testimony from a spouse, partner in a domestic partnership, co-owner of current or former policies or any other person involved in the payment of policy premiums.

(6) A person is entitled to a hearing on rescinding of the suspension of the person's driving privilege under this rule. A determination by the Accident Reporting and Insurance Verification Unit that the suspension should not be rescinded does not limit the person's right to a hearing.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 806.245, 809.380 & 809.450

Stats. Implemented: ORS 806.245, 809.380 & 809.450

Hist.: MV 17-1985, f. 12-19-85, ef. 1-1-86; MV 22-1987; Administrative Renumbering 3-1988, Renumbered from 735-033-0055, f. 9-21-87, ef. 9-27-87; MV 7-1989, f. & cert. ef. 2-1-89; DMV 20-2003, f. 12-15-03 cert. ef. 1-1-04; DMV 5-2008, f. & cert. ef. 2-4-08; DMV 23-2009, f. 12-22-09, cert. ef. 1-1-10

## 735-050-0062

### What Constitutes "Reasonably and in Good Faith"

(1) Examples of circumstances that constitute reasonable and good faith belief include, but are not limited to, the following:

(a) An insurance company accepted application and payment for liability insurance covering the period of time in question;

(b) An insurance carrier or producer (agent) told a person that he or she was insured or would be insured by a particular policy, and the person was not told otherwise until after the accident or the Driver and Motor Vehicle Services Division of the Department of Transportation (DMV) random sample;

(c) A separated spouse, partner in a domestic partnership, or other additional holder of an insurance policy cancels the policy without the person's knowledge and consent as shown by:

(A) Proof of legal separation; or

(B) A written statement from the party canceling the policy; and

(d) A person is not yet 21 years old, is attending school or is in the military service and believes he or she is covered by a parent's policy.

(2) DMV will use the examples in section (1) of this rule as guidelines in making decisions. However, each request for the rescinding of a suspension under this rule will be reviewed on a case-by-case basis.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 806.245, 809.380 & 809.450

Stats. Implemented: ORS 806.245, 809.380 & 809.450

Hist.: MV 7-1989, f. & cert. ef. 2-1-89; DMV 20-2003, f. 12-15-03 cert. ef. 1-1-04; DMV 5-2008, f. & cert. ef. 2-4-08; DMV 23-2009, f. 12-22-09, cert. ef. 1-1-10

## 735-050-0064

### What Does Not Constitute "Reasonably and in Good Faith"

(1) Examples of beliefs that do not constitute a reasonable and good faith belief include, but are not limited to, the following:

(a) Belief that a vendor's single interest (VSI) or other policy issued by a dealer or financing institution provides motor vehicle liability coverage. That policy or its declarations must clearly state that it does not provide motor vehicle liability insurance, does not meet financial responsibility requirements or contain some other similar statement;

(b) Belief by a person who is not yet 21 years of age, not attending school or not in military service, and not residing with a parent that he or she is covered by a parent's policy;

(c) Belief by a person that a policy meets the requirements of the financial responsibility law when the person has not read the policy declarations and limitations;

(d) Belief that a policy is still in force because of non-receipt of a notice of cancellation, unless the person presents substantial evidence showing that the insurance company did not meet the notification requirements for cancellation found in ORS Chapter 742;

(e) Belief that a spouse or partner in a domestic partnership, normally pays all bills and must have paid an insurance premium; and

(f) Belief based only upon an insurance carrier's or insurance producer's (agent) representation after an accident has occurred when, at the time of the accident, the person did not reasonably believe that they were covered.

(2) The Driver and Motor Vehicle Services Division of the Department of Transportation will use the examples in section (1) of this rule as guidelines in making decisions. However, each request for the rescinding of a suspension under this rule will be reviewed on a case-by-case basis.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 806.245, 809.380 & 809.450

Stats. Implemented: ORS 806.245, 809.380 & 809.450

Hist.: MV 7-1989, f. & cert. ef. 2-1-89; DMV 20-2003, f. 12-15-03 cert. ef. 1-1-04; DMV 5-2008, f. & cert. ef. 2-4-08; DMV 23-2009, f. 12-22-09, cert. ef. 1-1-10

## 735-050-0070

### Suspensions for Uninsured Accidents

(1) The Driver and Motor Vehicle Services Division of the Department of Transportation (DMV) will suspend the driving privileges and right to apply for driving privileges of any person if the person is involved in any motor vehicle accident at any time when DMV determines the person has been driving uninsured.

(2) DMV will determine that a person was the driver of a vehicle involved in an accident if DMV receives a report to that effect from the

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police, an insurance carrier or insurance producer (agent), or any other person involved in the accident.

(3) If the accident must be reported to DMV, DMV will determine that a person was involved in an accident while driving uninsured if:

(a) The person does not respond to DMV's request for an accident report;

(b) The person does not respond to DMV's request for both the name of the insurance carrier and the policy number that covered the person's operation of the vehicle at the time of the accident; or

(c) The insurance carrier the person stated he or she was insured with denies coverage for the accident.

(4) DMV will grant a pre-suspension hearing under ORS 809.440(1), upon timely request, to any person whose driving privileges are suspended as described in section (1) of this rule. The suspension will not take effect pending the outcome of the hearing and DMV will impose the suspension if the administrative law judge affirms the suspension following the hearing.

(5) Once a suspension described in section (1) of this rule takes effect, DMV will rescind the suspension if the person supplies the name of an insurance carrier and policy number that covered the person's operation of the vehicle at the time of the accident.

(6) DMV will again suspend the driving privileges if the suspension was rescinded under section (5) and the insurance carrier subsequently denies coverage for the accident. The person will be eligible for full reinstatement of driving privileges one year from the new suspension date.

**EXCEPTION:** DMV shall subtract time served under the original uninsured accident suspension from the one-year suspension period.

Stat. Auth.: ORS 184.616, 184.619, 802.010 & 809.417

Stats. Implemented: ORS 809.417

Hist.: MV 22-1985, f. 12-31-85, ef. 1-1-86; Administrative Renumbering 3-1988, Renumbered from 735-033-0065; MV 15-1991, f. 9-18-91, cert. ef. 10-1-91; DMV 20-2003, f. 12-15-03 cert. ef. 1-1-04; DMV 10-2006, f. & cert. ef. 8-25-06; DMV 23-2009, f. 12-22-09, cert. ef. 1-1-10

## 735-050-0080

### Financial Responsibility Verification Program

(1) The Driver and Motor Vehicle Services Division of the Department of Transportation (DMV) will randomly select motor vehicles for financial responsibility verification. The total number randomly selected each year will not exceed ten percent of the motor vehicles registered in Oregon that are subject to verification.

(2) DMV may, in addition, designate persons for verification of financial responsibility requirements if DMV has reasonable grounds to believe that the person is in violation of financial responsibility requirements. DMV's determination of reasonable grounds will be based on the following:

(a) Written statements from police, insurance carriers, insurance producers (agents), and the public;

(b) Any admission to DMV by the owner of an Oregon-registered vehicle that the vehicle is not insured;

(c) Receipt by DMV of any record from another jurisdiction that the owner of any Oregon-registered vehicle was convicted of driving uninsured, regardless of the vehicle driven at the time of offense.

(d) Receipt by DMV of any record from another jurisdiction indicating that an Oregon-registered vehicle was driven without insurance, regardless of who was driving the vehicle;

(e) Statements made during an administrative hearing by a driver or owner of a vehicle that the Oregon-registered vehicle was driven while uninsured; or

(f) No record of submission from an insurance carrier, pursuant to ORS 742.580, 806.195 and OAR 735-050-0130 through 735-050-0160, that a motor vehicle liability insurance policy has been issued.

(3) DMV will use a written statement as identified in section (2)(a) of this rule as a basis for a financial responsibility verification request only if the person making the statement does all of the following:

(a) Signs and dates the request;

(b) Identifies the vehicle that the person believes is being operated in violation of financial responsibility requirements; and

(c) Explains why the person believes the vehicle is being operated in violation of financial responsibility requirements and includes facts that would cause a reasonable person to believe the vehicle is being operated in violation of financial responsibility requirements.

(4) DMV will suspend the driving privileges or right to apply for driving privileges of any person who fails to make a future responsibility filing after failing verification or who falsely certifies compliance with financial responsibility requirements.

(5) A person who fails to make a future responsibility filing after failing verification or who falsely certifies compliance with financial responsibility requirements is entitled to a pre-suspension hearing in accordance with ORS 809.440(1) and 809.415. If no pre-suspension hearing is held, a person may be entitled to a post-imposition hearing in accordance with OAR 735-050-0090.

Stat. Auth.: ORS 184.616, 814.619, 802.010 & ORS 806.150

Stats. Implemented: ORS 806.150 & ORS 809.450

Hist.: MV 2-1986, f. & ef. 1-30-86; Administrative Renumbering 3-1988, Renumbered from 735-033-0075; MV 12-1990, f. & cert. ef. 7-16-90; MV 6-1991, f. & cert. ef. 7-16-91; DMV 9-2003, f. & cert. ef. 7-17-03; DMV 20-2003, f. 12-15-03 cert. ef. 1-1-04; DMV 23-2009, f. 12-22-09, cert. ef. 1-1-10

## 735-050-0120

### Proof of Compliance With Financial Responsibility Requirements in Lieu of an Unexpired Insurance Card

The following list establishes what constitutes "other current proof of compliance with financial or future responsibility requirements" under ORS 806.011, and "proof of compliance with financial responsibility requirements" under ORS 806.012:

(1) An unexpired motor vehicle liability insurance policy for the particular vehicle that meets the standards set forth in ORS 806.080;

(2) An unexpired motor vehicle liability insurance binder issued by the insurance carrier or its authorized insurance producer (agent) for the particular vehicle that meets the standards set forth in ORS 806.080;

(3) A letter signed by a representative from an insurance carrier or its authorized agent, on the insurance carrier's or agent's letterhead, that verifies current insurance coverage;

(4) A certificate of self insurance issued by the Driver and Motor Vehicle Services Division of the Department of Transportation (DMV) under ORS 806.130 naming the owner of the particular vehicle; or

(5) A displayed Oregon dealer plate unless the dealership does not sell motorized vehicles and has completed a "Certificate of Exemption from Vehicle Liability Insurance for Vehicle Dealer," DMV Form 735-7024.

Stat. Auth.: ORS 184.616, 184.619, 806.011 & 806.012

Stats. Implemented: ORS 806.011 & 806.012

Hist.: DMV 3-1994, f. & cert. ef. 7-21-94; DMV 22-2002, f. 11-18-02, cert. ef. 1-1-03; DMV 14-2003, f. 10-24-03, cert. ef. 1-1-04; DMV 20-2003, f. 12-15-03 cert. ef. 1-1-04; DMV 23-2009, f. 12-22-09, cert. ef. 1-1-10

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**Rule Caption:** Requirements for a Hazardous Materials Endorsement; Military Privileges; Valid CDL; Civil Penalty for Out-of-Service Order.

**Adm. Order No.:** DMV 24-2009

**Filed with Sec. of State:** 12-22-2009

**Certified to be Effective:** 1-1-10

**Notice Publication Date:** 10-1-2009

**Rules Amended:** 735-062-0190, 735-070-0000, 735-070-0170

**Rules Repealed:** 735-062-0003, 735-070-0043

**Subject:** Chapter 395, Oregon Laws 2009 (SB 129) amends several statutes related to commercial driving privileges and the operation of a commercial motor vehicle. The bill was proposed by DMV to make certain that Oregon's commercial driver license (CDL) program is in compliance with federal regulations.

To qualify for a hazardous materials endorsement, section 8 of the new law requires the person to be a U.S. citizen or permanent legal resident as defined by the department by rule. The amendment of 735-062-0190(1)(c) establishes what documents are required to establish proof of U.S. citizenship or a permanent legal status. DMV also amended 735-062-0190 to align DMV's process with federal requirements that a person be required to pass a security threat assessment from the Transportation Security Administration (TSA) every five years. Other amendments clarify the process for cancellation of a CDL if a person does not remain qualified for the hazardous materials endorsement.

DMV amended 735-070-0000 to include a reference to ORS 807.173 which authorizes DMV to cancel a CDL if the person no longer qualifies for a hazardous materials endorsement.

Section 14 of the new law specifies new civil penalty amounts for violation of an out-of-service order. DMV amended 735-070-0170 to delete the language concerning the civil penalty amounts and to update a statutory reference in the section that sets forth administrative hearing rights.

DMV repealed 735-062-0003 and 735-070-0043 because the new law includes all necessary language and the rules are no longer needed.

**Rules Coordinator:** Lauri Kunze—(503) 986-3171

## 735-062-0190

### Requirements for Issuance and Retention of a Hazardous Materials Endorsement

(1) To obtain, retain or renew commercial driver license (CDL) with a hazardous materials endorsement, a person must be qualified. To qualify for a hazardous materials endorsement a person must:

(a) Qualify for commercial driving privileges or have a valid Oregon CDL;

(b) Pass a hazardous materials endorsement knowledge test for an original endorsement or a renewal;

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(c) Pass a security threat assessment (security check) from the Transportation Security Administration (TSA) in accordance with 49 CFR Part 1572, including receipt by DMV of a notice from TSA which shows the person does not pose a security threat. A person must pass a TSA security check at the following times:

(A) Within four years and nine months prior to the date DMV issues an original hazardous materials endorsement;

(B) At intervals of not more than five years from the date of the person's most recent TSA security check; and

(C) Any other time required by DMV.

(d) Pay all required fees, which include, but may not be limited to, any applicable issuance fee and a hazardous materials knowledge test fee.

(2) To obtain, replace or renew a CDL with a hazardous materials endorsement a person must provide proof of U.S. citizenship, as described in OAR 735-062-0015(2), or permanent legal residence, as described in OAR 735-062-0015(3). A person unable to provide one of the documents listed in OAR 735-062-0015(2) or (3) is not qualified for a hazardous materials endorsement.

(3) A person is no longer qualified for a hazardous materials endorsement if:

(a) DMV receives a notice of threat assessment from TSA requiring immediate cancellation of the hazardous materials endorsement;

(b) DMV receives notice from TSA indicating the person did not pass the security threat assessment; or

(c) The person fails to complete and pass a TSA security check as described in section (1) of this rule.

(4) If DMV determines a person is no longer qualified for a hazardous materials endorsement, DMV will cancel the person's CDL as set forth in OAR 735-070-0000. Upon cancellation of the CDL, the person must immediately surrender to DMV the CDL showing the hazardous materials endorsement. If the person otherwise qualifies and pays a replacement fee, DMV will issue a driver license or a CDL without a hazardous materials endorsement.

(5) The person may request an administrative review on the cancellation of his or her CDL. The issues for the administrative review are limited to whether:

(a) When required, the person completed and passed a TSA security check as described in section (1) of this rule; or

(b) DMV received a notice from TSA showing the person does not qualify for a hazardous materials endorsement; and

(c) Whether the person is the same person named on the notice.

(6) An applicant for an Oregon CDL with a hazardous materials endorsement who presents a valid CDL with a hazardous materials endorsement issued by another state must still qualify for an original hazardous materials endorsement as set forth in section (1) of this rule.

(7) If the person passes a TSA security check within one year from the date the person's CDL with a hazardous materials endorsement was canceled under section (3) of this rule and otherwise qualifies for the CDL and endorsement, DMV will reissue the CDL with a hazardous materials endorsement after payment of a replacement fee. If the cancellation has been in effect for more than one year, the person must reapply for the hazardous materials endorsement as an original endorsement and must take all required tests, pay all required fees and pass the required TSA security check.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 807.173

Stats. Implemented: ORS 807.170, 807.173, 807.350, 809.310, 49 USC sec. 5103a

Hist.: DMV 3-2005, f. 1-20-05, cert. ef. 1-31-05; DMV 13-2005, f. 5-19-05, cert. ef. 5-31-05; DMV 18-2005(Temp), f. & cert. ef. 8-18-05 thru 2-13-06; DMV 26-2005, f. & cert. ef. 12-14-05; DMV 7-2006(Temp), f. 7-31-06, cert. ef. 8-1-06 thru 1-27-07; DMV 8-2006, f. & cert. ef. 8-25-06; DMV 24-2009, f. 12-22-09, cert. ef. 1-1-10

## 735-070-0000

### Driver License Cancellations — Not Entitled to Driving Privileges

(1) DMV will, under the provisions of ORS 807.350 and 809.310(1), cancel a person's driving privileges if DMV determines the person is not entitled to or no longer qualified for a driver permit or driver license.

(2) A person is not entitled to a driver permit or driver license if the person does not meet the eligibility requirements of ORS 807.024, 807.040, 807.060, 807.062, 807.065, 807.066, 807.070 and 807.173.

(3) A person is not entitled to a driver permit or driver license if the person's driving privileges are suspended or revoked in any jurisdiction.

Stat. Auth.: ORS 184.616, 184.619 & 802.010

Stats. Implemented: ORS 802.540, 807.040, 807.050, 807.060, 807.070, 807.120, 807.150, 807.173, 807.400 & 809.310

Hist.: MV 16-1987, f. 9-21-87, ef. 9-27-87; Administrative Renumbering 3-1988, Renumbered from 735-031-0061; MV 11-1988(Temp), f. & cert. ef. 4-1-88; MV 19-1988, f. & cert. ef. 6-1-88; MV 8-1989, f. & cert. ef. 2-1-89; MV 14-1992, f. & cert. ef. 10-16-92; MV 16-1992, f. & cert. ef. 12-16-92; DMV 3-2002, f. & cert. ef. 3-14-02; DMV 16-2008, f. 6-23-08, cert. ef. 7-1-08; DMV 24-2009, f. 12-22-09, cert. ef. 1-1-10

## 735-070-0170

### Hearing Regarding Civil Penalty for Violation of an Out-of-Service Order or Notification of Violation

When a civil penalty is imposed under Sec. 14, Ch. 395, Oregon Laws 2009, the person has a right to a contested case hearing in accordance with ORS 183.745. However, the amount of the civil penalty is not an issue at the hearing, and the administrative law judge presiding at the contested case hearing may not adjust the amount of the civil penalty.

Stat. Auth.: ORS 184.616, 184.619 & 802.010

Stats. Implemented: Sec. 14 Ch. 395 OL 2009

Hist.: MV 13-1993, f. 10-22-93, cert. ef. 11-4-93; DMV 17-2008, f. & cert. ef. 7-23-08; DMV 24-2009, f. 12-22-09, cert. ef. 1-1-10

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**Rule Caption:** Limited Term Driver Licenses, Driver Permits and Identification Cards; Documents Needed; Valid with Previous Photo.

**Adm. Order No.:** DMV 25-2009

**Filed with Sec. of State:** 12-22-2009

**Certified to be Effective:** 1-1-10

**Notice Publication Date:** 10-1-2009

**Rules Amended:** 735-062-0007, 735-062-0010, 735-062-0015, 735-062-0020, 735-062-0090, 735-062-0125

**Subject:** Section 4, Chapter 1, Oregon Laws 2008, which is operative on January 1, 2010, provides for the issuance, renewal and replacement of a limited term driver license, limited term driver permit and limited term identification card. DMV amended OAR 735-062-0007, 735-062-0010 and 735-062-0090 to specify what proof of legal presence in the United States an applicant must provide for the issuance or renewal of a limited term driver license, limited term driver permit or limited term identification card if the applicant is in the US on a temporary basis. Other changes update these rules to refer to a limited term driver license, driver permit or ID card.

The amendment to OAR 735-062-0015(6) clarifies that DMV will not re-verify the legal presence documents presented by a person who is applying to replace a limited term driver license, limited term driver permit or limited term identification card since those documents were verified at the time of original issuance or renewal. DMV also amended section (2) of this rule to clarify that a tribal ID card is sufficient proof that the person applying is a citizen or permanent resident of the US.

OAR 735-062-0125 defines the requirements for renewing or replacing a driver license or identification card using a previous photo on file with DMV. As authorized by SB 1080, these may be issued to an applicant who is a US Citizen or permanent resident who is unable to renew or replace an Oregon issued driver license or identification card in person because the applicant is away from Oregon for an extended period of time. DMV's amendment clarifies what proof must be provided by the applicant to qualify for a driver license or identification card that uses a previous photo. DMV also amended 735-062-0020 to specify the requirements for proof of identity and date of birth when a driver license or identification card issued under 735-062-0125 is renewed or replaced.

DMV amended 735-062-0090 to extend to 14 months the time period within which a person may apply for renewal of a driver license or identification card before its expiration date. The amendment also describes the proof of legal presence necessary to renew a limited term driver license, driver permit or identification card.

**Rules Coordinator:** Lauri Kunze—(503) 986-3171

## 735-062-0007

### Driver Permits or Driver Licenses

(1) Before the Driver and Motor Vehicle Services Division of the Department of Transportation (DMV) will issue a driver permit or driver license, the person applying for the driver permit or driver license must:

(a) Satisfy all requirements set forth in ORS 807.040 and 807.060(2)(a) if under the age of 18. For purposes of ORS 807.060 and this subsection:

(A) "Mother" means the biological or adoptive mother of the applicant;

(B) "Father" means the biological or adoptive father of the applicant; and

(C) "Legal guardian" means an individual, or the authorized representative of an entity, private or public institution or agency appointed as guardian of the applicant by a court having jurisdiction.

(b) Satisfy all requirements set forth in ORS 807.065 and 807.066 to receive a driver license (provisional) if under 18 years of age;

(c) Provide proof of a verifiable SSN or proof that the person is not eligible for a SSN as provided in OAR 735-062-0005;

(d) Provide proof of legal presence as provided in OAR 735-062-0015;

(e) Submit to the collection of biometric data for the purpose of establishing identity as provided in ORS 807.024 and OAR 735-062-0016;

(f) Provide proof of the person's identity and date of birth as provided in OAR 735-062-0020;



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(g) Provide proof of the person's residence address as provided in OAR 735-062-0030;

(h) Provide proof, as provided in OAR 735-016-0070, that the person is domiciled in or a resident of Oregon;

(i) Surrender all driver permits and driver licenses in the person's possession that have been issued by:

- (A) Another state;
- (B) A Canadian province or territory; or
- (C) A U.S. territory.

(j) In addition to all requirements in subsections (a) through (i) of this section, a person who holds a commercial driver license from another jurisdiction must satisfy all requirements set forth in ORS 807.045 and OAR 735-062-0200.

(2) A person is not eligible for driving privileges under ORS 807.060(4) or (5) and DMV will not issue or renew driving privileges or replace a driver license or driver permit if on an application for driving privileges or a replacement license or permit a person:

(a) Answers yes to the question "Do you have a vision condition or impairment that has not been corrected by glasses, contacts or surgery that affects your ability to drive safely?" and the person is unable to pass a DMV vision screening;

(b) Answers yes to the question "Do you have any physical or mental conditions or impairments that affect your ability to drive safely?";

(c) Answers yes to the question "Do you use alcohol, inhalants, or controlled substances to a degree that affects your ability to drive safely?"

(3) A person who is denied issuance or renewal of driving privileges or replacement of a driver license or driver permit under section (2) of this rule will be allowed to establish or reestablish eligibility by passing DMV examinations under ORS 807.070, by getting a determination of eligibility from the Medical Determination Officer under ORS 807.090 or both, as determined by DMV. The requirement may be waived if DMV determines the application was completed in error and the person is eligible for driving privileges.

(4) Upon receipt of an application for a driver license or driver permit, DMV will make an inquiry to the National Driver Register/Problem Driver Pointer System (NDR/PDPS) or the Commercial Driver License Information System (CDLIS) or both to determine if the applicant's driving privileges are suspended, revoked, canceled or otherwise not valid in any other jurisdiction. For issuance of a commercial driver license (CDL), DMV will also make an inquiry to CDLIS to determine if the applicant has been issued a CDL in another jurisdiction.

(5) DMV may require the applicant to provide a clearance letter in compliance with OAR 735-062-0160, indicating the applicant has valid driving privileges from any jurisdiction in which an inquiry with the National Driver Register/Problem Driver Pointer System (NDR/PDPS) or the Commercial Driver License Information System (CDLIS) or both indicates the applicant's driving privilege is not fully valid.

(6) DMV will not issue driving privileges to a person until his or her driving privilege is reinstated in all jurisdictions, unless the only remaining reinstatement requirement in the other jurisdiction is proof of financial responsibility. Nothing in this section prohibits DMV from issuing a regular Class C driver license to a person whose CDL driving privileges are not valid as long as the person's regular Class C or equivalent driving privileges are valid.

(7) DMV will not issue a driver license or permit to a person with a current, valid Oregon identification card (ID card). To become eligible, the person must surrender the ID card before DMV may issue the Oregon driver license or permit. If the person's ID card is lost or destroyed, the person must make a statement that the card is lost or destroyed and that it will be returned to DMV if found.

(8) A driver license of a United States citizen or permanent legal resident with a February 29 birth date expires:

- (a) On February 29 if the expiration year is a leap year; or
- (b) On March 1 if the expiration year is not a leap year.

(9) After determining that an applicant has met all requirements under this rule, DMV will issue the license or permit and mail it to the address provided by the applicant at the time of the application.

(10) After determining that an applicant has met all requirements under this rule and has provided proof of legal presence in the United States on a temporary basis, as described in OAR 735-062-0015(4), DMV will issue a limited term driver license or limited term driver permit and mail it to the address provided by the applicant at the time of the application.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 807.040, 807.050, 807.060, 807.120, 809.310 & 2008 OL Ch 1  
Stats. Implemented: ORS 807.040, 807.060, 807.066 & 2008 OL Ch 1  
Hist.: MV 14-1987, f. 9-21-87, ef. 9-27-87; Administrative Renumbering 3-1988, Renumbered from 735-031-0000; MV 6-1990, f. & cert. ef. 4-2-90; MV 14-1992, f. & cert. ef. 10-16-92; MV 16-1992, f. & cert. ef. 12-16-92; DMV 12-2000, f. & cert. ef. 9-21-00; DMV 3-2003, f. & cert. ef. 4-21-03; DMV 2-2005, f. 1-20-05, cert. ef. 1-31-05; DMV 27-2005, f. 12-14-05 cert. ef. 1-1-06; DMV 5-2007, f. 5-24-07, cert. ef. 8-1-07; DMV 17-2007, f. 12-24-07, cert. ef. 1-1-08; DMV 1-2008(Temp), f. 1-18-08, cert. ef. 2-4-08 thru 8-1-08; Renumbered from 735-062-0000, DMV 16-2008, f. 6-23-08, cert. ef. 7-1-08; DMV 25-2009, f. 12-22-09, cert. ef. 1-1-10

## 735-062-0010

### Identification Cards

(1) Pursuant to ORS 807.400 and as provided in this rule, DMV will issue an identification card to a person who does not have a valid driver license.

(2) A person applying for an identification card must:

(a) Satisfy all identification card requirements set forth in ORS 807.400 and 807.410, except as described under section (7) of this rule;

(b) Provide proof of a verifiable SSN or proof that the person is not eligible for a SSN as provided in OAR 735-062-0005;

(c) Provide proof of legal presence as provided in OAR 735-062-0015;

(d) Submit to the collection of biometric data for the purpose of establishing identity as provided in ORS 807.024 and OAR 735-062-0016.

(e) Provide proof of the person's identity and date of birth as provided in OAR 735-062-0020; and

(f) Provide proof of the person's residence address as provided in OAR 735-016-0070 and 735-062-0030.

(3) Identification cards issued to persons for whom DMV has created an Oregon driving record will reflect the same number as that on the existing record.

(4) An applicant in possession of a driver license issued by another jurisdiction must surrender that license to DMV before an identification card will be issued. The person must provide a statement to DMV if the person's license is lost, destroyed or the person no longer has the license in his or her possession, and must agree that the license will be surrendered to DMV if found.

(5) Applicants for an identification card must personally apply at a DMV office to receive an identification card.

(6) All identification cards must include a photograph of the cardholder.

(7) DMV will waive the fee requirements set forth in ORS 807.410 for those persons applying for an identification card when:

(a) The person voluntarily surrenders an Oregon license or driver permit to DMV based upon the person's recognition that the person is no longer competent to drive; or

(b) The person's driving privileges are suspended under ORS 809.419(1) and the person voluntarily surrenders the person's license or driver permit to DMV.

(8) An identification card of a United States citizen or permanent legal resident with a February 29 birth date expires:

- (a) On February 29 if the expiration year is a leap year; or
- (b) On March 1 if the expiration year is not a leap year.

(9) After determining that an applicant has met all requirements under this rule, DMV will issue the identification card and mail it to the address provided by the applicant at the time of application.

(10) After determining that an applicant has met all requirements under this rule and has provided proof legal presence in the United States on a temporary basis, as described in OAR 735-062-0015(4), DMV will issue a limited term identification card and mail it to the address provided by the applicant at the time of the application.

(11) DMV may renew an identification card as provided in OAR 735-062-0090 or may do so using a previous photograph only as provided 735-062-0125.

(12) DMV may replace an identification card as provided in OAR 735-062-0110 or may do so using a previous photograph only as provided 735-062-0125.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 807.040, 807.050, 807.400 & 2008 OL Ch 1  
Stats. Implemented: ORS 807.400 & 2008 OL Ch 1  
Hist.: MV 14-1987, f. 9-21-87, ef. 9-27-87; Administrative Renumbering 3-1988, Renumbered from 735-031-0003; MV 19-1990, f. 12-17-90, cert. ef. 1-1-91; DMV 12-2000, f. & cert. ef. 9-21-00; DMV 24-2001, f. 12-14-01, cert. ef. 1-1-02; DMV 5-2007, f. 5-24-07, cert. ef. 8-1-07; DMV 1-2008(Temp), f. 1-18-08, cert. ef. 2-4-08 thru 8-1-08; DMV 16-2008, f. 6-23-08, cert. ef. 7-1-08; DMV 25-2009, f. 12-22-09, cert. ef. 1-1-10

## 735-062-0015

### Proof of Legal Presence

(1) Except as provided in OAR 735-062-0032 and 735-062-0033, a person who applies for any original, renewal or replacement driver permit, driver license, or identification card must provide valid documentary proof that the person is a citizen or permanent legal resident of the United States or is otherwise legally present in the United States in accordance with federal immigration laws, unless the person's DMV record shows DMV has previously verified the person's SSN and shows that the person is a citizen or permanent legal resident of the United States. The documents provided must be either original or certified copies.

(2) Documents acceptable as proof of U.S. citizenship include, but are not limited to:

(a) A birth certificate issued by a U.S. Territorial government, the District of Columbia or the government of a state or political subdivision of a state of the United States. DMV will not accept a hospital-issued birth certificate, hospital card or birth registration or baptismal certificate.

(b) U.S. Consular Report of Birth Abroad (FS-240).

(c) U.S. government-issued Certification of Report of Birth (DS-1350 or FS-545).

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- (d) Request for Verification of Birth (DD372).
- (e) United States passport, not expired more than five years.
- (f) United States passport card, not expired more than five years.
- (g) U.S. Territory passport, not expired more than five years.
- (h) Tribal ID card from a federally recognized tribe located in Oregon or a federally recognized tribe with an Oregon affiliation, if DMV determines:

(A) The procedures used in issuing the card are sufficient to prove that a member is a citizen or permanent resident of the United States; and

(B) The card contains security features that are sufficient to prevent alteration or counterfeiting of the card.

- (i) Certificate of Citizenship (N560 and N561).
- (j) Certificate of Naturalization (N550, N570 and N578).
- (k) U.S. Citizen Identification Card (I-197 and I-179).

(3) Documents acceptable as proof of permanent legal residence in the U.S include, but are not limited to: Resident Alien card; Permanent Resident card (I-551); or a Permit to Re-Enter (I-327).

(4) Documents acceptable as proof that a person is not a citizen or permanent legal resident of the United States but is legally present in the United States on a temporary basis include, but are not limited to:

(a) Arrival/Departure Record (I-94 or CBP I-94A) or a valid I-797A Notice of Action issued by the Department of Homeland Security or Custom and Border Protection with a valid unexpired foreign passport.

(b) Arrival/Departure Record (I-94, CBP I-94A) with a passport issued by the Federated States of Micronesia (FSM), Republic of the Marshall Islands (RMI) or Republic of Palau, not expired more than five years.

- (c) Temporary Resident ID card (I-688);
- (d) Employment Authorization card (I-766); or
- (e) Refugee Travel Document Form I-571.

(5) DMV will not accept as the proof required by sections (3) and (4) of this rule a document that is not verified through the Systematic Alien Verification for Entitlements (SAVE) system.

(6) Notwithstanding section (5) of this rule, DMV may accept a document described in sections (3) and (4) of this rule that is not verified through the SAVE system if:

(a) DMV is able to determine through other means that the document is valid; or

(b) The document is presented for the replacement of a limited term driver license, limited term driver permit, or limited term identification card under OAR 735-062-0110.

(7) An applicant who must obtain a document in order to provide proof of legal presence may apply for an applicant temporary driver permit as described in OAR 735-062-0032 that will provide driving privileges for a limited time or an applicant temporary identification card as described in 735-062-0033.

Stat. Auth.: ORS 184.616, 184.619, 802.010 & 2008 OL Ch. 1  
Stats. Implemented: 2008 OL Ch. 1  
Hist.: DMV 16-2008, f. 6-23-08, cert. ef. 7-1-08; DMV 23-2008(Temp), f. 9-11-08, cert. ef. 9-15-08 thru 3-13-09; DMV 27-2008, f. 12-15-08, cert. ef. 1-1-09; DMV 25-2009, f. 12-22-09, cert. ef. 1-1-10

## 735-062-0020

### Proof of Identity and Date of Birth Requirements

(1) A person who applies for an original, renewal or replacement driver permit, driver license, or identification card must provide valid documentary proof of the person's identity and date of birth prior to the issuance of such driver permit, driver license, or identification card. Documents must be original or certified copies.

(2) Except as provided in section (3) of this rule, documents acceptable as proof of identity and date of birth include, but are not limited to:

(a) Any document that provides proof of legal presence as provided in OAR 735-062-0015.

(b) U.S. Military documents including:

(A) Military or Armed Forces ID card;

(B) Military Common Access Card; or

(C) U.S. Uniform Services ID and Privileges card (DD1173 and DD1173-1).

(c) Tribal ID card from a federally recognized tribe located in Oregon or a federally recognized tribe with an Oregon affiliation if DMV determines:

(A) The procedures used in issuing the card are sufficient to prove a member's identity and date of birth; and

(B) The card contains security features that are sufficient to prevent alteration or counterfeiting of the card.

(d) Canadian Government Issued Birth Certificate;

(e) Out-of-state, District of Columbia, U.S. Territorial government or Canadian driver license, instruction permit or identification card, that contains the applicant's photograph, not expired more than one year unless hole-punched or marked "Not Valid as ID."

(f) Oregon driver license, instruction permit, or identification card, not expired more than one year. For the purposes of this subsection, DMV will not accept a driver license or identification card that was issued without a photograph, or issued with a previous photograph as described in OAR 735-062-0125.

(g) U.S. Department of State driver license or Non-driver ID card not expired more than one year.

(h) Oregon Concealed Weapon Permit/Concealed Handgun License, not expired more than one year.

(i) A letter verifying identity provided by an Oregon County Community Corrections agency if:

(A) DMV determines the procedures used in issuing the letter are reasonably equivalent to DMV standards for verification of a person's age and identity; and

(B) The letter contains security features that are sufficient to prevent alteration or counterfeiting of the letter.

(j) A letter verifying identity provided by the U.S. Pretrial Services if:

(A) DMV determines the procedures used in issuing the letter are reasonably equivalent to DMV standards for verification of a person's age and identity; and

(B) The letter contains security features that are sufficient to prevent alteration or counterfeiting of the letter.

(k) A letter verifying identity provided by the Oregon Youth Authority Agency if:

(A) DMV determines the procedures used in issuing the letter are reasonably equivalent to DMV standards for verification of a person's age and identity; and

(B) The letter contains security features that are sufficient to prevent alteration or counterfeiting of the letter.

(l) A letter verifying identity provided by a U.S. District Court Probation Office if:

(A) DMV determines the procedures used in issuing the letter are reasonably equivalent to DMV standards for verification of a person's age and identity; and

(B) The letter contains security features that are sufficient to prevent alteration or counterfeiting of the letter.

(m) Oregon Department of Correction Release Identification card, issued after April 30, 2005.

(n) The applicant's DMV record, including the applicant's digital photo, if the applicant has previously been issued an Oregon driver license, driver permit or identification card.

(3) A person who is renewing or replacing a driver license or identification card issued pursuant to OAR 735-062-0125 must provide an original or certified copy of one of the following documents as proof of identity and date of birth:

(a) A birth certificate issued by a U.S. Territorial government, the District of Columbia or the government of a state or political subdivision of a state of the United States. DMV will not accept a hospital-issued birth certificate, hospital card or birth registration or baptismal certificate.

(b) U.S. Consular Report of Birth Abroad (FS-240).

(c) U.S. government-issued Certification of Report of Birth (DS-1350 or FS-545).

(d) Request for Verification of Birth (DD372).

(e) United States passport, not expired more than five years.

(f) United States passport card, not expired more than five years.

(g) U.S. Territory passport, not expired more than five years.

(h) Tribal ID card from a federally recognized tribe located in Oregon or a federally recognized tribe with an Oregon affiliation, if DMV determines:

(A) The procedures used in issuing the card are sufficient to prove that a member is a citizen or permanent resident of the United States; and

(B) The card contains security features that are sufficient to prevent alteration or counterfeiting of the card.

(i) Certificate of Citizenship (N560 and N561).

(j) Certificate of Naturalization (N550, N570 and N578).

(k) U.S. Citizen Identification Card (I-197 and I-179).

(l) Resident Alien card.

(m) Permanent Resident card (I-551).

(n) Permit to Re-Enter (I327).

(4) DMV will not accept a document as proof of identity and date of birth if DMV has reason to believe the document is not valid. DMV may request an applicant for a driver permit, driver license, or identification card to present additional documentary proof of identity and date of birth if the document presented does not establish the applicant's identity or date of birth to the satisfaction of DMV.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 807.050, 807.150 & 807.400  
Stats. Implemented: ORS 807.050, 807.062, 807.150, 807.160, 807.220, 807.230 & 807.280  
Hist.: MV 14-1987, f. 9-21-87, ef. 9-27-87; March 1988, Renumbered from 735-031-0016; MV 6-1990, f. & cert. ef. 4-2-90; DMV 12-1997, f. & cert. ef. 11-17-97; DMV 7-2001, f. & cert. ef. 3-7-01; DMV 34-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-04; DMV 5-2004, f. & cert. ef. 3-25-04; DMV 21-2004(Temp), f. & cert. ef. 10-1-04 thru 3-29-05; DMV 8-2005, f. & cert. ef. 2-16-05; DMV 9-2006, f. & cert. ef. 8-25-06; DMV 2-2008(Temp), f. 1-18-08, cert. ef. 2-4-08 thru 8-1-08; DMV 16-2008, f. 6-23-08, cert. ef. 7-1-08; DMV 23-2008(Temp), f. 9-11-08, cert. ef. 9-15-08 thru 3-13-09; DMV 27-2008, f. 12-15-08, cert. ef. 1-1-09; DMV 25-2009, f. 12-22-09, cert. ef. 1-1-10

## 735-062-0090

### Renewal Driver Licenses and Identification Cards

(1) DMV will renew the driver license of a person satisfying the requirements set forth in ORS 807.150.

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(2) An applicant for the renewal of a driver license or identification card must:

- (a) Provide proof of a verifiable SSN or proof that the person is not eligible for a SSN as provided in OAR 735-062-0005(2);
- (b) Provide proof of legal presence as provided in OAR 735-062-0015;
- (c) Submit to the collection of biometric data for the purpose of establishing identity as provided in ORS 807.024 and 735-062-0016; and
- (d) Provide proof of identity and date of birth as provided in OAR 735-062-0020.

(3) An applicant for the renewal of a driver license or identification card that includes a change of residence address must present to DMV one of the proofs of residence address listed in OAR 735-062-0030 that shows the person's current residence address. (Current residence address is the residence address to be included on the license or identification card to be issued.)

(4) DMV may renew an unexpired driver license or identification card up to 14 months prior to the expiration date.

(5) If a driver license has been expired more than one year, the applicant must re-apply for an original driver license and meet the requirements set forth in OAR 735-062-0007.

(6) An applicant for a renewal of a commercial driver license with a hazardous materials endorsement must retake and pass the hazardous materials knowledge test and meet the requirements set forth in OAR 735-062-0190 to retain the hazardous materials endorsement on the commercial driver license.

(7) An applicant for a renewal of a commercial driver license must meet the requirements set forth in OAR 735-063-0065.

(8) Before processing a driver license renewal, DMV will make an inquiry to the National Driver Register/Problem Driver Pointer System (NDR/PDPS) or the Commercial Driver License Information System (CDLIS), or both, to determine if the applicant's driving privileges are suspended, revoked, canceled or otherwise not valid in any other jurisdiction. Before processing a commercial driver license (CDL) renewal, DMV will make an inquiry to CDLIS to determine if the applicant has been issued a CDL in any other jurisdiction.

(9) If the applicant's driving privileges are suspended, revoked, canceled or otherwise not valid in any other jurisdiction, the applicant may not renew an Oregon driver license until the applicant submits a clearance letter that complies with OAR 735-062-0160 and shows the applicant's driving privileges are reinstated or otherwise valid in the other jurisdiction.

(10) Notwithstanding section (9) of this rule, DMV will renew the driving privileges of an applicant whose driving privileges are suspended, revoked, canceled or otherwise not valid in another jurisdiction if the only remaining reinstatement requirement in the other jurisdiction is proof of future financial responsibility.

(11) DMV will not renew an Oregon driver license or permit if the applicant has a current, valid Oregon identification card. To become eligible, the person must surrender the Oregon identification card before DMV will renew the Oregon driver license or permit. If the person's identification card is lost or the person no longer has the identification card in his or her possession, the person must provide a statement attesting to this fact.

(12) Notwithstanding subsection (2)(b) of this rule, DMV will renew a limited term driver license, limited term driver permit or limited term identification card to an applicant who otherwise qualifies for renewal under this rule and has provided proof of temporary legal presence in the United States as described in OAR 735-062-0015(4) that has been extended or is still in effect.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 802.012, 807.040 & 2008 OL Ch 1  
Stats. Implemented: ORS 802.012, 802.540, 807.040 - 807.060, 807.100, 807.150, 807.400 & 2008 OL Ch 1  
Hist.: MV 14-1987, f. 9-21-87, ef. 9-27-87; Administrative Renumbering 3-1988, Renumbered from 735-031-0009; MV 14-1992, f. & cert. ef. 10-16-92; MV 16-1992, f. & cert. ef. 12-16-92; DMV 11-1998, f. & cert. ef. 9-14-98; DMV 21-2004(Temp), f. & cert. ef. 10-1-04 thru 3-29-05; DMV 2-2005, f. 1-20-05, cert. ef. 1-31-05; DMV 4-2007, f. 5-24-07, cert. ef. 6-5-07; DMV 17-2007, f. 12-24-07, cert. ef. 1-1-08; DMV 1-2008(Temp), f. 1-18-08, cert. ef. 2-4-08 thru 8-1-08; DMV 7-2008(Temp), f. & cert. ef. 2-22-08 thru 8-19-08; DMV 10-2008, f. & cert. ef. 4-24-08; DMV 16-2008, f. 6-23-08, cert. ef. 7-1-08; DMV 25-2009, f. 12-22-09, cert. ef. 1-1-10

## 735-062-0125

### Standards for Issuance of a Renewal or Replacement Driver License or Identification Card Containing a Previous Photograph

(1) DMV may renew or replace a person's driver license or identification card by issuing a renewal or replacement license or identification card containing a photograph of the person already on file with DMV, if the applicant:

- (a) Provides proof that he or she is a resident of or domiciled in Oregon as described in OAR 735-016-0040;
- (b) Provides proof or previously has proven that he or she is a citizen or permanent resident of the United States as required by OAR 735-062-0015. An applicant who has not previously provided proof to DMV of citizenship or permanent legal residency in the U.S. may provide a copy, satisfactory to DMV, of one or more documents required by OAR 735-062-0015(2) or (3).
- (c) Provides proof or previously has provided proof of his or her Social Security number, and the number is verified with the Social Security Administration as required by OAR 735-062-0005;

(d) Submits a written statement to DMV establishing good cause why he or she is not able to appear and apply for the renewal or replacement license or identification card at a DMV field office and certifying that he or she will not be returning to Oregon within 150 days from the date of application;

(e) Provides proof that he or she is, in fact, the person to whom the license or identification card to be renewed or replaced was issued; and

(f) Meets all other qualifications for the license or identification card sought.

(2) Circumstances constituting "good cause" for purposes of subsection (1)(d) of this rule include, but are not limited to, the following:

(a) The applicant is temporarily in another jurisdiction or country for business reasons, employment or education, will be returning to Oregon, and continues to satisfy Oregon's residency requirements.

(b) The applicant is traveling outside of Oregon and the applicant's Oregon driver license or identification card is lost, stolen or mutilated;

(c) The applicant is traveling outside of Oregon and the applicant's Oregon driver license or identification card has expired or will expire before the person returns to Oregon; or

(d) The applicant has a medical condition or health problems that prevent him or her from applying for a renewal or replacement license or identification card at a DMV field office and submits to DMV proof of the medical condition or health problems from the applicant's licensed treating physician.

(3) Notwithstanding section (1) of this rule, DMV may issue a renewal or replacement license or identification card containing a photograph of the applicant already on file with DMV, if the applicant is an Oregon licensed driver or identification card holder serving on active duty in the United States Armed Forces outside of Oregon who provides a copy of his or her:

(a) Most current Leave Earning Statement showing Oregon as his or her home on record;

(b) Federally-issued active duty Military identification card; and

(c) Social Security number to be verified with the Social Security Administration, if not previously provided.

(4) A spouse, partner in a domestic relationship or dependent of a military person on active duty in the United States Armed Forces outside of Oregon who qualifies under section (3) of this rule, who holds an Oregon driver license or identification card may qualify for a driver license or identification card using the previous photograph, if the spouse or dependent provides a copy of the following:

(a) The military member's most current Leave Earning Statement showing Oregon as his or her home on record;

(b) The military member's active duty Military identification card;

(c) The spouse, partner or dependent's Military identification card; and

(d) The spouse, partner or dependent's Social Security number to be verified with the Social Security Administration, if not previously provided.

(5) DMV will not replace or renew a driver license or identification card under this rule, if the applicant's most recent photograph on file with DMV is more than nine years and two months old.

Stat. Auth.: ORS 184.616, 184.619, 802.010 & 2008 OL Ch 1

Stats. Implemented: ORS 807.400 & 2008 OL Ch 1

Hist.: DMV 16-2008, f. 6-23-08, cert. ef. 7-1-08; DMV 25-2009, f. 12-22-09, cert. ef. 1-1-10

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**Rule Caption:** Proof of School Attendance, Completion, Exemption and for Waiver of Reinstatement Fee.

**Adm. Order No.:** DMV 26-2009

**Filed with Sec. of State:** 12-22-2009

**Certified to be Effective:** 1-1-10

**Notice Publication Date:** 10-1-2009

**Rules Amended:** 735-062-0035

**Subject:** ORS 809.380 as amended by Chapter 105, Oregon Laws 2009 (HB 2871) requires that DMV waive the reinstatement fee for a person whose driving privileges are suspended for non-attendance at school if the person can show that he or she has graduated from high school or received a General Educational Development (GED) certificate at the time of reinstating driving privileges. The amendment to 735-062-0035 establishes what proof DMV will accept as proof of high school graduation or a GED certificate for determining whether a reinstatement fee should be waived.

**Rules Coordinator:** Lauri Kunze—(503) 986-3171

## 735-062-0035

### Proof of School Attendance, Completion or Exemption

DMV will require an applicant under 18 years of age to provide proof of school attendance, completion or exemption before issuing a driving privilege when no privilege has been issued to the applicant previously or the applicant's driving privilege has been revoked or cancelled. DMV must also view proof of school attendance, completion or exemption before reinstating a driving privilege suspended for failure to attend school. The following are proof of attendance, completion or exemption from school:

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- (1) Proof of high school graduation includes:
    - (a) The applicant's high school diploma or a copy thereof;
    - (b) A certified copy of the applicant's high school transcript showing that the applicant has graduated; or
    - (c) A letter on school letterhead and signed by the principal or the principal's designee stating the applicant has graduated from high school.
  - (2) Proof of receipt of a General Educational Development (GED) certificate includes:
    - (a) The applicant's GED certificate or copy thereof; or
    - (b) A letter from the Department of Community Colleges and Workforce Development, on agency letterhead and signed by an authorized representative, stating that the applicant has received a GED certificate.
  - (3) The Statement of Enrollment form (DMV form #735-7185) signed by the principal or designee of the principal of the secondary school attended by the applicant.
  - (4) The Statement of Enrollment form (DMV form #735-7185) signed by an authorized representative of a community college attended by the applicant showing that the applicant is making satisfactory progress toward a GED certificate.
  - (5) The Statement of Enrollment form (DMV form #735-7185) signed by the authorized representative of a community college attended by the applicant showing that the applicant is making satisfactory progress toward a high school diploma.
  - (6) The Statement of Enrollment form (DMV form #735-7185) signed by the authorized representative of the education service district or school district having jurisdiction over the area of the applicant's residence showing that the applicant is being taught by a private teacher or parent in compliance with ORS 339.035.
  - (7) A statement signed by the applicant, along with any supporting documentation, describing why the applicant cannot attend school due to circumstances beyond the applicant's control. Based upon the information submitted, DMV will determine whether or not the applicant is exempt from school attendance. This determination is only for the purpose of issuing driving privileges and does not exempt the applicant from any requirement to attend school.
  - (8) Proof that the applicant is exempt from school attendance under ORS 339.030(2) includes:
    - (a) The Statement of Enrollment form (DMV form #735-7185) signed by the designated representative of the education service district or school district having jurisdiction over the area of the applicant's residence showing that the applicant has been declared exempt from school attendance under ORS 339.030(2).
    - (b) A letter from the education service district or school district having jurisdiction over the area of the applicant's residence or State Board of Education, on letterhead and signed by a designated representative, stating that applicant has been granted an exemption from school attendance under ORS 339.030(2).
  - (9) DMV will waive the reinstatement fee for a person whose driving privileges were suspended under ORS 809.423(3) if the person provides:
    - (a) Proof of high school graduation as provided in section (1) of this rule; or
    - (b) Proof of a GED certificate as provided in section (2) of this rule.
- [ED. NOTE: Forms referenced are available from the agency.]  
Stat. Auth.: ORS 184.616, 184.619 & 807.066  
Stats. Implemented: ORS 807.066  
Hist.: DMV 6-2000(Temp), f. 8-10-00, cert. ef. 9-1-00 thru 2-27-01; DMV 13-2000, f. & cert. ef. 10-13-00; DMV 26-2009, f. 12-22-09, cert. ef. 1-1-10

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**Rule Caption:** Hardship or Probationary Permit Restrictions.

**Adm. Order No.:** DMV 27-2009

**Filed with Sec. of State:** 12-22-2009

**Certified to be Effective:** 1-1-10

**Notice Publication Date:** 11-1-2009

**Rules Amended:** 735-064-0100

**Subject:** Section 12, Chapter 783, Oregon Laws 2009 (HB 3271) amends ORS 809.600(1) and adds a new offense — aggravated driving while suspended or revoked — to the kinds of convictions that result in revocation of driving privileges as an habitual offender. OAR 735-064-0100(1)(c) describes what constitutes a violation of a hardship or probationary permit and lists the convictions in ORS 809.600(1)(a) through (g). DMV amended 735-064-0100 to include the conviction of aggravated driving while suspended or revoked.

**Rules Coordinator:** Lauri Kunze—(503) 986-3171

## 735-064-0100

### Hardship or Probationary Permit Restrictions

(1) A person issued a hardship or probationary permit must not do any of the following:

- (a) The person must not drive outside the hardship or probationary permit driving restrictions;

(b) The person must not be convicted of or forfeit bail for more than one traffic offense listed in ORS 809.600(2)(b) (including city traffic offenses and similar offenses under federal or state law) within any 12-month period. See OAR 735-064-0220 for a list of offenses and statutory references;

(c) The person must not be convicted of or forfeit bail for an offense as specified in ORS 809.600(1)(a) through (g). These offenses are: murder, manslaughter, criminally negligent homicide, assault, recklessly endangering another person, menacing, or criminal mischief resulting from the operation of a motor vehicle; reckless driving, driving while under the influence of intoxicants, failure to perform the duties of a driver involved in an accident or collision, criminal driving while suspended or revoked, fleeing or attempting to elude a police officer, aggravated vehicular homicide or aggravated driving while suspended or revoked;

(d) The person must not use intoxicants and drive;

(e) The person must not refuse to submit to a chemical breath test, blood test or urine test;

(f) The person must not be convicted of or forfeit bail for an offense under ORS 811.170; or

(g) The person must not falsify any information appearing on the Hardship/Probationary Application.

(2) The person required to have an IID must not violate the following provisions:

(a) Drive any vehicle which does not have an IID installed unless exempted by statute and administrative rule;

(b) Drive an employer's owned or leased vehicle without an IID unless the person is carrying a copy of an employer's exemption letter, Employer IID Exemption form or medical exemption letter in his or her possession;

(c) Tamper with the IID or remove it from the vehicle; or

(d) Solicit another person to blow into the IID.

(3) The person must maintain any required recommendation from a program approved by AMH and the court recommendation for a hardship or probationary permit during the term of the hardship or probationary permit.

(4) Evidence that a restriction has been violated includes, but is not limited to the following:

(a) Police reports;

(b) Accident reports;

(c) Reports from rehabilitation/treatment agencies;

(d) Written reports from family members or the general public;

(e) An official report which indicates the person has driven outside the hardship or probationary permit restrictions;

(f) An official report which indicates the person has been driving after using intoxicants;

(g) Receipt of a copy of a report from a police officer that indicates the person has refused the chemical breath test, blood test or urine test following an arrest for driving under the influence of intoxicants;

(h) An official report from a police officer;

(i) A court conviction; and

(j) A written, signed statement from an approved IID provider.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 807.270 & 813.510

Stats. Implemented: ORS 807.240, 807.270, 813.100, 813.510, 813.602, 813.608, 813.610, 813.612, & 813.614

Hist.: MV 7-1984, f. 6-29-84, ef. 7-1-84; MV 17-1986, f. & ef. 10-1-86; MV 12-1987(Temp), f. 9-16-87, ef. 9-27-87; MV 31-1987, f. & ef. 10-5-87; Administrative Renumbering 3-1988,

Renumbered from 735-031-0120; MV 30-1989, f. & cert. ef. 10-3-89; DMV 4-1994, f. & cert. ef. 7-21-94; DMV 12-1996, f. & cert. ef. 12-20-96; DMV 2-2006, f. & cert. ef. 2-15-06;

DMV 3-2008, f. & cert. ef. 1-25-08; DMV 27-2009, f. 12-22-09, cert. ef. 1-1-10

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**Rule Caption:** Convictions Used in Driver Improvement and Other Programs Where the Sanction Based on Cumulative Convictions.

**Adm. Order No.:** DMV 28-2009

**Filed with Sec. of State:** 12-22-2009

**Certified to be Effective:** 1-1-10

**Notice Publication Date:** 11-1-2009

**Rules Amended:** 735-064-0220, 735-072-0035

**Subject:** ORS 809.605 requires DMV to adopt rules specifying which traffic offenses count for the purpose of determining that a person is a habitual offender under ORS 809.600(2). By administrative rule, those offenses are used to determine who qualifies for DMV's Driver Improvement programs, and whether a person has violated the terms of a hardship or probationary permit or has committed a serious traffic violation while operating a commercial motor vehicle. OAR 735-064-0220 specifies those traffic offense convictions DMV will use for the above described purposes.

OAR 735-072-0035 is used only in the Driver Improvement Programs and contains a list of traffic offenses where it takes five offenses listed to equal one driver improvement violation.

During the 2009 legislative session, several bills were enacted creating new traffic offenses or amending current traffic offense statutes,

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requiring changes in OAR 735-064-0220 and 735-072-0035 to implement these laws.

DMV further amended these two rules by listing convictions that involve all-terrain vehicles, motor assisted scooters, snowmobiles, equipment violations and local ordinances in OAR 735-072-0035. These convictions will no longer be used for determining a habitual offender revocation, hardship and probationary permit violations, or to describe a motor vehicle traffic control violation. Instead, these convictions will be listed in OAR 735-072-0035 to determine when a person has attained a driver improvement violation under both the Adult and Provisional Driver Improvement Programs. DMV removed any conviction that carries its own suspension or revocation of driving privileges sanction, e.g. failure to install or use an ignition interlock device. Other changes include moving repealed statutory references and obsolete ACD codes into new sections and listing offenses in alphabetical order.

**Rules Coordinator:** Lauri Kunze—(503) 986-3171

## 735-064-0220

### Traffic Offenses Used in Habitual Offender, Driver Improvement, CMV Serious Violations and Hardship/Probationary Driver Permit Programs

- (1) A conviction for an offense listed in this rule counts toward:
  - (a) The Habitual Offender Program pursuant to ORS 809.600(2);
  - (b) The Provisional and Adult Driver Improvement Programs outlined in Oregon Administrative Rule chapter 735, division 72;
  - (c) Motor vehicle traffic control violations connected to a fatal accident as defined in ORS 801.477(1)(k) and OAR 735-070-0037 that can lead to a suspension of commercial motor vehicle driving privileges.
  - (d) Revocation of a probationary driver permit pursuant to ORS 807.270(7); and
  - (e) Revocation of a hardship permit pursuant to OAR 735-064-0100 and 735-064-0110.

(2) This section lists the offenses and the statutory citations for Oregon offenses used in the programs identified in section (1) of this rule: [Table not included. See ED. NOTE.]

(3) The following offenses have been repealed under Oregon law but still count as a conviction for an offense as set forth in section (1) of this rule if the person was convicted of the listed offense or it is an equivalent offense as described in section (4) of this rule: [Table not included. See ED. NOTE.]

(4) Offenses from other states may be posted to driver records using an AAMVANet Code Dictionary (ACD) code. This section identifies the code that appears on the driver record, a description of the offense and the ORS reference covering an equivalent offense(s) for Oregon: [Table not included. See ED. NOTE.]

(5) The following ACD codes are obsolete, but convictions reported under these codes may still count as a conviction for an offense as set forth in section (1) of this rule if DMV received notice from another state of a conviction using the following codes: [Table not included. See ED. NOTE.]

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

Stat. Auth.: ORS 184.616, 184.619, 809.480 & 809.605

Stats. Implemented: ORS 807.240, 807.270, 809.480, 809.600(2) & 809.605

Hist.: MV 17-1986, f. & ef. 10-1-86; MV 33-1987, f. & ef. 11-2-87; Administrative Renumbering 3-1988, Renumbered from 735-031-0180; MV 32-1989, f. & cert. ef. 10-3-89; MV 7-1990, f. & cert. ef. 5-16-90; MV 18-1991, f. 9-18-91, cert. ef. 9-29-91; MV 26-1991, f. & cert. ef. 11-18-91; DMV 8-1995, f. & cert. ef. 6-19-95; DMV 5-1997, f. & cert. ef. 2-20-97; DMV 8-1998, f. & cert. ef. 6-19-98; DMV 27-2001(Temp), f. 12-14-01, cert. ef. 1-1-02 thru 6-29-02; DMV 11-2002, f. 6-24-02, cert. ef. 6-30-02; DMV 33-2003(Temp), f. 12-15-03 cert. ef. 1-1-04 thru 6-28-04; DMV 4-2004, f. & cert. ef. 2-23-04; DMV 21-2005(Temp), f. 9-19-05, cert. ef. 10-1-05 thru 3-29-06; DMV 28-2005, f. & cert. ef. 12-14-05; DMV 19-2007, f. 12-24-07, cert. ef. 1-1-08; DMV 28-2009, f. 12-22-09, cert. ef. 1-1-10

## 735-072-0035

### Driver Improvement Offenses

(1) The conviction for an offense listed below counts toward both the Provisional and Adult Driver Improvement Programs. It takes five convictions from the following list to equal one driver improvement violation. All other convictions counting in the Driver Improvement Programs are outlined in OAR 735-064-0220. [List not included. See ED. NOTE.]

(2) Offenses from other states are posted to driver records using an AAMVANet Code Dictionary (ACD) code. This section identifies the code that appears on the driver record, a description of the offense and the ORS or administrative rule reference to the equivalent offense(s) in Oregon. The offenses listed below also count towards both the Provisional and Adult Driver Improvement Programs as described in section (1) of this rule. [List not included. See ED. NOTE.]

(3) The following ACD codes are obsolete but convictions reported under these codes may still count as a conviction for an offense for both the Provisional and Adult Driver Improvement Programs as described in section (1) of this rule if DMV received notice from another state of a conviction using the following codes: [List not included. See ED. NOTE.]

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

Stat. Auth.: ORS 184.616, 184.619 & 809.480

Stat. Imp.: ORS 809.480

Hist.: DMV 29-2001(Temp), f. 12-14-01 cert. ef. 1-1-02 thru 6-29-02; DMV 12-2002, f. 6-24-02, cert. ef. 6-30-02; DMV 19-2007, f. 12-24-07, cert. ef. 1-1-08; DMV 28-2009, f. 12-22-09, cert. ef. 1-1-10

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

**Adm. Order No.:** DMV 29-2009

**Filed with Sec. of State:** 12-22-2009

**Certified to be Effective:** 1-1-10

**Notice Publication Date:** 10-1-2009

**Rules Amended:** 735-080-0020, 735-080-0040, 735-080-0060

**Subject:** ORS 811.604 as amended by Chapter 238, Oregon Laws 2009 (SB 937) requires that an application for renewal of a disabled person parking permit contain a certificate signed by a licensed health care provider that the person qualifies for the permit. Previously a person could sign a statement that they still qualify for a disabled person parking permit to renew.

DMV amended 735-080-0040 to establish how an applicant for the renewal of a disabled person parking permit must provide the required signed certificate that qualifies the person to renew the permit. This includes a new renewal form that can be used.

DMV also amended 735-080-0020 and 735-080-0060 to list the correct form numbers for applications as DMV has developed new forms that are specific to the permit, decal or placard for which the person is applying. Other changes were made for clarity.

**Rules Coordinator:** Lauri Kunze—(503) 986-3171

## 735-080-0020

### Issuance of Disabled Person Parking Permits

(1) The Driver and Motor Vehicle Services Division of the Oregon Department of Transportation (DMV) will issue an individual disabled person parking permit or decal, or both, as described in ORS 811.605 to an applicant whose completed application (DMV form 735-265 IP) includes:

- (a) The applicant's name and address;
- (b) The applicant's driver license number, disability golf cart driver permit number or identification card number; and
- (c) A certificate, as required by ORS 811.604, that the applicant is a person with a disability.

(2) DMV will issue a wheelchair user disabled person parking permit or decal, as described in ORS 811.613, to an applicant whose completed application (DMV form 735-265 WCP) includes:

- (a) The applicant's name and address;
- (b) The applicant's driver license number, disability golf cart driver permit number or identification card number;
- (c) A certificate, as described in ORS 811.604, showing that the applicant is a person with a disability and the person has a condition that requires the use of a wheelchair or similar low-powered motorized or mechanically propelled vehicle designed specifically for use by a person with a physical disability; and
- (d) The applicant certifies that he or she uses a wheelchair or similar vehicle and requires a van accessible parking space.

(3) DMV will issue a temporary disabled person parking permit, valid for a maximum of six months, to a person whose completed application (DMV form 735-265 6T) includes:

- (a) The applicant's name and address;
- (b) The applicant's driver license number, disability golf cart driver permit number, identification card number, or customer number, if one has been assigned by DMV; and
- (c) A certificate, as required by ORS 811.604, except that it certifies that the applicant is temporarily disabled for less than four years. If the certificate specifies an ending date of the disability that is less than six months, that date will be used as the expiration date of the permit.

(4) DMV will issue a foreign visitor permit to a person who meets the requirements of ORS 811.611.

(5) DMV will issue a program disabled person parking permit, as described under ORS 811.607, to a program that regularly operates at least one vehicle for the transportation of persons with disabilities, including, but not limited to a nonprofit organization, an agency, a residential care facility, an assisted living facility, a medical or persons with disabilities transportation service, or an adult foster care home. The program's completed application (DMV form 735-265 PP) must include:

- (a) The program's name and address;
- (b) The name of the program's contact person;
- (c) A certification that the program is an organization, agency or business that regularly transports persons with disabilities; and
- (d) The number of vehicles in the program that regularly transports persons with disabilities.

(6) DMV will issue a family disabled person parking permit to a family that has more than one person with disabilities residing in the same house-

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hold. The applicant must be an adult family member and the applicant's completed application (DMV form 735-265 FPP) must include:

- (a) The name and address of the applicant;
- (b) A certificate, as required by ORS 811.609, that the family includes at least two persons with a disability, including the name of each family member with a disability; and
- (c) The number of vehicles regularly used by the family to transport those family members with a disability.

Stat. Auth.: ORS 801.235, 802.010, 811.602, 811.607 & 811.609  
Stats. Implemented: ORS 811.602 & 811.604, 811.605, 811.606, 811.607 & 811.609  
Hist.: MV 11-1985, f. 9-19-85, ef. 9-20-85; MV 30-1986, f. 12-31-86, ef. 1-1-87; Administrative Renumbering 3-1988, Renumbered from 735-110-08810; MV 38-1989, f. & cert. ef. 10-3-89; MV 20-1991, f. 9-18-91, cert. ef. 9-29-91; DMV 20-2007, f. 12-24-07, cert. ef. 1-1-08; DMV 29-2009, f. 12-22-09, cert. ef. 1-1-10

## 735-080-0040

### Replacement and Renewal of Disabled Person Parking Permits

(1) DMV may replace a disabled person parking permit, including an individual permit, a wheelchair user permit, a temporary permit, a temporary duplicate permit and a permit with a parking identification card as described in OAR 735-080-0060. To replace a permit or decal, the holder may apply for replacement in person at a DMV field office or by mail to the DMV Driver Issuance Unit — Parking Permits Clerk at 1905 Lana Ave NE, Salem, OR, 97314. All replacements for program and family permits are required to apply by mail to the DMV Driver Issuance Unit — Parking Permits Clerk at 1905 Lana Ave NE, Salem, OR, 97314. The holder must submit an Application for a Person with a Disability Parking Permit on the applicable DMV form 735-265 as described in OAR 735-080-0020 or 735-080-0060, that includes:

- (a) The name, address and Oregon driver license or permit number (ODL), identification card number (ID) or customer number;
  - (b) A certification that the original disabled person parking permit is lost or destroyed; and
  - (c) A certification that the applicant continues to qualify for the permit.
- (2) If a required certificate as described in ORS 811.604 or 811.609 is not on file with DMV, DMV will not replace a lost or stolen disabled person parking permit. The person must apply for an original disabled person permit as set forth in OAR 735-080-0020.

(3) A disabled person parking permit becomes invalid when the individual, wheelchair user, program or family no longer meets the qualifying conditions and must be immediately returned to DMV. A disabled person parking permit may not be transferred to any other person.

(4) An individual or wheelchair user permit or decal expires on the expiration date of the person's driver license, disability golf cart permit, identification card or parking identification card. The permit or decal must be renewed within one year from the date of expiration of the permit. To renew a permit or decal the holder must appear in person at a DMV field office if also renewing a driver license, disability golf cart permit or identification card or may renew by mail by submitting:

- (a) The Parking Placard and Driver license or ID card Renewal Reminder (DMV form 735-7353) that includes a Certificate of Disability completed by the holder's physician; or
- (b) An Application for a Person with a Disability Parking Permit, on the applicable DMV form 735-265 as described in OAR 735-080-0020, that includes a Certificate of Disability completed by the holder's physician, certified nurse practitioner or physician assistant.
- (5) To renew a disabled person parking permit with a parking identification card as described in OAR 735-080-0060 the holder must submit by mail, to the DMV Driver Issuance Unit — Parking Permits Clerk at 1905 Lana Ave NE, Salem, OR, 97314, a completed Non-Photo Parking ID Card and Disabled Person's Parking Permit Application (DMV form 735-265 NPP) that includes a Certificate of Disability completed by the holder's physician, certified nurse practitioner or physician assistant.

(6) A program permit expires eight years from the date of issuance. DMV will renew and issue new permit(s) if the program continues to qualify and completes DMV form 735-265B. The form must be mailed to DMV, Driver Issuance Unit, 1905 Lana Avenue NE, Salem, Oregon 97314. The permit must be renewed within one year from the date of expiration of the permit.

(7) A family permit expires eight years from the date of issuance. DMV will renew and issue new permit(s) if a family continues to qualify and completes DMV form 735-265B. The form must be mailed to DMV, Driver Issuance Unit, 1905 Lana Avenue NE, Salem, Oregon 97314. The permit must be renewed within one year from the date of expiration of the permit.

(8) A temporary disabled person parking permit expires six months from the date of issuance. The permit may not be renewed but the person may re-apply for a temporary disabled person parking permit by complying with OAR 735-080-0020(3) if the person's temporary disability continues beyond a six-month period.

(9) A Temporary duplicate permit expires 30 days after issuance. A person may not renew a temporary duplicate permit.

Stat. Auth.: ORS 184.616, 184.619, 811.602, 811.607 & 811.609  
Stats. Implemented: ORS 811.602, 811.604, 811.605, 811.606, 811.607 & 811.609  
Hist.: MV 11-1985, f. 9-19-85, ef. 9-20-85; MV 30-1986, f. 12-31-86, ef. 1-1-87; Administrative Renumbering 3-1988, Renumbered from 735-110-0830; MV 38-1989, f. & cert. ef. 10-3-89; MV 20-1991, f. 9-18-91, cert. ef. 9-29-91; DMV 6-1996, f. & cert. ef. 8-15-

96; DMV 12-2000, f. & cert. ef. 9-21-00; DMV 18-2001(Temp), f. & cert. ef. 9-21-01 thru 3-19-01; DMV 6-2002, f. & cert. ef. 3-14-02; DMV 20-2007, f. 12-24-07, cert. ef. 1-1-08; DMV 29-2009, f. 12-22-09, cert. ef. 1-1-10

## 735-080-0060

### Parking Identification Card

(1) An applicant for an individual disabled parking permit who does not have a driver license, driver permit, or identification card and is unable to go to a DMV office to be photographed, must obtain a parking identification card. The applicant must submit the following to DMV:

(a) An application (DMV form 735-265 NPP) for a parking identification card that includes the applicant's name, residence address, date of birth, height, weight, and signature, and a certificate, as required by ORS 811.604, that the applicant is a person with a disability. It must also include a statement from a licensed physician that because of the applicant's medical or physical condition, it is impractical or harmful for the applicant to appear at a DMV office to be photographed; and

(b) The fee for issuance of a parking identification card under ORS 807.410(1).

(2) The applicant must mail the application, fee and statement from a physician to DMV, Driver Issuance Unit, 1905 Lana Avenue NE, Salem, Oregon 97314.

(3) A parking identification card issued under this rule expires on the applicant's birthday, in the eighth calendar year after the year of issuance or on the date it is no longer medically impractical or harmful to the applicant to appear at a DMV office to be photographed for an identification card, whichever is earlier.

Stat. Auth.: ORS 184.616, 184.619, 802.010 & 811.603  
Stats. Implemented: ORS 811.603 & 2008 OL Ch 1  
Hist.: MV 20-1991, f. 9-18-91, cert. ef. 9-29-91; DMV 6-1996, f. & cert. ef. 8-15-96; DMV 12-2000, f. & cert. ef. 9-21-00; DMV 18-2001(Temp), f. & cert. ef. 9-21-01 thru 3-19-02; DMV 6-2002, f. & cert. ef. 3-14-02; DMV 12-2008, f. 6-23-08, cert. ef. 7-1-08; DMV 29-2009, f. 12-22-09, cert. ef. 1-1-10

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**Rule Caption:** When Police Officer Unable to Appear at Hearing /Original Hearing as Used in ORS 813.440(1)(f).

**Adm. Order No.:** DMV 30-2009

**Filed with Sec. of State:** 12-22-2009

**Certified to be Effective:** 1-1-10

**Notice Publication Date:** 10-1-2009

**Rules Adopted:** 735-090-0125

**Rules Amended:** 735-090-0120

**Subject:** ORS 813.440 as amended by Section 1, Chapter 520, Oregon Laws 2009 (HB 2968) allows a hearing to determine the validity of a suspension ordered under implied consent laws to be scheduled outside of the time requirements of ORS 813.410 due to the inability of the person's attorney to appear because of the attorney's illness, vacation or scheduling conflict arising from other court or administrative hearing appearances. However this section does include a provision that the hearing must be rescheduled no later than 45 days after the date of the original hearing. As there are other reasons a hearing may be re-scheduled, before or after a hearing is actually held, a definition of original hearing is needed. DMV adopted 735-090-0125 to clarify what is considered the original hearing date for purposes of determining whether a hearing can be re-scheduled due to an attorney's illness, vacation or scheduling conflict.

DMV also amended 735-090-0120 that describes what the process is for rescheduling a hearing to determine the validity of a suspension under ORS 813.410 when a police officer is unable to appear at the hearing. The Office of Administrative Hearings (OAH) reschedules a hearing for an officer's illness, vacation or official duty conflict. The changes to OAR 735-090-0120 clarify what happens whenever a police officer is unable to attend a hearing due to the officer's illness, vacation or official duty conflict.

**Rules Coordinator:** Lauri Kunze—(503) 986-3171

## 735-090-0120

### Police Officer Unable to Appear at Hearing

(1) If a subpoenaed police officer is unable to appear at a hearing under ORS 813.410 due to an officer's illness, vacation or official duty conflicts, a hearing will be re-scheduled as soon as practicable.

(2) DMV will rescind the suspension of the petitioner's driving privileges pending the outcome of the hearing conducted pursuant to ORS 813.440(1)(d).

(3) The DMV or OAH may receive notification of an officer's illness, vacation or official duty conflict before or after a scheduled hearing. Post hearing notification must be received by the DMV or OAH no later than 10 days after the hearing. Verification must be to the satisfaction of the DMV.

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(4) An official duty conflict exists if the subpoenaed police officer is unable to attend the hearing due to any of the following conditions:

- (a) Community caretaking pursuant to ORS 133.033;
- (b) Court;
- (c) Hazardous or impeding travel conditions;
- (d) Participating in employer approved training;
- (e) Physical incapacity; or
- (f) Service in the U.S. Armed Forces, military reserves, National Guard or the organized militia.

(5) Nothing in this rule prevents the taking of evidence at the time of the originally scheduled hearing and continuing the hearing for the testimony of the unavailable police witness(es).

Stat. Auth.: ORS 183.341, 184.616, 813.410 & 813.440  
Stats. Implemented: ORS 813.410 & 813.440  
Hist.: MV 15-1993, f. 10-22-93, cert. ef. 11-4-93; DMV 7-1997, f. & cert. ef. 9-18-97; DMV 14-2007, f. & cert. ef. 12-24-07; DMV 30-2009, f. 12-22-09, cert. ef. 1-1-10

## 735-090-0125

### Original Hearing

The date of the original hearing, as used in ORS 813.440(1)(f), is the initial date that OAH scheduled a hearing to be held for a particular case, regardless of whether a hearing actually took place on that date.

Stat. Auth.: ORS 183.341, 184.616, 813.410 & 813.440  
Stats. Implemented: ORS 813.410 & 813.440  
Hist.: DMV 30-2009, f. 12-22-09, cert. ef. 1-1-10

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**Rule Caption:** Implements chapter 551, Oregon Laws 2009, relating to Vehicle Dealer Consignment Practices and Dealer-Only Auctions.

**Adm. Order No.:** DMV 31-2009

**Filed with Sec. of State:** 12-22-2009

**Certified to be Effective:** 1-1-10

**Notice Publication Date:** 11-1-2009

**Rules Adopted:** 735-150-0042, 735-150-0047

**Rules Amended:** 735-150-0010, 735-150-0020, 735-150-0110

**Subject:** Chapter 551, Oregon Laws 2009 amends ORS 822.015 to exempt out-of-state licensed vehicle dealers and their authorized representatives from Oregon vehicle dealer certification requirements when participating in a vehicle auction held by a certified Oregon vehicle dealer (dealer-only auction). It also amends ORS 822.060 to require DMV to adopt rules specifying which persons and which vehicle dealers may take and sell vehicles on consignment from other jurisdictions and to regulate the taking and selling of consigned vehicles.

DMV has adopted OAR 735-150-0042 and 735-150-0047 to: (1) specify who may take and sell vehicles from other jurisdictions; and (2) establish procedures and requirements for out-of-state licensed vehicle dealers and their authorized representatives to participate in a dealer-only auction.

The amendments of OAR 735-150-0010, 735-150-0020 and 735-150-0110 update terms, citations and definitions consistent with the legislative amendments.

**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.

(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) "Authorized Representative" for the purposes of ORS 822.015 means an individual who is authorized by a certified dealer or licensed dealer to buy and sell vehicles on behalf of that dealer while participating in a vehicle auction as described under OAR 735-150-0047.

(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 (29) of this rule.

(10) "Certified dealer" means a vehicle dealer who holds a vehicle dealer certificate issued or renewed under ORS Chapter 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" 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.

(24) "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.

# ADMINISTRATIVE RULES

(25) "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.

(26) "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.

(27) "Permanent revocation" means to permanently revoke a vehicle dealer certificate and the right to apply for a vehicle dealer certificate.

(28) "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.

(29) "Principal" means an owner, partner, corporate officer or other person who controls or manages the business organization or employees or agents of the business organization.

(30) "Purchaser" has the same meaning as buyer or lessee.

(31) "Rebuilder" means a person engaged in conducting a "vehicle rebuilding business" as specified in ORS 822.070.

(32) "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.

(33) "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.

(34) "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.

(35) "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) & (2).

(36) "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 & 2009 Or. Laws, Ch.

551

Stats. Implemented: ORS 822.005 - 822.080 & 2009 Or. Laws, Ch. 551  
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

## 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(15).

(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(1)(h)(B), 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 OAR 735-150-0010(15) 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 & 2009 OL Ch. 551

Stats. Implemented: ORS 822.015 & 2009 OL Ch. 551

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

## 735-150-0042

### Vehicle Consignments

For purposes of ORS 822.015 and 822.060, only a certified dealer who holds a vehicle dealer certificate issued or renewed under ORS 822.020 or 822.040 may take and sell vehicles on consignment from other jurisdictions.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 822.015, 822.060 & 2009 OL Ch. 551

Stats. Implemented: ORS 822.015, 822.060 & 2009 OL Ch. 551

Hist.: DMV 31-2009, f. 12-22-09, cert. ef. 1-1-10

## 735-150-0047

### Rules Concerning Dealer-Only Auctions

(1) For purposes of ORS 822.015(h)(B), as amended by section 3, chapter 551, Oregon Laws 2009, and this rule, the following definitions apply:

(a) "Authorized Representative" means an individual who is authorized by a certified dealer or licensed dealer to buy and sell vehicles on behalf of that dealer while participating in a vehicle auction as described in this rule.

(b) "Certified dealer" has the same meaning as defined in OAR 735-150-0010(10).

(c) "Licensed dealer" for the purposes of this rule and as defined under OAR 735-150-0010(22) means a person who is currently licensed as vehicle dealer in another jurisdiction.

(d) "Vehicle auction" means a vehicle auction conducted by a certified dealer as authorized under ORS 822.015, in which only certified dealers, licensed dealers or their authorized representatives are permitted to participate.

(2) An authorized representative who wishes to participate in a vehicle auction must present proof to the certified dealer conducting the auction before the representative may participate in the auction. Proof that an individual is an "authorized representative" as defined under section (1) of this rule, includes but is not limited to any of the following:

(a) Written authorization issued from a certified dealer or licensed dealer that names the individual as an authorized representative and a copy of the authorizing dealer's certificate or license, whichever is applicable. The copy must include the following:

(A) The dealer's certificate or the dealer's license, whichever is applicable;

(B) The business name under which the dealer is registered to do business and the street address and telephone number of the business;

(C) The business type of the dealer or dealership, for example, a sole proprietorship, partnership, limited liability company, corporation, etc.); and

(D) The name, address and phone number of an individual authorized by the dealer as the contact person for the dealer on any matter related to a dealer's certificate or license.

(b) A current valid picture identification card issued by a certified dealer, licensed dealer, or a dealer registration identification business that maintains a database of vehicle dealers or authorized representative.

(c) Any other form of authorization, documentation or identification, sufficient to a vehicle auction or DMV that the individual is an authorized representative. Information provided under this subsection is subject to verification by the auction or DMV by telephone, fax, or other electronic means.

(3) In addition to the proof described under section (2) of this rule, upon request of a vehicle auction or DMV, an authorized representative must provide proof of personal identification. Proof of personal identification under this section includes, but is not limited to the following photo identification:

(a) A current valid driver license or identification card issued by Oregon or another jurisdiction;

(b) A current valid vehicle salesperson license or authorized representative license, if required in the jurisdiction;

(c) A current valid passport; or

(d) Any other form of photo identification, sufficient to establish the identity of the individual to the satisfaction of a vehicle auction or DMV.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 822.015, 822.035 & 2009 OL Ch. 551

Stats. Implemented: ORS 822.015 & 2009 OL Ch. 551

Hist.: DMV 31-2009, f. 12-22-09, cert. ef. 1-1-10



# ADMINISTRATIVE RULES

## 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 or an authorized representative 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) Makes a false statement of material fact in:

(a) An application for a dealer certificate or attachments thereof;

(b) Any investigation by DMV or law enforcement; or

(c) Any DMV document.

(21) Commits a felony by violating ORS 822.605.

(22) 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.

(23) Fails to comply with the requirements of the Oregon Vehicle Code with reference to notices or reports of the transfer of vehicles or campers.

(24) Allows or permits the unlawful use of any certificate or registration plate.

(25) 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 & 2009 OL Ch. 551

Stats. Implemented: ORS 822.005 - 822.080 & 2009 OL Ch. 551

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

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## Department of Transportation, Motor Carrier Transportation Division Chapter 740

**Rule Caption:** Acceptable payment methods from motor carriers.

**Adm. Order No.:** MCTD 3-2009

**Filed with Sec. of State:** 12-22-2009

**Certified to be Effective:** 12-22-09

**Notice Publication Date:** 11-1-2009

**Rules Amended:** 740-055-0020

**Subject:** OAR 740-055-0020 describes payment options for motor carriers. The rule needs to be updated to reflect current practice and to address a recent situation when an agent for a motor carrier remitted payment on behalf of the motor carrier with a non-sufficient fund (NSF) check. The current rule does not contemplate such action and is being amended to place responsibility on the motor carrier when an agent provides a NSF check. Other changes clarify that the Department will accept payment from an agent, and a motor carrier that is not registered with ODOT may pay fees and taxes by credit card.

**Rules Coordinator:** Lauri Kunze—(503) 986-3171

### 740-055-0020

#### Payment of Fees

(1) Carriers registered with the Oregon Department of Transportation, or their agents as established either through an approved Power of Attorney or prior remittance of taxes or fees on behalf of the carrier, shall pay taxes and fees by either:

(a) Cash;

(b) Bank Draft;

(c) Guaranteed Draft;

(d) Credit card, under the conditions described in ORS 825.502;

(e) Cashier's Check;

(f) Travelers Check;

(g) Company check when drawn in the name of record of the account to which it is to be applied;

(h) Personal or business check from an agent described in subsection (1);

(i) Personal check when drawn in the name of a company employee;

(j) Personal check from a corporate officer; or

(k) Personal check when drawn in the name of a lessor driver when accompanied by a copy of the lease.

(2) Carriers not registered with the Oregon Department of Transportation shall pay fees and taxes due by either:

(a) Cash;

(b) Bank Draft;

(c) Guaranteed Draft;

(d) Credit card, under the conditions described in ORS 825.502;

(e) Cashier's Check; or

(f) Travelers Check.

(3) All payments to the Oregon Department of Transportation for taxes and fees shall be in United States funds.

(4) In the event any check drawn payable to the Department for payment of taxes or fees is not honored, the motor carrier account for which the check was drawn will be assessed the maximum service charge authorized by ORS 30.701(5) for each such check and the motor carrier account for which the check was drawn may thereafter be required to remit taxes or fees by money order, bank draft, certified check, or cash.

Stat. Auth.: ORS 30.701, 823.011 & 825.502

Stats. Implemented: ORS 30.701, 825.498 & 825.502

Hist.: PUC 18, f. 1-21-55, ef. 9-1-54 (Order No. 33203); PUC 120, f. 10-26-62, ef. 11-15-62 (Order No. 38811); PUC 135, f. 5-9-66, ef. 5-15-66 (Order No. 42332); PUC 148, f. 7-29-68, ef. 9-1-68 (Order No. 44783); PUC 156, f. 8-6-73, ef. 8-15-73 (Order No. 73-507); Renumbered from 860-038-0010; PUC 12-1981, f. & ef. 12-16-81 (Order No. 81-880); PUC 3-1988, f. & cert. ef. 1-25-88 (Order No. 88-068); PUC 7-1993, f. & cert. ef. 3-19-93 (Order No. 93-285); MCT 3-1996, f. & cert. ef. 3-14-96; Renumbered from 860-068-0010; MCT 6-1996, f. & cert. ef. 12-19-96; MCTB 2-1999, f. & cert. ef. 8-20-99; MCTD 3-2009, f. & cert. ef. 12-22-09

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**Rule Caption:** Re-adoption of the International Fuel Tax Agreement and clarifying audit procedures.

**Adm. Order No.:** MCTD 4-2009

**Filed with Sec. of State:** 12-22-2009

**Certified to be Effective:** 1-1-10

**Notice Publication Date:** 11-1-2009

**Rules Amended:** 740-200-0040, 740-200-0045

# ADMINISTRATIVE RULES

**Subject:** The International Fuel Tax Agreement (IFTA) and associated material are applicable to Oregon-based motor carriers who participate in IFTA as a way to report and pay fuel tax to other jurisdictions. The revision to 740-200-0040 adopts the most recent version of IFTA and associated material as the procedures and guidelines for Oregon-based IFTA participants to ensure Oregon remains current with national and international IFTA standards.

The changes to 740-200-0045, which talks about standard industry miles per gallon (MPG) averages and how they may be used to determine fuel tax liability when a licensee fails to maintain or provide adequate records, provide a progressive assessment approach an auditor may use.

**Rules Coordinator:** Lauri Kunze—(503) 986-3171

## 740-200-0040

### Adoption of International Fuel Tax Agreement

(1) The provisions contained in the International Fuel Tax Agreement (IFTA) Articles of Agreement, the IFTA Audit Manual and the IFTA Procedures Manual, and all amendments thereto in effect January 1, 2010, are hereby adopted and prescribed by the Oregon Department of Transportation (ODOT) and apply to Oregon-based motor carriers who participate in IFTA.

(2) In addition to the requirements described in section (1) of this rule, the following requirements apply to Oregon-based motor carriers who participate in IFTA:

(a) Records required to be maintained for distance data must denote intermediate trip stops;

(b) Records of monthly over the road and bulk fuel reconciliations must be maintained;

(c) The Department shall assess a penalty of \$50 or 10 percent of the amount of delinquent taxes due, whichever is greater, for failing to file a return, filing a late return, or underpaying taxes due on a return;

(d) Upon proposing an additional assessment as the result of an audit, the Department shall assess a penalty of 10 percent of the amount of delinquent taxes due;

(e) Any person against whom a proposed assessment is made by the Department may petition the Department for reassessment within 30 days after service upon the person of the assessment notice. If a petition for reassessment is not filed within the 30-day period, the assessment becomes final. If a petition for reassessment is timely filed, the Department will reconsider the assessment. The decision of the Department upon a petition for reassessment will become final 30 days after notice of the decision is served upon the petitioner. A petitioner may submit a request for hearing in the petition for reassessment; and

(f) If a request for hearing is timely received, a hearing will be scheduled and conducted in accordance with the provisions of ORS Chapter 183. The petitioner will be provided a minimum of 10 days notice of the time and place of the hearing. The Department may assess a penalty of \$150 for failure to appear at a scheduled hearing.

[Publications: Publications referenced are available from the agency.]

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

Stat. Implemented: ORS 825.490, 825.494 & 825.555

Hist.: MCTB 6-2002, fr. & cert. ef. 11-18-02; MCTD 8-2003, f. & cert. ef. 11-18-03, cert. ef. 1-1-04; MCTD 4-2004, f. 12-28-04, cert. ef. 1-1-05; MCTD 2-2008, f. 6-23-08, cert. ef. 7-1-08; MCTD 4-2009, f. 12-22-09, cert. ef. 1-1-10

## 740-200-0045

### Industry Standard Average MPG

The International Fuel Tax Agreement (IFTA) Audit Manual adopted under OAR 740-200-0040 describes that industry averages may be used to determine fuel tax liability when a licensee fails to maintain or provide records adequate to support reported fuel tax.

(1) The Motor Carrier Transportation Division will periodically analyze industry fleet data to determine Oregon industry standard average miles per gallon (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.

(2) Failure to maintain or provide records required by IFTA adequate to support reported fuel tax and described in OAR 740-200-0040(2) may result in assessment of fuel taxes based on:

(a) Prior experience of the licensee;

(b) Licensees with similar operations;

(c) Industry averages;

(d) Records available from fuel distributors; or

(e) Other pertinent information the auditor may obtain or examine.

(3) Absent substantial evidence to the contrary by reviewing the compliance record of the licensee, in the absence of adequate records, a standard of 4 MPG may be used.

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

## Department of Veterans' Affairs Chapter 274

**Rule Caption:** Establishes Procedures for Criminal Records Checks for Applicants, Employees, Volunteers, and Contractors.

**Adm. Order No.:** DVA 1-2009

**Filed with Sec. of State:** 12-22-2009

**Certified to be Effective:** 1-1-10

**Notice Publication Date:** 12-1-2009

**Rules Adopted:** 274-006-0001, 274-006-0002, 274-006-0004, 274-006-0005, 274-006-0010, 274-006-0011, 274-006-0012, 274-006-0013, 274-006-0014, 274-006-0015, 274-006-0018, 274-006-0020

**Subject:** These rules establish procedures for the Oregon department of Veterans' Affairs to perform criminal background checks and use the information obtained to evaluate the fitness of job applicants, employees, volunteers, vendor, and contractors, (collectively, "applicants") of the Department, Criminal records checks under this rule include name-based checks through the Law Enforcement Data System (LEDS) and fingerprint-based checks for certain positions and classifications. The rules require applicants to provide information to facilitate criminal records checks and establish procedures to keep criminal history information confidential. The rules specify the crimes that the Department will consider when making determinations about the fitness of applicants to hold a position within, or provide service to the Department and establish procedural rules for challenges to the Department's fitness determinations. The rules permit the Department to require applicants to pay the actual cost of the criminal records checks.

**Rules Coordinator:** Herbert D. Riley—(503) 373-2055

## 274-006-0001

### Purpose

These rules provide for the Department of Veterans' Affairs (Department) acquisition of information about a subject individual's criminal history through criminal records checks and its use of that information to determine whether the individual is fit to provide services to the Department as an employee, volunteer, contractor or vendor. The fact that the Department determines that an individual is fit does not guarantee the individual a position as a Department employee, volunteer, contractor or vendor or that the individual will be hired by the Department.

Stat. Authority: ORS 181.534 and 406.030

Stats. Implemented: ORS 181.534 and 406.030

Hist.: DVA 1-2009, f. 12-22-09, cert. ef. 1-1-10

## 274-006-0002

### Definitions

(1) "**Criminal Offender Information**" means records and related data concerning physical description and vital statistics, fingerprints received and compiled by the Oregon Department of State Police to identify criminal offenders and alleged offenders, records of arrests and the nature and disposition of criminal charges, including sentencing, confinement, parole and release records.

(2) "**Criminal Records Check**" means one or more of the following three processes undertaken by the Department to check the criminal history of a subject individual:

(a) A name-based check of criminal offender information conducted through the Law Enforcement Data System (LEDS) maintained by the Oregon Department of State Police, in accordance with the rules adopted and procedures established by the Oregon Department of State Police;

(b) A check of Oregon criminal offender information, through fingerprint identification and other means, conducted by the Oregon Department of State Police at the Department's request (Oregon Criminal Records Check); or

(c) A nationwide check of federal criminal offender information, through fingerprint identification and other means, conducted by the Oregon Department of State Police through the Federal Bureau of Investigation or otherwise at the Department's request (Nationwide Criminal Records Check).

(3) "**Department**" means the Department of Veterans' Affairs as defined in ORS 406.005.

(4) "**Fitness Determination**" means a determination made by the Department, pursuant to the process established under OAR 274-006-0011, that a subject individual is fit or not fit to be a Department employee, volunteer, contractor or vendor in a position covered by OAR 274-006-0004(2).

(5) "**Subject Individual**" means an individual identified in OAR 274-006-0004 as someone from whom the Department may require a criminal records check.

Stat. Auth.: ORS 181.534, 406.030 & 2009 SB 94

# ADMINISTRATIVE RULES

Stats. Implemented: ORS 181.534, 406.030 & 2009 SB 94  
Hist.: DVA 1-2009, f. 12-22-09, cert. ef. 1-1-10

## 274-006-0004

### Subject Individual

The Department may require a subject individual to complete a criminal records check pursuant to these rules because the person:

(1)(a) Is applying for employment with the Department of Veterans' Affairs in a position described in subsection (2) of this rule or is employed by the Department but is being transferred, promoted or demoted to a position described in subsection (2) of this rule; or

(b) Provides goods or services or seeks to provide goods or services to or on behalf of the Department as a contractor, subcontractor, vendor or volunteer, or as an employee, member or agent of a contractor, subcontractor, vendor or volunteer; and

(2) Is or will be working or providing services in a position in which the subject individual has:

(a) Control over, or access to, information technology systems would allow the person to harm the information technology systems or the information contained in the systems;

(b) Access to information that state or federal laws, rules or regulations prohibit disclosing or define as confidential;

(c) Responsibility for payroll, billing, collections or other financial transactions or for purchasing or selling property;

(d) Access to money, negotiable instruments or financial information of the Department;

(e) Mailroom duties;

(f) Responsibility for auditing the Department or other business entities doing business with the Department;

(g) Personnel or human resources functions or access to personnel information;

(h) Access to Social Security numbers, dates of birth or criminal background information of other persons;

(i) Access to tax or financial information of the Department or persons employed by the Department; or

(j) Access to tax or financial information collected by the Department about individuals or business entities.

Stat. Auth.: ORS 181.534, 406.030 & 2009 SB 94

Stats. Implemented: ORS 181.534, 406.030 & 2009 SB 94

Hist.: DVA 1-2009, f. 12-22-09, cert. ef. 1-1-10

## 274-006-0005

### Criminal Records Check Process

(1) When a Criminal Records Check is Required. The Department may conduct, or request the Oregon State Police to conduct, a criminal records check when:

(a) An individual meets the definition of a subject individual; or

(b) Required by federal law or regulation, by state or administrative rule, or by contract or written agreement with the Department.

(2) Which Criminal Records Check is Conducted. When the Department determines under section (1) Of this rule that a criminal records check is needed, the Department may request or conduct a LEDS Criminal Records Check, an Oregon Criminal Records Check, a Nationwide Criminal Records Check, or any combination thereof.

(3) Disclosure of Information by Subject Individual.

(a) Prior to a criminal records check, an individual shall complete and sign the Department's Criminal Records Request form and, if requested by the Department, a fingerprint card within three business days of receiving the forms. The Department may extend the deadline for good cause. The Department's criminal records request form will require the following information: name, birth date, social security number, physical characteristics, driver's license or identification card number and current address, prior residency in other states, military history, and any other identifying information deemed necessary by the Department.

(b) The Department may require additional information from the subject individual as necessary to complete the criminal records check and fitness determination, such as, but not limited to, proof of identity; or additional criminal, judicial, or other background information.

(c) The Department shall not request a fingerprint card from a subject individual under the age of 18 years unless the subject individual is emancipated pursuant to ORS 419B.550 et seq, or unless the Department also requests the written consent of a parent or guardian. In such case, such parent or guardian and youth must be informed that they are not required to consent. Notwithstanding, failure to consent may be construed as a refusal to consent under OAR 274-006-0011(3).

Stat. Auth.: ORS 181.534, 406.030 & 2009 SB 94

Stats. Implemented: ORS 181.534, 406.030 & 2009 SB 94

Hist.: DVA 1-2009, f. 12-22-09, cert. ef. 1-1-10

## 274-006-0010

### Hiring or Appointing on a Preliminary Basis

(1) If the Department elects to conduct a criminal records check pursuant to these rules, the Department, in its sole discretion, may hire or appoint

the subject individual on a preliminary basis pending completion of a criminal records check when:

(a) The subject individual has provided all information (including a fingerprint card, if requested) as required by the Department pursuant to OAR 274-006-0005; and

(b) The Department, in its sole discretion, determines that preliminary hiring is in the Department's best interests.

(2) A subject individual hired or appointed on a preliminary basis under this rule may participate in training, orientation, or work activities as assigned by the Department.

(3) A subject individual hired or appointed on a preliminary basis is deemed to be on trial service.

(4) Nothing in this rule shall be construed as requiring the Department to hire on a preliminary basis.

Stat. Auth.: ORS 181.534, 406.005, 406.030 & 2009 SB 94

Stats. Implemented: ORS 181.534, 406.005, 406.030 & 2009 SB 94

Hist.: DVA 1-2009, f. 12-22-09, cert. ef. 1-1-10

## 274-006-0011

### Final Fitness Determination

(1) If the Department elects to conduct a criminal records check, the Department shall make a fitness determination about a subject individual based on information provided by the subject individual under OAR 274-006-0005, the criminal records check(s) conducted, and any false statements made by the subject individual.

(2) In making a fitness determination about a subject individual, the Department will also consider the factors in subsections (a) through (f) below in relation to information provided by the subject individual under OAR 274-006-0005, any LEDS report or criminal offender information obtained through a criminal records check, and other information known by the Department. To assist in considering these factors, the Department may obtain any other information deemed relevant from the subject individual or any other source, including law enforcement and criminal justice agencies or courts within or outside of Oregon. To acquire other criminal offender information from the subject individual, the Department may request to meet with the subject individual, and may request to receive written materials or authorization to obtain other relevant information, from him or her. The subject individual shall meet with the Department if requested and provide additional information or authorization within a reasonable period of time, as established by the Department. The Department will use all collected information in considering:

(a) Whether the subject individual has been convicted, found guilty except for insanity (or a comparable disposition), has a pending indictment, has been arrested, or has an outstanding warrant for arrest for a crime listed in OAR 274-006-0012;

(b) The nature of any crime identified under section (2)(a) of this rule;

(c) The facts that support the conviction, finding of guilty except for insanity, or pending indictment;

(d) Any facts that indicate the subject individual made a false statement;

(e) The relevance, if any, of a crime identified under section (2)(a) of this rule or of a false statement made by the subject individual to the specific requirements of the subject individual's present or proposed position, services or employment; and

(f) Intervening circumstances, including, but not limited to the following, and only to the extent that they are relevant to the responsibilities and circumstances of the services or employment for which the fitness determination is being made:

(A) The passage of time since the commission or alleged commission of a crime identified under section (2)(a) of this rule;

(B) The age of the subject individual at the time of the commission or alleged commission of a crime identified under section (2)(a) of this rule;

(C) The likelihood of a repetition of offenses or of the commission of another crime;

(D) The subsequent commission of another crime listed in OAR 274-006-0012;

(E) Whether a conviction identified under section (2)(a) of this rule has been set aside, and the legal effect of setting aside the conviction;

(F) A recommendation of an employer;

(G) Whether the subject individual has been adjudicated in a juvenile court and found to be within the court's jurisdiction for an offense that would have constituted a crime listed in OAR 274-006-0012 if committed by an adult.

(3) Refusal to Consent. If a subject individual refuses to submit or consent to a criminal records check including fingerprint identification, the Department will deny the employment of the subject individual or deny any applicable position or authority to provide services. A person may not appeal any determination made based on a refusal to consent.

(4) If a subject individual is determined to be not fit, the subject individual may not be employed by or provide services as a volunteer, contractor or vendor to the Department in a position described in OAR 274-006-0004(2).

(5) Final Order. A completed final fitness determination is a final order of the Department unless the affected subject individual appeals the determi-

# ADMINISTRATIVE RULES

nation by requesting a contested case hearing as provided by OAR 274-006-0018(2) or an alternative appeals process as provided by OAR 274-006-0018(6).

Stat. Auth.: ORS 181.534 & 2009 SB 94  
Stats. Implemented: ORS 181.534 & 2009 SB 94  
Hist.: DVA 1-2009, f. 12-22-09, cert. ef. 1-1-10

## 274-006-0012

### Potentially Disqualifying Crimes

- (1) Crimes Relevant to a Fitness Determination:
  - (a) All felonies;
  - (b) All misdemeanors;
  - (c) Any United States Military crime or international crime;
- (2) Evaluation of Crimes. The Department shall evaluate a crime on the basis of the law of the jurisdiction in which the crime or offense occurred, as those laws are in effect at the time of the fitness determination.
- (3) Expunged Juvenile Record. Under no circumstances shall a subject individual be determined to be not fit under these rules on the basis of the existence or contents of a juvenile record that has been expunged pursuant to ORS 419A.260 and 419A.262.

Stat. Auth.: ORS 181.534 & 2009 SB 94  
Stats. Implemented: ORS 181.534 & 2009 SB 94  
Hist.: DVA 1-2009, f. 12-22-09, cert. ef. 1-1-10

Stat. Auth.: ORS 181.534 & 2009 SB 94  
Stats. Implemented: ORS 181.534 & 2009 SB 94  
Hist.: DVA 1-2009, f. 12-22-09, cert. ef. 1-1-10

## 274-006-0013

### Incomplete Fitness Determination

(1) The Department will close a preliminary or final fitness determination as incomplete when:

- (a) Circumstances change so that a person no longer meets the definition of a "subject individual" under OAR 274-006-0004.
- (b) The subject individual does not submit materials or information within the time required under OAR 274-006-0005(3);
- (c) The Department cannot locate or contact the subject individual;
- (d) The subject individual fails or refuses to cooperate with the Department's attempts to acquire other criminal records information under OAR 274-006-0011(2); or
- (e) The Department determines that the subject individual is not eligible or not qualified for the position (of employee, contractor, vendor or volunteer) for a reason unrelated to the fitness determination process.
- (f) The position is no longer open.

(2) A subject individual does not have a right to a contested case hearing under OAR 274-006-0018(2) or a right to an alternative appeals process as provided by OAR 274-006-0018(6) to challenge the closing of a fitness determination as incomplete.

Stat. Auth.: ORS 181.534 & 2009 SB 94  
Stats. Implemented: ORS 181.534 & 2009 SB 94  
Hist.: DVA 1-2009, f. 12-22-09, cert. ef. 1-1-10

## 274-006-0014

### Notice to Subject Individual of Fitness Determination

The Department shall inform the subject individual who has been determined not to be fit on the basis of a criminal records check, via personal service, or registered or certified mail to the most current address provided by the subject individual, of such disqualification.

Stat. Auth.: ORS 181.534 & 2009 SB 94  
Stats. Implemented: ORS 181.534 & 2009 SB 94  
Hist.: DVA 1-2009, f. 12-22-09, cert. ef. 1-1-10

## 274-006-0015

### Fees

(1) The Department may charge a fee for acquiring criminal offender information for use in making a fitness determination. In any particular instance, the fee shall not exceed the fee(s) charged the Department by the Oregon Department of State Police and the Federal Bureau of Investigation to obtain criminal offender information on the subject individual.

(2) The Department may charge the fee to the individual on whom criminal offender information is sought, or, if the individual is an employee of a Department contractor or vendor and is undergoing a fitness determination in that capacity, the Department may charge the fee to the individual's employer.

Stat. Auth.: ORS 181.534, 406.005, 406.030 & 2009 SB 94  
Stats. Implemented: ORS 181.534, 406.005, 406.030 & 2009 SB 94  
Hist.: DVA 1-2009, f. 12-22-09, cert. ef. 1-1-10

## 274-006-0018

### Appealing a Fitness Determination

(1) Purpose. Sections (2) to (5) of this rule set forth the contested case hearing process a subject individual must use to appeal a completed fitness determination made under OAR 274-006-0010 that the individual is not fit to hold a position with, or provide services to the Department as an employee, volunteer, contractor, or vendor. Section (6) of this rule identifies an alternative appeal process available only to current Department employees.

(2) Appeal process.

(a) To request a contested case hearing, the subject individual or the subject individual's legal representative must submit a written request for a contested case hearing to the address specified in the notice provided under

OAR 274-006-0014. To be timely, the request must be received by the Department at the specified address within 14 calendar days of the date stated on the notice. The Department shall address a request received after expiration of the deadline as provided under OAR 137-003-0528.

(b) When a timely request is received by the Department under subsection (a), a contested case hearing shall be conducted by an administrative law judge assigned by the Office of Administrative Hearings, pursuant to the Attorney General's Uniform and Model Rules, "Procedural Rules, Office of Administrative Hearings" OAR 137-003-0501 to 137-003-0700, as supplemented by the provisions of this rule.

(3) Discovery. The Department or the administrative law judge may protect information made confidential by ORS 181.534(15) or other applicable law as provided under OAR 137-003-0570(7) or (8).

(4) No Public Attendance. Contested case hearings on fitness determinations are closed to non-participants.

(5) Proposed and Final Order:

(a) Proposed Order. After a hearing, the administrative law judge will issue a proposed order.

(b) Exceptions. Exceptions, if any, shall be filed within 14 calendar days after service of the proposed order. The proposed order shall provide an address to which exceptions must be sent.

(c) Default. A completed final fitness determination made under OAR 274-006-0010 becomes final:

(A) Unless the subject individual makes a timely request for a hearing;

or

(B) When a party withdraws a hearing request, notifies the Department or the ALJ that the party will not appear, or fails to appear at the hearing.

(6) Alternative Process. A subject individual currently employed by the Department may choose to appeal a fitness determination either under the process made available by this rule or through the process made available by applicable personnel rules, policies and collective bargaining provisions. A subject individual's decision to appeal a fitness determination through applicable personnel rules, policies, and collective bargaining provisions is an election of remedies as to the rights of the individual with respect to the fitness determination and is a waiver of the contested case process made available by this rule.

(7) Remedy. The only remedy that may be awarded is a determination that the subject individual is fit or not fit. Under no circumstances shall the Department be required to place a subject individual in any position, nor shall the Department be required to accept services or enter into a contractual agreement with a subject individual.

(8) Challenging Criminal Offender Information. A subject individual may not use the appeals process established by this rule to challenge the accuracy or completeness of information provided by the Oregon Department of State Police, the Federal Bureau of Investigation, or agencies reporting information to the Oregon Department of State Police or the Federal Bureau of Investigation.

(a) To challenge information identified in this section of the rule, a subject individual may use any process made available by the agency that provided the information.

(b) If the subject individual successfully challenges the accuracy or completeness of information provided by the Oregon Department of State Police, the Federal Bureau of Investigation, or an agency reporting information to the Oregon Department of State Police or the Federal Bureau of Investigation, the subject individual may request that the Department conduct a new criminal records check and re-evaluate the original fitness determination made under OAR 274-006-0010 by submitting a new Department criminal records request. This provision only applies if the position for which the original criminal history check was conducted is vacant and available.

(9) Appealing a fitness determination under section (2) or section (6) of this rule, challenging criminal offender information with the Department that provided the information, or requesting a new criminal records check and re-evaluation of the original fitness determination under section (8)(b) of this rule, will not delay or postpone the Department's hiring process or employment decisions.

Stat. Auth.: ORS 181.534, 406.030 & 2009 SB 94  
Stats. Implemented: ORS 181.534, 406.030 & 2009 SB 94  
Hist.: DVA 1-2009, f. 12-22-09, cert. ef. 1-1-10

## 274-006-0020

### Recordkeeping Confidentiality

Any information obtained in the criminal records check is confidential. The Department must restrict the dissemination of information obtained in the criminal records check. Only those persons, as identified by the Department, with a demonstrated and legitimate need to know the information, may have access to criminal records check records.

Stat. Auth.: ORS 181.534, 406.030 & 2009 SB 94  
Stats. Implemented: ORS 181.534, 406.030 & 2009 SB 94  
Hist.: DVA 1-2009, f. 12-22-09, cert. ef. 1-1-10

# ADMINISTRATIVE RULES

## Employment Department, Child Care Division Chapter 414

**Rule Caption:** Amends rules regarding the Criminal History Registry, renames to Central Background Registry, expands definition of subject individual.

**Adm. Order No.:** CCD 1-2009(Temp)

**Filed with Sec. of State:** 12-30-2009

**Certified to be Effective:** 1-1-10 thru 6-30-10

**Notice Publication Date:**

**Rules Amended:** 414-061-0000, 414-061-0010, 414-061-0020, 414-061-0030, 414-061-0040, 414-061-0050, 414-061-0060, 414-061-0070, 414-061-0080, 414-061-0090, 414-061-0100, 414-061-0110, 414-061-0120

**Subject:** Renames the Criminal History Registry to the Central Background Registry for the purposes of Child Care Division rules and expands the definition of subject individual.

**Rules Coordinator:** Janet Orton—(503) 947-1679

### 414-061-0000

#### Purpose

(1) The Child Care Division will conduct criminal records checks and child protective services records checks on subject individuals, as defined in OAR 414-061-0030, for enrollment of subject individuals in the Central Background Registry.

(2) These rules provide guidelines on how CCD obtains criminal records and child protective services records on subject individuals, applies such information to its determination about the suitability of the subject individual, and enrolls approved subject individuals in the Central Background Registry.

Stat. Auth.: ORS 657A.030(7)

Stats. Implemented: ORS 657A.030

Hist.: CCD 1-1998, f. 9-30-98, cert. ef. 10-1-98; CCD 2-2003, f. 12-5-03 cert. ef. 12-7-03;

CCD 1-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10

### 414-061-0010

#### Scope of Rules

(1) Consistent with the purposes of these rules, CCD will issue decisions about persons defined as subject individuals as to their suitability to be enrolled in the Central Background Registry and employed in programs defined as "Requesting Agencies" in OAR 414-061-0020(16).

(2) These rules (OAR 414-061-0000 through 414-061-0120) shall be construed and implemented consistent with the regulations governing:

(a) Child care licensing in OAR 414-205-0000 through 414-205-0170, 414-300-0000 through 414-300-0410, and 414-350-0000 through 414-350-0400;

(b) Pre-kindergarten programs in OAR 581-019-0005 through 581-019-0035;

(c) Parent-as-teacher programs in OAR 581-019-0050 through 581-019-0080; and

(d) Early childhood special education and early intervention programs in OAR 581-015-0900 through 581-015-1060.

Stat. Auth.: ORS 657A.030(7)

Stats. Implemented: ORS 657A.030

Hist.: CCD 1-1998, f. 9-30-98, cert. ef. 10-1-98; CCD 2-2003, f. 12-5-03 cert. ef. 12-7-03;

CCD 1-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10

### 414-061-0020

#### Definitions

(1) "Agency Agreement" means the written agreement between the Oregon State Police and the Oregon Child Care Division.

(2) "CCD" means the Child Care Division of the Employment Department.

(3) "Child Protective Services Records" means information on child abuse and neglect cases from the Department of Human Services.

(4) "Computerized Criminal History (CCH) System" means the on-line computer files of significant criminal offender information maintained by the Oregon State Police (OSP).

(5) "Conditional Enrollment" means temporary approval to be enrolled in the Central Background Registry following an OSP criminal records check and child protective services records check but prior to receipt by the Division of the results of a required FBI criminal records check.

(6) "Criminal Records" means information, including fingerprints and photographs, received, compiled, and disseminated by the Oregon State Police for purposes of identifying criminal offenders and alleged offenders and maintained as to such persons' records of arrest, the nature and disposition of criminal charges, sentencing, confinement, and release and includes the OSP Computerized Criminal History System.

(7) "Early Childhood Care and Education Program" means a regulated child care facility, federally-funded Head Start program, Oregon Department

of Education funded pre-kindergarten program, parent-as-teacher program, or early childhood special education/early intervention program.

(8) "Employee" means any individual caring for, overseeing, or who has or may have access to children, who holds a paid position in a requesting agency.

(9) "Employee of the Child Care Division" means any individual employed by the Child Care Division who works in the child care licensing unit.

(10) "Enrollment" means approval for a two-year period to be enrolled in the Central Background Registry following an OSP criminal records check, child protective services records check and, if required, an FBI records check.

(11) "Fee" means the charges assessed the subject individual for processing each criminal records check and/or fingerprint-based criminal records check.

(12) "FBI" means the Federal Bureau of Investigation.

(13) "Fingerprint-Based Criminal Records" means criminal offender information compiled and maintained by the Federal Bureau of Investigation.

(14) "Incident" means the commission of a Category I or Category II crime or a founded child protective services case.

(15) "OSP" means the Oregon State Police.

(16) "Requesting Agency" means a childhood care and education program or individual providing care to children which is:

(a) Regulated by CCD under ORS 657A.280 or 657A.330; or

(b) An early childhood care and education program.

(17) "Unsupervised Contact with Children" means contact with children that provides the person opportunity for personal communication or touch when not under the direct supervision of a child care provider or employee.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 657A.030(7)

Stats. Implemented: ORS 657A.030

Hist.: CCD 1-1998, f. 9-30-98, cert. ef. 10-1-98; CCD 2-2003, f. 12-5-03 cert. ef. 12-7-03;

CCD 1-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10

### 414-061-0030

#### Subject Individuals

(1) For purposes of criminal records checks, including fingerprint-based criminal records checks, and child protective services records checks, "Subject Individual" means a person who wishes to seek employment as:

(a) The owner, operator or an employee or volunteer of a certified, registered or otherwise regulated facility caring for children that is subject to the jurisdiction of the Child Care Division of the Employment Department;

(b) The operator or an employee of an Oregon pre-kindergarten program or parent-as-teacher program under ORS 329.170 to 329.200;

(c) The operator or an employee of a federal Head Start Program regulated by the United States Department of Health and Human Services;

(d) An employee of the Child Care Division of the Employment Department;

(e) A contractor or an employee of the contractor who provides early childhood special education or early intervention services pursuant to ORS 343.455 to 343.534; or

(f) A child care provider who is required to be enrolled in the Central Background Registry by any state agency.

(g) A designated employee or volunteer of a Metro Service District.

(2) An individual in any of the above facilities or programs who may have unsupervised contact with children is also a subject individual.

Stat. Auth.: ORS 657A.030(7)

Stats. Implemented: ORS 657A.030

Hist.: CCD 1-1998, f. 9-30-98, cert. ef. 10-1-98; CCD 2-2003, f. 12-5-03 cert. ef. 12-7-03;

CCD 1-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10

### 414-061-0040

#### Limitations of Inquiries

(1) Only CCD employees who have been fingerprinted and cleared by the Oregon State Police shall access or have access to criminal records information pursuant to a valid agency agreement, as defined in OAR 414-061-0020(1). All such information shall be handled in compliance with the agency agreement and rules and procedures of the Oregon State Police relating to the criminal records information (OAR 257-015-0000 to 257-015-0100). It is the responsibility of CCD to assure strict compliance with federal and state laws, rules, and procedures regarding, access, dissemination, maintenance, and destruction of criminal records information.

(2) Criminal records information obtained from OSP and/or the FBI will not be used for any purpose other than that for which it was obtained nor given to unauthorized persons or agencies.

(3) Criminal records information, including fingerprint-based criminal records information, and child protective services information shall be obtained by CCD to determine whether a subject individual has been convicted of a crime or has a founded child protective services record which is related to enrollment in the Central Background Registry.

(4) If a subject individual has been convicted of a crime which is related to enrollment in the Central Background Registry, the subject individual will be notified by CCD that he or she:

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(a) Has a right to inspect and challenge the accuracy of his/her Oregon criminal records by contacting the Oregon State Police;

(b) May challenge the accuracy or completeness of any entry on the subject individual's criminal records provided by the FBI by filing a challenge with the Assistant Director of the FBI Identification Division, Washington, D.C. 20537-9700; and

(c) May inspect his/her own OSP record, but not his/her FBI record, by requesting the opportunity from CCD in writing.

Stat. Auth.: ORS 657A.030(7)

Stats. Implemented: ORS 657A.030

Hist.: CCD 1-1998, f. 9-30-98, cert. ef. 10-1-98; CCD 2-2003, f. 12-5-03 cert. ef. 12-7-03;

CCD 1-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10

## 414-061-0050

### History to be Considered

(1) CCD has determined that serious felonies and misdemeanors involving violence or unauthorized sexual conduct, especially with children or otherwise vulnerable persons, is fundamentally inconsistent with any responsibility for care of children. Conviction of crimes listed in Category I of this rule shall disqualify a subject individual from being enrolled in the Central Background Registry, unless the subject individual provides sufficient evidence of suitability as described in section (6) of this rule.

(a) The crimes in Category I include:

- (A) 162.165 Escape I;
- (B) 162.185 Supplying Contraband;
- (C) 163.095 Aggravated Murder;
- (D) 163.115 Murder;
- (E) 163.118 Manslaughter I;
- (F) 163.125 Manslaughter II;
- (G) 163.145 Criminally Negligent Homicide;
- (H) 163.165 Assault III;
- (I) 163.175 Assault II;
- (J) 163.185 Assault I;
- (K) 163.200 Criminal Mistreatment II;
- (L) 163.205 Criminal Mistreatment I;
- (M) 163.225 Kidnapping II;
- (N) 163.235 Kidnapping I;
- (P) 163.275 Coercion;
- (Q) 163.355 Rape III;
- (R) 163.365 Rape II;
- (S) 163.375 Rape I;
- (T) 163.385 Sodomy III;
- (U) 163.395 Sodomy II;
- (V) 163.405 Sodomy I;
- (W) 163.408 Unlawful Sexual Penetration II;
- (X) 163.411 Unlawful Sexual Penetration I;
- (Y) 163.415 Sexual Abuse III;
- (Z) 163.425 Sexual Abuse II;
- (AA) 163.427 Sexual Abuse I;
- (BB) 163.435 Contributing to Sexual Delinquency of Minor;
- (CC) 163.445 Sexual Misconduct;
- (DD) 163.515 Bigamy;
- (EE) 163.525 Incest;
- (FF) 163.535 Abandonment of a Child;
- (GG) 163.545 Child Neglect II;
- (HH) 163.547 Child Neglect I;
- (II) 163.555 Criminal Nonsupport;
- (JJ) 163.575 Endangering the Welfare of a Minor;
- (KK) 163.670 Using Child in Display of Sexually Explicit Conduct;
- (LL) 163.684 Encouraging Child Sexual Abuse I;
- (MM) 163.685 Encouraging Child Sexual Abuse II;
- (NN) 163.686 Encouraging Child Sexual Abuse III;
- (OO) 163.688 Possession of Materials Depicting Sexually Explicit Conduct of a Child I;
- (PP) 163.689 Possession of Materials Depicting Sexually Explicit Conduct of a Child II;
- (QQ) 163.693 Failure to Report Child Pornography;
- (RR) 163.732 Stalking;
- (SS) 164.075 Theft by Extortion;
- (TT) 164.225 Burglary I;
- (UU) 164.325 Arson I;
- (VV) 164.395 Robbery III;
- (WW) 164.405 Robbery II;
- (XX) 164.415 Robbery I;
- (YY) 166.085 Abuse of Corpse II;
- (ZZ) 166.087 Abuse of Corpse I;
- (AAA) 166.155 Intimidation II;
- (BBB) 166.165 Intimidation I;
- (CCC) 166.220 Unlawful Use of a Weapon;
- (DDD) 166.270 Possession of Weapons by Certain Felons;
- (EEE) 166.272 Unlawful Possession of Machine Guns, Certain Short Barreled Firearms and Firearms Silencers;
- (FFF) 166.275 Possession of Weapons by Inmates of institutions;
- (GGG) 166.382 Possession of Destructive Device;

(HHH) 166.384 Unlawful Manufacture of Destructive Device;

(III) 166.429 Firearms Used in Felony;

(JJJ) 166.660 Unlawful Paramilitary Activity;

(KKK) 166.720 Racketeering Activity;

(LLL) 167.012 Promoting Prostitution;

(MMM) 167.017 Compelling Prostitution;

(NNN) 167.062 Sadomasochistic Abuse or Sexual Conduct in Live Show;

(OOO) 167.065 Furnishing Obscene Materials to Minors;

(PPP) 167.070 Sending Obscene Materials to Minors;

(QQQ) 167.075 Exhibiting an Obscene Performance to a Minor;

(RRR) 167.080 Displaying Obscene Materials to Minors;

(SSS) 167.087 Disseminating Obscene Material;

(TTT) 167.090 Publicly Displaying Nudity or Sex for Advertising Purposes;

(UUU) 167.212 Tampering with Drug Records;

(VVV) 167.262 Adult Using Minor in Commission of Controlled Substance Offense; or

(WWW) 181.599 Failure to Report as Sex Offender.

(b) CCD will consider the following crimes if they were committed 15 years or less prior to the date the subject individual signed the Consent for Criminal Records Check and Request for Enrollment in the Central Background Registry: Assault III; Bigamy; Burglary I; Coercion; Contributing to Sexual Delinquency of Minor; Criminal Mistreatment II; Criminal Nonsupport; Kidnapping II; Possession of Weapons by Certain Felons; Racketeering Activity; Rape III; Robbery II; Robbery III; Sexual Misconduct; Stalking; Supplying Contraband; and Unlawful Use of a Weapon.

(c) CCD will consider the following crimes if they were committed 20 years or less prior to the date the subject individual signed the Consent for Criminal Records Check and Request for Enrollment in the Central Background Registry: Abuse of a Corpse I; Abuse of a Corpse II; Adult Using Minor in Commission of Controlled Substance Offense; Arson I; Assault I; Assault II; Compelling Prostitution; Criminal Mistreatment I; Criminally Negligent Homicide; Disseminating Obscene Material; Escape I; Failure to Report Child Pornography; Failure to Report as Sex Offender; Firearms Used in Felony; Incest; Intimidation I; Intimidation II; Kidnapping I; Manslaughter I; Manslaughter II; Possession of Destructive Device; Possession of Weapons by Inmates of Institutions; Promoting Prostitution; Publicly Displaying Nudity or Sex for Advertising Purposes; Robbery I; Sadomasochistic Abuse or Sexual Conduct in Live Show; Tampering with Drug Records; Theft by Extortion; Unlawful Manufacture of Destructive Device; Unlawful Paramilitary Activity; and Unlawful Possession of Machine Guns, Certain Short Barreled Firearms and Firearms Silencers.

(d) CCD will consider the following crimes regardless of the length of time since they were committed: Abandonment of a Child; Aggravated Murder; Child Neglect I; Child Neglect II; Displaying Obscene Materials to Minors; Encouraging Child Sexual Abuse I; Encouraging Child Sexual Abuse II; Encouraging Child Sexual Abuse III; Endangering the Welfare of a Minor; Exhibiting an Obscene Performance to a Minor; Furnishing Obscene Materials to Minors; Murder; Possession of Materials Depicting Sexually Explicit Conduct of a Child I; Possession of Materials Depicting Sexually Explicit Conduct of a Child II; Rape I; Rape II; Sending Obscene Materials to Minors; Sexual Abuse I; Sexual Abuse II; Sexual Abuse III; Unlawful Sexual Penetration I; Unlawful Sexual Penetration II; Sodomy I; Sodomy II; Sodomy III; and Using Child in Display of Sexually Explicit Conduct.

(e) These rules also apply to:

(A) A conviction of a crime in another jurisdiction which is the substantial equivalent of a crime listed in Category I;

(B) An adjudication by a juvenile court that a youth has committed an act that is the substantial equivalent of a crime listed in Category I; and

(C) Any attempts or solicitations to commit any Felony or Misdemeanor crime listed in Category I.

(f) Evaluations of crimes shall be based on Oregon laws in effect at the time of conviction, regardless of the jurisdiction in which the conviction occurred.

(2) CCD has further determined that felonies and misdemeanors involving theft, fraud, or deception, crimes against the state and public justice, and major traffic violations may substantially jeopardize the safety of children and are inconsistent with any position of unsupervised contact with children or otherwise vulnerable persons. If any subject individual was convicted of a crime listed in Category II of this rule, CCD will seek to obtain and review information on all intervening circumstances and other background information related to criminal activity, subject to section (6) of this rule. Based on this information, the Division will make a decision whether or not to enroll the subject individual in the Central Background Registry.

(a) The crimes in Category II include:

(A) 162.025 Bribe Receiving;

(B) 162.065 Perjury;

(C) 162.155 Escape II;

(D) 162.205 Failure to Appear I;

(E) 162.235 Obstructing Governmental or Judicial Administration;

(F) 162.265 Bribing a Witness;

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- (G) 162.275 Bribe Receiving by a Witness;
- (H) 162.285 Tampering with a Witness;
- (I) 162.305 Tampering with Public Records;
- (J) 162.325 Hindering Prosecution;
- (K) 162.405 Official Misconduct II;
- (L) 162.415 Official Misconduct I;
- (M) 163.160 Assault IV;
- (N) 163.190 Menacing;
- (O) 163.195 Recklessly Endangering Another Person;
- (P) 163.208 Assault on a Public Safety Officer;
- (Q) 163.465 Public Indecency;
- (R) 163.700 Invasion of Personal Privacy;
- (S) 164.055 Theft I;
- (T) 164.057 Aggravated Theft I;
- (U) 164.215 Burglary II;
- (V) 164.315 Arson II;
- (W) 164.365 Criminal Mischief I;
- (X) 165.013 Forgery I;
- (Y) 165.022 Criminal Possession of a Forged Instrument I;
- (Z) 165.032 Criminal Possession of a Forgery Device;
- (AA) 165.055 Fraudulent Use of a Credit Card (over \$750);
- (BB) 165.070 Possessing Fraudulent Communications Device;
- (CC) 165.074 Unlawful Factoring of Credit Card Transaction;
- (DD) 165.085 Sports Bribery;
- (EE) 165.090 Sports Bribe Receiving;
- (FF) 166.015 Riot;
- (GG) 166.065 Harassment;
- (HH) 166.090 Telephone Harassment;
- (II) 166.190 Pointing Firearm at Another;
- (JJ) 166.240 Carrying of Concealed Weapons;
- (KK) 166.250 Unlawful Possession of Firearms;
- (LL) 167.007 Prostitution;
- (MM) 167.222 Frequenting a Place Where Controlled Substances are

Used;

- (NN) 167.320 Animal Abuse I;
- (OO) 167.322 Aggravated Animal Abuse I;
- (PP) 167.330 Animal Neglect I;
- (QQ) 411.630 Unlawfully Obtaining Public Assistance;
- (RR) 411.675 Submitting Wrongful Claim or Payment Prohibited;
- (SS) 411.840 Unlawfully Obtaining or Disposing of Food Stamp

Benefits;

(TT) 471.410 Providing Liquor to Person under 21 or to Intoxicated Person;

(UU) 475.992 Prohibited Acts Generally; Penalties; Affirmative Defense for Certain Peyote Uses (controlled substance offenses);  
(VV) 475.993 Prohibited Acts for Registrants; Penalties;  
(WW) 475.994 Prohibited Acts Involving Records and Fraud;

Penalties;

(XX) 475.995 Penalties for Distribution to Minors;  
(YY) 475.996 Crime Category Classification for Violation of ORS 475.992; Proof of Commercial Drug Offense;  
(ZZ) 475.999 Penalty for Manufacture or Delivery of Controlled Substance within 1,000 feet of School;

- (AAA) 811.140 Reckless Driving;
- (BBB) 811.182 Criminal Driving while Suspended or Revoked;
- (CCC) 811.540 Fleeing or Attempting to Elude Police Officer;
- (DDD) 811.700 Failure to Perform Duties of Driver When Property

Damaged (hit and run, property);

(EEE) 811.705 Failure to Perform Duties of Driver to Injured Persons (hit and run, injury); or

(FFF) 813.010 Driving Under the Influence of Intoxicants.

(b) CCD will consider the following crimes if they were committed 5 years or less prior to the date the subject individual signed the Consent for Criminal Records Check and Request for Enrollment in the Central Background Registry: Bribe Receiving; Bribe Receiving by a Witness; Bribing a Witness; Criminal Driving while Suspended or Revoked; Criminal Possession of a Forged Instrument I; Criminal Possession of Forgery Device; Failure to Appear I; Forgery I; Fraudulent use of a Credit Card (over \$750); Hindering Prosecution; Failure to Perform Duties of Driver to Injured Persons (hit and run, injury); Failure to Perform Duties of Driver When Property Damaged (hit and run, property); Obstructing Governmental or Judicial Administration; Criminal Driving while Suspended or Revoked; Official Misconduct I; Official Misconduct II; Perjury; Possessing Fraudulent Communications Device; Reckless Driving; Sports Bribe Receiving; Sports Bribery; Submitting Wrongful Claim or Payment Prohibited; Tampering with a Witness; Tampering with Public Records; Unlawful Factoring of Credit Card Transaction; Unlawfully Obtaining or Disposing of Food Stamp Benefits; Unlawfully Obtaining Public Assistance.

(c) CCD will consider the following crimes if they were committed 7 years or less prior to the date the subject individual signed the Consent for Criminal Records Check and Request for Enrollment in the Central Background Registry: Aggravated Animal Abuse I; Animal Abuse I; Animal Neglect I; Assault IV; Carrying of Concealed Weapons; Criminal Mischief I;

Driving under the Influence of Intoxicants; Fleeing or Attempting to Elude Police Officer; Harassment; Menacing; Recklessly Endangering Another Person; Telephone Harassment; Theft I; and Unlawful Possession of Firearms.

(d) CCD will consider the following crimes if they were committed 10 years or less prior to the date the subject individual signed the Consent for Criminal Records Check and Request for Enrollment in the Central Background Registry: Aggravated Theft I; Arson II; Assault on a Public Safety Officer; Burglary II; Escape II; Invasion of Personal Privacy; Pointing Firearm at Another; Providing Liquor to Person Under 21 or to Intoxicated Person; Public Indecency; and Riot.

(e) CCD will consider the following crimes if they were committed 15 years or less prior to the date the subject individual signed the Consent for Criminal Records Check and Request for Enrollment in the Central Background Registry: Crime Category Classification for Violation of ORS 475.992/Proof of Commercial Drug Offense; Frequenting a Place Where Controlled Substances are Used; Prohibited Acts for Registrants; penalties; [(C)] Prohibited Acts Generally; Penalties; Affirmative Defense for Certain Peyote Uses (controlled substance offenses); [(D)] Prohibited Acts Involving Records and Frauds; Penalties; and [(E)] Prostitution.

(f) CCD will consider the following crimes if they were committed 20 years or less prior to the date the subject individual signed the Consent for Criminal Records Check and Request for Enrollment in the Central Background Registry: Penalties for Distribution to Minors; and Penalty for Manufacture or Delivery of Controlled Substance within 1,000 feet of School.

(g) These rules also apply to:

(A) A conviction of a crime in another jurisdiction which is the substantial equivalent of a crime listed in Category II;

(B) An adjudication by a juvenile court that a youth has committed an act that is the substantial equivalent of a crime listed in Category II; and

(C) Any attempts or solicitations to commit any Felony or Misdemeanor crime listed in Category II.

(h) Evaluations of crimes shall be based on Oregon laws in effect at the time of conviction, regardless of the jurisdiction in which the conviction occurred.

(3) CCD has determined that founded child protective services cases and firearm prohibition orders may substantially jeopardize the safety of children and are inconsistent with any position of unsupervised contact with children or otherwise vulnerable persons. If any subject individual has a founded child protective services case or active firearm prohibition order, CCD will seek to obtain and review information related to the case, subject to section (6) of this rule. Based on this information, the Division will make a decision whether or not to enroll the subject individual in the Central Background Registry.

(4) If CCD determines that additional information is needed to assess a person's suitability to be enrolled in the Central Background Registry, the subject individual shall provide the requested information within the required timeframes. The additional information may include, but is not limited to, an evaluation or assessment by a physician, counselor or other qualified person, documents to determine positive identification of the subject individual, and court documents.

(5) If a subject individual is in a diversion program or similar agreement for any Category I or Category II crime, the subject individual must provide written documentation of compliance with the terms of diversion or similar agreement. Based on this information, the Division will make a decision whether or not to enroll the subject individual in the Central Background Registry.

(6) Factors to be considered in determining suitability, based on information available to CCD and information provided by the subject individual, include:

- (a) Types and number of incidences;
- (b) Passage of time since the incident occurred;
- (c) Circumstances surrounding the incident;
- (d) Intervening circumstances since the occurrence of the incident; and
- (e) Relationship of the facts under subsections (a) through (d) of this section to the individual's suitability to work with children.

(7) CCD will not bar from enrollment in the Central Background Registry any subject individual because of the existence or contents of a juvenile record that has been expunged by the court.

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

Stat. Auth.: ORS 657A.030

Stats. Implemented: ORS 657A.030

Hist.: CCD 1-1998, f. 9-30-98, cert. ef. 10-1-98; CCD 2-2003, f. 12-5-03 cert. ef. 12-7-03; CCD 3-2004, f. 7-30-04 cert. ef. 8-1-04; CCD 1-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10

## 414-061-0060

### Requirements of Requesting Agencies

Requesting agencies, as defined in OAR 414-061-0020(16), must comply with the following requirements:

(1) A requesting agency's application forms must contain a notice that employees and other persons who are subject individuals must be enrolled in

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the Central Background Registry and that employment is subject to fingerprinting and criminal records checks.

(2) A requesting agency may hire a subject individual on a probationary basis if the subject individual is conditionally enrolled in the Central Background Registry. A requesting agency may hire a subject individual on a permanent basis if the subject individual is enrolled in the Central Background Registry.

(3) A requesting agency shall not hire or continue to employ on a probationary or permanent basis an individual if the individual is not enrolled in the Central Background Registry or has been removed from the Central Background Registry and has not been re-enrolled.

(4) A requesting agency may allow a subject individual who is not yet enrolled or conditionally enrolled in the Central Background Registry to participate in training, orientation and work activities if the training, orientation and work activities are at a location other than the child care facility or are conducted at the facility when children are not present and the subject individual is not in contact with any children.

Stat. Auth.: ORS 657A.030(7)  
Stats. Implemented: ORS 657A.030  
Hist.: CCD 1-1998, f. 9-30-98, cert. ef. 10-1-98; CCD 2-2003, f. 12-5-03 cert. ef. 12-7-03; CCD 1-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10

## 414-061-0070

### Procedures for Conducting Oregon State Police Criminal Records Checks and Department of Human Services Child Protective Services Record Checks

(1) Subject individuals shall consent to a criminal records check of the Oregon State Police Computerized Criminal History (CCH) System and a child protective services check at the time they request enrollment in the Central Background Registry.

(2) Central Background Registry enrollment forms shall contain notice that criminal records checks will be conducted as required by ORS 181.537 and 657A.030. The form shall also contain notice that child protective services checks will be conducted.

(3) Subject individuals shall provide all information required for a criminal records check and a child protective services check. Information includes:

(a) A properly completed and signed form CCD 199, Consent for Criminal Records Check and Request for Enrollment in the Central Background Registry;

(b) For a subject individual who acknowledges a prior conviction of a criminal offense, as listed in OAR 414-061-0050, an explanation of the relationship of the facts which support the conviction and all intervening circumstances. On request of CCD, the subject individual must authorize CCD to verify information provided by the individual; and

(c) On the application for enrollment in the Central Background Registry, CCD may request subject individuals to consent to the use of their social security numbers for criminal and child protective services records checks, for identifying enrollees in the Central Background Registry, for sharing information with other agencies to verify child care licensing status for child care payments, and for compiling statistical information for program planning and evaluation.

(4) CCD will review the criminal records information, child protective services information, and any additional information and will determine whether or not a subject individual may be enrolled in the Central Background Registry.

(5) Fees for each name checked through OSP CCH and child protective services systems are as follows:

(a) No charge for CCD employees; and

(b) All other requests for criminal record checks and child protective services checks and enrollment in the Central Background Registry will cost \$3 per person.

[ED. NOTE: Forms referenced in this rule are available from the agency.]  
Stat. Auth.: ORS 657A.030(7)  
Stats. Implemented: ORS 657A.030  
Hist.: CCD 1-1998, f. 9-30-98, cert. ef. 10-1-98; CCD 2-2003, f. 12-5-03 cert. ef. 12-7-03; CCD 1-2006(Temp), f. & cert. ef. 3-16-06 thru 9-12-06; CCD 4-2006, f. 7-13-06, cert. ef. 7-14-06; CCD 1-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10

## 414-061-0080

### Procedures for Conducting FBI Criminal History Checks

(1) An FBI criminal records check will be done on a subject individual whose OSP CCH record shows multi-state offender status, who has lived in Oregon less than 18 months or when CCD has information that the individual has committed a crime in another state.

(2) The subject individual shall supply to CCD the following information:

(a) One properly completed FBI fingerprint card, with printing in the "reason fingerprinted" block which reads "ORS 181.537/NCPA/VCA Child Care";

(b) Properly completed form CCD 199, Consent for Criminal Records Check and Request for Enrollment in the Central Background Registry; and

(c) For a subject individual who acknowledges a prior conviction, as listed in OAR 414-061-0050, an explanation of the relationship of the facts which support the conviction and all intervening circumstances. On request

of CCD, the subject individual must authorize CCD to verify information provided under this rule.

(3) As part of the consent to a criminal records check, CCD may request the subject individual to consent to the use of his/her social security number in conducting the check.

(4) CCD will review the criminal records information and any additional information and will determine whether or not a subject individual may be enrolled in the Central Background Registry.

(5) CCD will charge the subject individual \$62 for an FBI records check, to be paid at the time of the request.

[ED. NOTE: Forms referenced are available from the agency.]  
Stat. Auth.: ORS 657A.030(7)  
Stats. Implemented: ORS 657A.030  
Hist.: CCD 1-1998, f. 9-30-98, cert. ef. 10-1-98; CCD 2-2003, f. 12-5-03 cert. ef. 12-7-03; CCD 6-2004, f. & cert. ef. 12-17-04; CCD 3-2005(Temp), f. & cert. ef. 8-16-05 thru 2-12-06; CCD 5-2005, f. 12-29-05, cert. ef. 1-1-06; CCD 1-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10

## 414-061-0090

### CCD Enrollment Procedures

(1) A subject individual shall be enrolled in the Central Background Registry if CCD has determined that the individual:

(a) Has provided all information and/or documents requested by CCD;

(b) Has no criminal or child protective services history or has dealt with the issues and provided adequate evidence of suitability;

(c) Has paid the applicable fee; and

(d) Has complied with the rules of CCD adopted pursuant to the Central Background Registry (OAR 414-061-0000 through 414-061-0120).

(2) Enrollment in the Central Background Registry shall expire two years from the date of enrollment, unless rescinded sooner, and may be renewed upon application to CCD, payment of the required fee and compliance with the rules adopted by CCD pursuant to the Central Background Registry (OAR 414-061-0000 through 414-061-0120).

(3) A subject individual who has been enrolled in the Central Background Registry will be notified by CCD of his or her enrollment and the enrollment dates. Such notification will not be sufficient evidence of enrollment for employment by a requesting agency.

(4) A subject individual may be conditionally enrolled in the Central Background Registry pending the results of an FBI criminal records check if the individual has been determined to be suitable based on OSP criminal records information and child protective services information.

(a) A conditionally enrolled subject individual who has been determined to be suitable based on FBI criminal records information shall be enrolled in the Central Background Registry.

(b) The two-year enrollment period will include the time the subject individual was conditionally enrolled.

(c) A conditionally enrolled subject individual who has been determined not to be suitable based on FBI criminal records information shall be removed from the Central Background Registry, according to the provisions of OAR 414-061-0110.

(d) A conditional enrollment will expire if the subject individual has not been enrolled in the Registry within one year of the conditional enrollment.

Stat. Auth.: ORS 657A.030(7)  
Stats. Implemented: ORS 657A.030  
Hist.: CCD 1-1998, f. 9-30-98, cert. ef. 10-1-98; CCD 2-2003, f. 12-5-03 cert. ef. 12-7-03; CCD 1-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10

## 414-061-0100

### CCD Denial Procedures

(1) A subject individual shall be denied enrollment in the Central Background Registry if the individual:

(a) Has been determined not suitable;

(b) Has failed to submit requested information or documentation;

(c) Has been charged with, arrested for, or a warrant is out for a Category I or Category II crime with final disposition not yet reached;

(d) Has an open child protective services or law enforcement case with final disposition not yet reached; or

(e) Is in a diversion program or similar agreement and has failed to provide written documentation of compliance with the terms of diversion or the agreement.

(2) A subject individual may appeal CCD's determination not to enroll the subject individual in the Central Background Registry, pursuant to OAR 414-061-0120.

(3) A subject individual who has been denied enrollment in the Central Background Registry due to a determination of unsuitability shall not be eligible for enrollment in the Registry for 3 years from the date of denial.

Stat. Auth.: ORS 657A.030(7)  
Stats. Implemented: ORS 657A.030  
Hist.: CCD 1-1998, f. 9-30-98, cert. ef. 10-1-98; CCD 2-2003, f. 12-5-03 cert. ef. 12-7-03; CCD 5-2004, f. & cert. ef. 11-16-04; CCD 1-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10



# ADMINISTRATIVE RULES

## 414-061-0110

### Removal and Suspension Procedures

(1) An individual enrolled in the Central Background Registry shall be removed or suspended from the Registry by CCD if, during the period of enrollment, the individual;

- (a) Has been determined not suitable for enrollment in the Registry;
- (b) Has failed to submit requested information or documentation;
- (c) Has been charged with, arrested for, or a warrant is out for a Category I or Category II crime with final disposition not yet reached;

(d) Has a founded child protective services case or an open child protective services or law enforcement case with final disposition not yet reached; or

(e) Is in a diversion program or similar agreement and has failed to provide written documentation of compliance with the terms of diversion or the agreement.

(2) CCD may immediately, and without prior hearing, remove or suspend a subject individual from the Central Background Registry when, in the opinion of CCD, such action is necessary to protect children from physical or mental abuse or a substantial threat to health and safety. Such action may be taken before an investigation is completed.

(3) CCD may reinstate a subject individual in the Central Background Registry if the condition(s) that resulted in the suspension is corrected.

(4) When a subject individual is removed or suspended from the Central Background Registry, CCD will notify the subject individual and the requesting agencies which have inquired about the subject individual's enrollment of the removal or suspension.

(5) A subject individual who has been removed from the Central Background Registry and has not subsequently been re-enrolled shall not be eligible for enrollment in the Registry for 3 years from the date of removal.

Stat. Auth.: ORS 657A.030(7)

Stats. Implemented: ORS 657A.030

Hist.: CCD 1-1998, f. 9-30-98, cert. ef. 10-1-98; CCD 2-2003, f. 12-5-03 cert. ef. 12-7-03; CCD 5-2004, f. & cert. ef. 11-16-04; CCD 1-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10

## 414-061-0120

### Rights for Review and Contested Case Hearings

(1) CCD shall conduct contested case hearings per ORS 183.413 to 183.470 and afford subject individuals the right to appeal a decision made by CCD that the subject individual may not be enrolled in or has been removed from the Central Background Registry. Subject individuals must notify CCD of their request for a contested case hearing not later than 14 calendar days from the date of service of the denial or removal notice.

(2) CCD has no jurisdiction in a contested case hearing over allegations that the criminal records information received from OSP or the FBI or child protective services information received from the Department of Human Services is inaccurate, incomplete or maintained in violation of any federal or state law. Therefore, a contested case hearing cannot be held by CCD for that purpose. Challenges to the accuracy or completeness of the information provided by the Department of State Police, the FBI and agencies reporting information to CCD must be made through those departments, bureaus or agencies and not through the contested case process.

(3) CCD is entitled to rely on the criminal records information supplied by OSP or the FBI or child protective services information supplied by the Department of Human Services until OSP, the FBI, or the Department of Human Services notifies CCD that information has been changed or corrected in a manner that would alter the CCD decision. If a subject individual has requested a contested case hearing, CCD will stay the hearing until the subject individual has been afforded a reasonable time to correct or complete the record or has declined to do so.

(4) To preserve the confidentiality of the records and the privacy of the subject individual, any contested case hearing will not be open to the public unless requested by the subject individual.

(5) A subject individual who is also an employee of the licensing unit of the Child Care Division and who is determined unsuitable for enrollment in the Central Background Registry may appeal the determination through either the contested case process or applicable personnel rules, policies and collective bargaining provisions. A subject individual's decision to appeal a determination through personnel rules, policies and collective bargaining provisions shall constitute an election of remedies as to the rights of the subject individual with respect to the disqualification determination and shall constitute waiver of the contested case process.

Stat. Auth.: ORS 657A.030(7)

Stats. Implemented: ORS 657A.030

Hist.: CCD 1-1998, f. 9-30-98, cert. ef. 10-1-98; CCD 2-2003, f. 12-5-03 cert. ef. 12-7-03; CCD 1-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10

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**Rule Caption:** Amends rules regarding Registered Family Child Care Homes.

**Adm. Order No.:** CCD 2-2009(Temp)

**Filed with Sec. of State:** 12-30-2009

**Certified to be Effective:** 1-1-10 thru 6-30-10

**Notice Publication Date:**

**Rules Amended:** 414-205-0000, 414-205-0010, 414-205-0020, 414-205-0035, 414-205-0040, 414-205-0055, 414-205-0065, 414-205-0075, 414-205-0085, 414-205-0090, 414-205-0100, 414-205-0110, 414-205-0120, 414-205-0130, 414-205-0140, 414-205-0150, 414-205-0160, 414-205-0170

**Subject:** Amends rules to change the reference to the Criminal History Registry to the Central Background Registry, changes the term "special needs child" to child with special needs, specifies the licensing requirements and revises rules regarding imposition of civil penalties on Registered Family Child Care Homes for rule violations. This rules also prohibits providers who have had certain negative actions taken against their license or enrollment in the Central Background Registry from doing certain types of exempt child care.

**Rules Coordinator:** Janet Orton—(503) 947-1679

## 414-205-0000

### Purpose

(1) Oregon Administrative Rules (OAR) 414-205-0000 through 414-205-0170 are the Child Care Division's minimum requirements for registering family child care providers. The purpose of these rules is to protect the health, safety, and well-being of children when cared for outside their own homes.

(2) Registration is required for persons who provide child care:

(a) On other than an occasional basis; and

(b) To more than three children from more than one family at any one time, other than the person's own children; or

(c) To three or fewer children, even if from the same family if that person's enrollment in the Central Background Registry has been denied or the person has been removed for cause, or suspended; or their child care facility certification or registration has been denied or revoked for cause, or suspended, or the person has voluntarily withdrawn their application or closed their registration or certification while under investigation by CCD; or

(d) That is primarily educational to children age 36 months or older but not attending kindergarten for four hours or less a day if that person's enrollment in the Central Background Registry has been denied or the person has been removed for cause, or suspended; or their child care facility certification or registration has been denied or revoked for cause, or suspended, or the person has voluntarily withdrawn their application or closed their registration or certification while under investigation by CCD; or

(e) On an occasional basis by a person not ordinarily engaged in providing child care if that person's enrollment in the Central Background Registry has been denied or the person has been removed for cause, or suspended; or their child care facility certification or registration has been denied or revoked for cause, or suspended, or the person has voluntarily withdrawn their application or closed their registration or certification while under investigation by CCD; or

(f) To children from only one family other than the person's own family if that person's enrollment in the Central Background Registry has been denied or the person has been removed for cause, or suspended; or their child care facility certification or registration has been denied or revoked for cause, or suspended, or the person has voluntarily withdrawn their application or closed their registration or certification while under investigation by CCD.

(3) These rules do not apply to care provided:

(a) In the home of the child;

(b) To three or fewer children, not including the provider's own children except as provided in 414-205-0000(2)(c);

(c) To children from one family, not including the provider's own children except as provided in 414-205-0000(2)(f);

(d) On an occasional basis by a person not ordinarily engaged in providing child care except as provided in 414-205-0000(2)(e);

(e) By the child's parent, guardian, or person acting in place of a parent;

(f) By a person related to the child care children by blood, marriage, or adoption; or

(g) By a person who is a member of the child's extended family, as determined by the division on a case-by-case basis or;

(h) By a person providing care that is primarily educational, unless provided to a preschool child for more than four hours a day, except as provided in 414-205-0000(2)(d).

(4) Any family child care provider exempt from registration may apply for registration.

(5) These rules apply only during the hours the provider is conducting the child care business.

Stat. Auth.: ORS 657A

Stats. Implemented: ORS 657A.260 & 657A.330

Hist.: CCD 2-1994, f. 7-15-94, cert. ef. 8-15-94; CCD 1-1995, f. 10-30-95, cert. ef. 11-1-95; CCD 2-1995(Temp), f. 12-28-95, cert. ef. 1-1-96; CCD 2-1996, f. 3-19-96, cert. ef. 4-1-96; CCD 1-2000, f. 3-31-00, cert. ef. 4-2-00; CCD 7-2003, f. 12-23-03, cert. ef. 12-28-03; CCD 2-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10

# ADMINISTRATIVE RULES

## 414-205-0010

### Definitions

(1) "Caregiver" means any person, including the provider, who cares for the children in the registered family child care home and works directly with the children, providing care, supervision and guidance.

(2) "Central Background Registry" means CCD's Registry of individuals who have been approved to work in a child care facility in Oregon pursuant to ORS 657A.030 and OAR 414-061-0000 through 414-061-0120.

(3) "Child Care" means the care, supervision and guidance on a regular basis of a child, unaccompanied by a parent, guardian or custodian, during a part of the 24 hours of the day, with or without compensation.

(4) "Child Care Child" means any child under 13 years of age, or a child with special needs under the age of 18 who requires a level of care over and above the norm for his/her age, who does not reside in the home and for whom the provider has supervisory responsibility in the temporary absence of the parent.

(5) "Child with Special Needs" means a child under the age of 18 who requires a level of care over and above the norm for his/her age due to a physical, developmental, behavioral, mental or medical disability.

(6) "CCD" means the Child Care Division of the Employment Department, or the Administrator or staff of the Division.

(7) "Civil Penalty" means a fine imposed by CCD on a provider for violation on these rules.

(8) "Family" means persons related by blood, marriage, or adoption, or whose functional relationship (e.g., parent(s), custodian(s), guardian(s)) in exercising physical care and custody of the child(ren) is similar to those found in such associations.

(9) "Full-Time Child Care" means care provided to children not yet eligible for the first grade or above. One or more children may fill a full-time space in the home as long as the children are not in care at the same time.

(10) "Infant" means a child who is not yet walking.

(11) "New Application" means a registration application that has been filed by an applicant who has never had an active registration.

(12) "Night Care" means care given to a child who sleeps at the family child care home for all or part of the night.

(13) "Occasional" means infrequently or intermittently, including but not limited to care that is provided during summer or other holiday breaks when children are not attending school, but not to exceed 70 calendar days in a year.

(14) "Oregon Registry" means the voluntary registry at the Oregon Center for Career Development in Childhood Care and Education at Portland State University that documents the training, education and experience of individuals who work in childhood care and education.

(15) "Part-Time Child Care" means care provided to a child who meets the definition of a school-age child and is in care on days and hours school is not in session.

(16) "Preschool-Age Child" means a child 24 months of age to eligible to be enrolled in the first grade and, during the months of summer vacation from school, eligible to be enrolled in the first grade in the next school year.

(17) "Provider" means a resident of the registered family child care home who is responsible for the children in care; is the children's primary caregiver; and the person whose name is on the certificate of registration.

(18) "Registered Family Child Care Home" means the residence of the provider, who has a current Family Child Care Registration at that address and who provides care in the family living quarters.

(19) "Registration" means the document a family child care provider is issued by the Child Care Division to operate a family child care home where care is provided in the family living quarters of the provider's home pursuant to ORS 657A.330 and OAR 414-205-0000 through 414-205-0170. Registration is limited to one provider at one address.

(20) "Renewal Application" means a registration application that has been filed by a currently registered family child care provider who wishes to continue registration.

(21) "Reopen Application" means a registration application that has been filed by an applicant whose registration is expired or closed, including those closures resulting from an address change.

(22) "School-Age Child" means a child eligible to be enrolled in the first grade or above and, during the months of summer vacation from school, a child eligible to be enrolled in the first grade or above in the next school year.

(23) "Serious Complaint" means a complaint filed against:

(a) A registered family child care provider by a person who has alleged that:

- (A) Children are in imminent danger;
- (B) There are more children in care than allowed by law;
- (C) Corporal punishment is being used;
- (D) Children are not being supervised;
- (E) Multiple or serious fire, health or safety hazards are present in the home;

(F) Extreme unsanitary conditions are present in the home; or

(G) Adults are in the home who are not enrolled in the Child Care Division's Central Background Registry; or

(b) An individual providing child care, as defined by ORS 657A.250(4), who is not a registered family child care provider by a person who has alleged that there are more children in care than allowed by law.

(24) "Substitute Caregiver" means a person who acts as the children's primary caregiver in the registered family child care home in the temporary absence of the provider.

(25) "Usable Exit" means an unobstructed door or window through which the provider and the children can evacuate the home in case of a fire or emergency. Doors must be able to be opened from the inside without a key, and window openings must be at least 20 inches wide and 22 inches in height, with a net clear opening of 5 square feet and a sill no more than 48 inches above the floor.

Stat. Auth.: Ch. 858, OL 1999 (SB 2240)

Stats. Implemented: Ch. 858, OL 1999 (SB 2240)

Hist.: CCD 2-1994, f. 7-15-94, cert. ef. 8-15-94; CCD 1-1995, f. 10-30-95, cert. ef. 11-1-95; CCD 3-1999(Temp), f. 10-21-99, cert. ef. 10-23-99 thru 1-1-00; CCD 7-1999, f. 12-29-99, cert. ef. 1-1-00; CCD 1-2000, f. 3-31-00, cert. ef. 4-2-00; CCD 5-2001, f. 11-2-01, cert. ef. 11-4-01; CCD 1-2007(Temp), f. & cert. ef. 3-20-07 thru 9-16-07; CCD 2-2007, f. & cert. ef. 7-13-07; CCD 2-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10

## 414-205-0020

### Application for Registration

(1) The applicant must apply for registration on the form(s) supplied by CCD. The original form(s) must be submitted to CCD for processing.

(2) Persons submitting new applications must attend a family child care overview session prior to submitting their application to CCD.

(3) Persons interested in submitted an application must meet the training requirements outlined in OAR 414-205-0055.

(4) An application for registration is required:

- (a) For a new registration;
- (b) For renewing a registration; and
- (c) For reopening a registration.

(5) There is a non-refundable filing fee of \$30 for each application. If the provider submits documentation that the provider's family income is below 100% of the Federal Poverty Level, the fee may be reduced.

(6) All civil penalties must be paid in full.

(7) To determine if requirements are met, the applicant/provider may be required to supply additional information or permit CCD, a fire marshal, or a public health official to assess the home and/or review child care records.

(8) Providers must satisfactorily complete an on-site health and safety review conducted by CCD prior to issuance of a new, renewal or reopen registration. The review will ensure that the provider is in compliance with the rules related to health, safety and sanitation.

(9) If an application for renewal and payment of the required fee is received by CCD at least 30 days prior to the expiration date of the current registration, the current registration, unless officially revoked, remains in effect until CCD has acted on the application for renewal and has given notice of the action taken.

Stat. Auth. ORS 657A

Stats. Implemented: ORS 657A.260, 657A.330 & 657A.440

Hist.: CCD 2-1994, f. 7-15-94, cert. ef. 8-15-94; CCD 1-1995, f. 10-30-95, cert. ef. 11-1-95; CCD 2-1995(Temp), f. 12-28-95, cert. ef. 1-1-96; CCD 2-1996, f. 3-19-96, cert. ef. 4-1-96; CCD 1-2000, f. 3-31-00, cert. ef. 4-2-00; CCD 5-2001, f. 11-2-01, cert. ef. 11-4-01; CCD 5-2001, f. 11-2-01, cert. ef. 11-4-01; CCD 1-2007(Temp), f. & cert. ef. 3-20-07 thru 9-16-07; CCD 2-2007, f. & cert. ef. 7-13-07; CCD 2-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10

## 414-205-0035

### General Requirements

(1) The home in which child care is provided must be the residence of the provider.

(2) Registration is limited to one provider per household.

(3) A registration applies to only the person and address on the certificate of registration and is not transferable to another location or individual.

(4) The registration is valid for a maximum of two years. The registration period begins with the effective date shown on the certificate of registration. A provider may not care for more than three (3) children, other than the provider's own children, at any one time prior to receiving a certificate of registration from CCD.

(5) CCD registration records are open to the public on request. However, information protected by state or federal law will not be disclosed.

(6) The name, address, telephone number, and registration status of providers is public information. However, CCD may withhold from the public a provider's address and telephone number if the provider makes a written request documenting that disclosure of the address and/or telephone number would endanger him/her or a family member living in the home (OAR 137-004-0800). The request must be on a form supplied by CCD.

(7) The Certificate of Registration must be posted in the family child care home in an area where it can be viewed by parents.

(8) The provider shall have no other employment, either in or out of the home, during the hours children are in care.

(9) The provider must allow custodial parents or legal guardians of child care children access to the home during the hours their child(ren) are in care.

(10) The provider must comply with state and federal laws related to immunizations, child care restrictable diseases, child safety systems and seat

# ADMINISTRATIVE RULES

belts in vehicles, bicycle safety, civil rights laws, and the Americans with Disabilities Act.

(11) Any caregiver who has reason to believe that any child has suffered abuse (physical injury, mental injury, neglect that leads to physical harm, sexual abuse and/or exploitation, or threat of harm) must report the information to the Department of Human Services Child Welfare (DHS) or to a law enforcement agency. By statute, this requirement applies 24 hours per day.

(12) The provider must notify parents if there will be a substitute caregiver and the caregiver's name or if the children will be away from the home for any part of the day for visits, field trips, or any other activity off the premises. In the event of an emergency, a good faith effort will be made to notify parents that a substitute will be caring for the children.

(13) If an applicant or a provider provides or wishes to provide adult or child foster care, the foster care licensing agency must grant approval for the applicant to provide both child care and foster care services.

Stat. Auth.: ORS 657A.260  
Stats. Implemented: ORS 657A.260  
Hist.: CCD 1-2000, f. 3-31-00, cert. ef. 4-2-00; CCD 1-2007(Temp), f. & cert. ef. 3-20-07 thru 9-16-07; CCD 2-2007, f. & cert. ef. 7-13-07; CCD 2-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10

## 414-205-0040

### The Provider and Other Persons in the Home

(1) The registered provider and any substitute caregiver shall be at least 18 years old and in such physical and mental health as will not adversely affect a child in care.

(2) No one shall have access to child care children who has demonstrated behavior that may have a detrimental effect on a child. Residents of the home are considered to have access to the child care children even if they are not generally at home during child care hours.

(a) The applicant and other residents of the home 18 years of age or older must be enrolled in CCD's Central Background Registry prior to the issuance of a registration. Residents of the home who are under 18 years of age must be enrolled in the Registry by their 18th birthday.

(b) Prior to another adult moving into the home, residing on a temporary basis in the home, visiting the home on a regular basis, or substituting for or assisting the provider, the provider must receive documentation from CCD that the individual is enrolled in the Central Background Registry. This does not apply to parents of children in care unless they are residing in the home or substituting for or assisting the provider.

(c) If additional information is needed to assess a person's ability to care for children or to have access to children, references, an evaluation by a physician, counselor, or other qualified person, or other information may be required by CCD.

(d) Any visitor to the home or other adult who is not enrolled in the Central Background Registry may not have unsupervised access to children.

(3) A caregiver substituting for the provider must:

(a) Be familiar with the requirements for registration and agree to comply with them;

(b) Be enrolled in the Central Background Registry prior to substituting for the provider; and

(c) Comply with all the requirements, except those in OAR 414-205-0055, placed on the provider in these rules.

Stat. Auth.: ORS 657A  
Stats. Implemented: ORS 657A.050, 657A.060, 657A.260 & 657A.330  
Hist.: CCD 2-1994, f. 7-15-94, cert. ef. 8-15-94; CCD 1-1995, f. 10-30-95, cert. ef. 11-1-95; CCD 1-2000, f. 3-31-00, cert. ef. 4-2-00; CCD 2-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10

## 414-205-0055

### Training Requirements

(1) When a person submits a new application for registration as a family child care provider, the Child Care Division shall, prior to approving the registration, receive evidence from the person that the person has:

(a) Completed the Family Child Care Overview session;

(b) A current certification in first aid and infant and child cardiopulmonary resuscitation;

(c) A current food handler certification pursuant to ORS 624.570; and

(d) Completed two hours of training on child abuse and neglect issues.

(2) When a registered family child care provider submits a renewal application, the Child Care Division shall, prior to approving it, receive evidence from the provider that the provider has:

(a) A current certification in first aid and infant and child cardiopulmonary resuscitation;

(b) A current food handler certification pursuant to ORS 624.570; and

(c) Completed a minimum of eight hours of training during the two years preceding the renewal date. The training must be related to the core knowledge categories in the Oregon Registry. At least four clock hours of the eight hours of training must be in child development or early childhood.

(3) When a person submits a reopen application, the Child Care Division shall, prior to approving it, receive evidence from the individual that the individual has:

(a) A current certification in first aid and infant and child cardiopulmonary resuscitation;

(b) A current food handler certification pursuant to ORS 624.570; and

(c) Documentation that individual has eight hours of training related to the Oregon Registry core knowledge categories during the previous two year license period. If the individual was previously licensed for less than two years, the training requirements will be prorated as follows: two hours of training for each six months of the previous license period.

Stat. Auth.: ORS 657A.260  
Stats. Implemented: ORS 657A.260  
Hist.: CCD 1-2000, f. 3-31-00, cert. ef. 4-2-00; CCD 5-2001, f. 11-2-01, cert. ef. 11-4-01; CCD 3-2004, f. 7-30-04 cert. ef. 8-1-04; CCD 1-2007(Temp), f. & cert. ef. 3-20-07 thru 9-16-07; CCD 2-2007, f. & cert. ef. 7-13-07; CCD 2-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10

## 414-205-0065

### Children in Care

(1) A family child care provider may care for a maximum of 10 children under 13 years of age, or under age 18 if a child with special needs, at any one time. This includes the provider's own children, the child care children, foster children, and any other children for whom the provider is responsible.

(2) Of the 10 children under 13 years of age or under age 18 if a child with special needs, the provider may care for:

(a) A maximum of 6 children preschool age or younger, including the provider's own children, of which only 2 children may be under 24 months of age.

(b) In addition, there may be 4 school-age children.

(c) If there are fewer than 6 children preschool age or younger, there may be more school-age children, as long as there are no more than 10 children in the home at any one time.

(3) Other children, including but not limited to neighborhood children or friends of the provider's children, are included in the maximum number of 10 children allowed in care if their parents or other adults responsible for supervising them are not present in the home or are not directly supervising their own child(ren).

(4) Visiting children and their parents or others directly supervising them can be in the family child care home only on an occasional basis.

(5) No child younger than 6 weeks of age can be in care in a family child care home. This does not include the provider's child(ren).

Stat. Auth.: ORS 657A.260  
Stats. Implemented: ORS 657A.260  
Hist.: CCD 1-2000, f. 3-31-00, cert. ef. 4-2-00; CCD 5-2001, f. 11-2-01, cert. ef. 11-4-01; CCD 2-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10

## 414-205-0075

### Supervision of Children

The provider or a substitute caregiver is responsible for the children in care. The provider or substitute caregiver must:

(1) Be within sight and/or sound of all children at all times;

(2) Be aware of what each child is doing at all times; and

(3) Be physically present when preschool age or younger children are playing outside unless the outside play area is fully fenced and hazard free. If the outside play area is fully fenced and hazard free, the provider must be within sight and/or sound of the children.

Stat. Auth.: ORS 657A.260  
Stats. Implemented: ORS 657A.260  
Hist.: CCD 1-2000, f. 3-31-00, cert. ef. 4-2-00; CCD 5-2001, f. 11-2-01, cert. ef. 11-4-01; CCD 2-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10

## 414-205-0085

### Discipline

(1) The provider must have a written discipline policy. The policy must be simple and understandable to the child, the parent(s) and to substitute caregivers. The written discipline policy must be given to all parents.

(2) The following behavior by caregivers is prohibited:

(a) Corporal punishment, including hitting, spanking, slapping, beating, shaking, pinching, and other measures that produce physical pain;

(b) Withdrawal or the threat of withdrawal of food, rest, or bathroom opportunities;

(c) Punishing a child for toileting accidents or for refusing food;

(d) Abusive or profane language;

(e) Any form of public or private humiliation, including threats of physical punishment; and

(f) Any form of emotional abuse, including, but not limited to, rejecting, terrorizing, neglecting, or corrupting a child.

(3) Parental request or permission to use any form of punishment listed in subsection (2) of this rule does not give the provider permission to use such punishment.

Stat. Auth.: ORS 657A.260  
Stats. Implemented: ORS 657A.260  
Hist.: CCD 1-2000, f. 3-31-00, cert. ef. 4-2-00; CCD 2-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10

## 414-205-0090

### Program of Activities

(1) The provider must give the children's needs first priority, assuring that they get adequate care and attention.

(2) Providers must make available activities, materials, and equipment for both indoor and outdoor play that provide a variety of experiences geared to the ages and abilities of the child(ren).

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(3) The children's activities must allow choice and develop skills based on each child's age and abilities.

(4) A balance of active and quiet play must be provided, both indoors and outdoors.

(5) The provider must have routines for eating, napping, and toileting, with flexibility to respond to the needs of each child.

(6) No child may view television or videos or play computer or electronic games for more than two (2) hours per day.

Stat. Auth.: ORS 657A.260

Stats. Implemented: ORS 657A.260

Hist.: CCD 1-2000, f. 3-31-00, cert. ef. 4-2-00; CCD 2-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10

## 414-205-0100

### Health

(1) The home must be a healthy environment for children.

(a) No person shall smoke or use smokeless tobacco in the family child care home during the hours the child care business is conducted. No person shall smoke or use smokeless tobacco in motor vehicles while child care children are passengers.

(b) No one shall consume alcohol or use non-prescription controlled substances in the presence of children. No one under the influence of alcohol or non-prescription controlled substances shall be in the home when child care children are present.

(c) There must be at least one flush toilet and one hand-washing sink available to children. Steps or blocks must be available to ensure children can use the toilet and sink without assistance.

(d) The room temperature must be at least 68°F during the hours the child care business is conducted.

(e) Rooms occupied by children must have a combination of natural and artificial lighting.

(f) Floors must be free of splinters, large unsealed cracks, sliding rugs and other hazards.

(2) The provider must have a basic first aid kit available for use. The kit must be kept out of the reach of children.

(3) Infants must be put to sleep on their backs.

(4) Except for mild cold symptoms that do not impair a child's function, children who are ill shall not be in care.

(5) If a child becomes ill in child care, the provider must separate the child from other children, to the extent possible, and contact the child's parent(s) to remove the child from care as soon as possible.

(6) Parents must be notified if their child is exposed to a communicable disease.

(7) Prescription and non-prescription medication may be given to a child only if the provider has written authorization from the parent, as required in OAR 414-205-0130(3).

(8) Prescription and non-prescription medications must be properly labeled and stored.

(a) Non-prescription medications or topical substances must be labeled with the child's name.

(b) Prescription medications must be in the original container and labeled with the child's name, the name of the drug, dosage, directions for administering, and the physician's name.

(c) Medication requiring refrigeration must be kept in a separate, covered container, marked "medication," in the refrigerator.

(9) Parents must be informed daily of any medications given to their child or any injuries their child has had.

(10) The provider must provide or ensure the availability of meals and snacks appropriate for the ages and needs of the children served.

(a) Meals and snacks must be based on the guidelines of the USDA Child Care Food Program.

(b) Foods must be stored and maintained at the proper temperature.

(c) Foods must be prepared and served according to the minimum standards for food handler certification.

(d) Infants must either be held or be fed sitting up for bottle feeding. Propping bottles is prohibited.

(11) Any animal at the family child care home must be in good health and be a friendly companion for the children in care.

(a) Potentially aggressive animals must not be in the same physical space as the children.

(b) Dogs and cats must be vaccinated according to a licensed veterinarian's recommendations.

(12) Animal litter boxes shall not be located in areas accessible to children.

(13) Caregivers must be physically present when children are interacting with animals.

(14) Reptiles (e.g. lizards, turtles, snakes iguanas) frogs, monkeys, hooked beaked birds, baby chicks and ferrets are prohibited unless they are housed in and remain in a tank or other container which precludes any direct contact by children. Educational programs that include prohibited animals and are run by zoos, museums and other professional animal handlers are permitted.

(15) Parents must be made aware of the presence of any animals in the child care home.

Stat. Auth.: ORS 657A.260

Stats. Implemented: ORS 657A.260

Hist.: CCD 1-2000, f. 3-31-00, cert. ef. 4-2-00; CCD 1-2008(Temp), f. & cert. ef. 8-6-08 thru 2-2-09; CCD 3-2008, f. & cert. ef. 10-2-08; CCD 2-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10

## 414-205-0110

### Safety

(1) Children shall be protected from fire and safety hazards. Providers must have the following protections in place:

(a) If any preschool age or younger children are in care, hard-to-remove protective caps on all exposed electrical outlets in rooms used by children.

(b) If any preschool age or younger children are in care, barriers to protect children from fireplaces, space heaters, wood stoves, stairways and other hazards. Gates and enclosures should have the Juvenile Products Manufacturers Assn. (JPMA) certification seal to ensure safety.

(c) A working smoke detector on each floor and in any area where children nap;

(d) A working fire extinguisher with a rating of at least 2-A:10-BC;

(e) Firearms and ammunition kept under lock. Ammunition stored separately from firearms. Firearms must remain unloaded;

(f) Cleaning supplies, paints, matches, cigarette lighters, and plastic bags kept under child-proof lock;

(g) Other potentially dangerous items, such as medicine, drugs, and poisonous and toxic materials kept under child-proof lock;

(h) If any preschool age or younger children are in care, poisonous plants must be kept out of the reach of children; and

(i) All clear glass panels in doors clearly marked at child level.

(2) All floor levels used by children must have access to two usable exits, as defined in OAR 414-205-0010(24), to the outdoors.

(a) If a basement is used for child care purposes, the requirement for two usable exits may be met by one of the following:

(A) A sliding glass door to the outdoors and a window which meets the definition of a usable exit;

(B) A swinging door to the outdoors and a window which meets the definition of a usable exit; or

(C) A window which meets the definition of a usable exit and an internal stairway to ground level which has unobstructed and direct access to the outdoors.

(b) If a window, which meets the definition of a usable exit, is used:

(A) Steps must be placed under the window to allow children to exit without assistance; and

(B) The window must be kept in good working condition.

(c) If a window used as an exit has a window well, a mechanism must be in place to allow children to exit the window well.

(3) The provider must have a written plan for evacuating children in an emergency. The plan must be posted in the home, familiar to the children and the caregivers, and practiced at least every other month.

(4) A telephone in working condition must be in the family child care home.

(a) Parents must be given the telephone number so they can contact the provider if needed.

(b) Emergency telephone numbers for fire, ambulance, police and poison control must be posted near the telephone.

(5) The building, grounds, water supply, and toys, equipment and furniture used by children must be maintained in a hazard-free condition.

(a) Broken toys, furniture and equipment must be removed from areas accessible to children.

(b) Both the exterior and interior of the home must be maintained in good repair.

(c) Painted surfaces must be in good condition, both inside and outside, to avoid exposing children to lead paint chips.

(6) If a caregiver is transporting children, the caregiver must have a valid driver's license and proof of appropriate insurance.

(7) The number of children transported shall not exceed the number of seat belts or child safety systems available in the vehicle.

Stat. Auth.: ORS 657A.260

Stats. Implemented: ORS 657A.260

Hist.: CCD 1-2000, f. 3-31-00, cert. ef. 4-2-00; CCD 2-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10

## 414-205-0120

### Sanitation

(1) All caregivers must wash their hands with soap and warm, running water:

(a) After changing a diaper;

(b) Before feeding a child or handling food; and

(c) After assisting a child with toileting or nose wiping.

(2) All caregivers and children must wash their hands with soap and warm, running water:

(a) After using the toilet;

(b) Before and after eating;

(c) After nose wiping;

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- (d) After playing outside; and
  - (e) After playing with animals or handling pet toys.
  - (3) All toys, equipment and furniture used by children must be cleaned and sanitized regularly and whenever soiled.
  - (4) The building and grounds must be maintained in a clean and sanitary manner.
  - (5) All garbage, solid waste, and refuse must be disposed of regularly, in a safe and sanitary manner.
  - (6) The home's water supply must be safe to drink.
  - (7) Wading pools are prohibited.
- Stat. Auth.: ORS 657A.260  
Stats. Implemented: ORS 657A.260  
Hist.: CCD 1-2000, f. 3-31-00, cert. ef. 4-2-00; CCD 2-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10

## 414-205-0130

### Record Keeping

- (1) The following records must be kept by the provider for at least one year and must be available at all times to CCD:
    - (a) Information from the parent(s) for each child at the time of admission:
      - (A) Name and birth date of the child;
      - (B) Any chronic health problem(s), including allergies, the child has;
      - (C) Names, work and home telephone numbers and addresses, and the work hours of the custodial parent(s) or guardian(s);
      - (D) Name and telephone number of person(s) to contact in an emergency;
      - (E) Name and telephone number of person(s) to whom the child may be released;
      - (F) The school attended by a school-age child; and
      - (G) Name, address and telephone number of the child's doctor and dentist.
    - (b) Daily attendance records, including dates each child attended and arrival and departure times each day;
    - (c) Medications administered, including the child's name, and the date and time of dosage; and
    - (d) Injuries to a child.
    - (2) Injuries to a child which require attention from a licensed health care professional, such as a physician, EMT or nurse, must be reported to CCD within seven days.
    - (3) The provider must have a written statement from the parent(s) regarding whether or not the provider is authorized to:
      - (a) Obtain emergency medical treatment for a child;
      - (b) Administer medications to a child;
      - (c) Take a child on a field trip or other activity outside the home or participate in any water activity; and
      - (d) Transport a child to and/or from school or allow a child to bus or walk to and/or from school or home.
- Stat. Auth.: ORS 657A.260  
Stats. Implemented: ORS 657A.260  
Hist.: CCD 1-2000, f. 3-31-00, cert. ef. 4-2-00; CCD 2-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10

## 414-205-0140

### Night Care

- A provider providing night care must:
    - (1) Have a written plan for the care, jointly agreed to by the parent(s) and the provider;
    - (2) Have a written plan for emergency situations occurring during the night;
    - (3) Be awake for the arrival and departure of each child in night care; and
    - (4) Follow all other applicable Registration rules.
- Stat. Auth.: ORS 657A.260  
Stats. Implemented: ORS 657A.260  
Hist.: CCD 1-2000, f. 3-31-00, cert. ef. 4-2-00; CCD 2-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10

## 414-205-0150

### Exceptions to Rules

- (1) A provider may request an exception to a rule.
  - (a) An exception must be requested on a form provided by CCD;
  - (b) The provider must provide a justification for the requested exception and an explanation of how the provider will ensure, through safeguards or other conditions, the health, safety and well-being of the children.
  - (2) The provider must be in compliance with the rule as written until the provider has received approval for the exception from CCD.
  - (3) In instances where care that is subject to registration, as defined in subsection (2) of rule 414-205-0000, will not be provided in the provider's own residence, the applicant/provider must request and receive approval for an exception prior to providing care at that location. In all respects, the location must appear and be arranged as a residence.
  - (4) No exception to a rule shall be granted unless the health, safety, and well-being of the children are ensured.

- (5) An exception is valid only for the registration period for which it is issued. A new exception must be requested with each renewal application.
- (6) The granting of an exception to a rule shall not set a precedent, and each request shall be evaluated on its own merits.
- (7) Waivers in effect on April 1, 2000, will remain in effect until the expiration of the current registration.

Stat. Auth.: ORS 657A.260  
Stats. Implemented: ORS 657A.260  
Hist.: CCD 1-2000, f. 3-31-00, cert. ef. 4-2-00; CCD 2-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10

## 414-205-0160

### Complaints

- (1) The Child Care Division (CCD) will respond to complaints made on registered and illegal providers, and may cooperate with law enforcement or other agencies in response to allegations of child abuse or noncompliance.
    - (a) Any and all complaints may result in an on-site investigation at the family child care home;
    - (b) All serious complaints will result in an on-site investigation at the family child care home;
    - (c) Complaints alleging child abuse or neglect will be reported to the Department of Human Services Child Welfare (DHS) or local law enforcement agencies.
    - (2) Applicants for registration will be given a copy of CCD's complaint procedures at the time of the on-site health and safety review. The complaint procedures are also available upon request to all applicants/providers for family child care registration.
- Stat. Auth.: ORS 657A.260  
Stats. Implemented: ORS 657A.260  
Hist.: CCD 1-2000, f. 3-31-00, cert. ef. 4-2-00; CCD 2-2007, f. & cert. ef. 7-13-07; CCD 2-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10

## 414-205-0170

### Grievance Review and Sanctions

- (1) Providers have a right to review any action or decision affecting them. The CCD grievance procedures are available upon request to all applicants/providers for family child care registration.
  - (2) Registration may be denied, suspended, or revoked if a provider fails to meet requirements, provide CCD with information requested, allow an inspection, or correct deficiencies.
  - (3) Any action taken by CCD to deny, suspend, or revoke registration may be reported to USDA Child Care Food Programs, child care resource and referral agencies, Children, Adults and Families, Office of Self-Sufficiency and Office of Safety and Permanency for Children.
  - (4) A registration may be suspended immediately when CCD believes children may be at risk of harm in the family child care home. Such action may be taken before an investigation is completed.
    - (a) A provider whose registration has been suspended must immediately notify, verbally or in writing, all parents of the suspension.
    - (b) A provider whose registration has been suspended must post the suspension in the home where it can be viewed by parents.
  - (5) Registration will be denied, suspended or revoked if the provider or other resident of the home has been removed or suspended from the Central Background Registry.
  - (6) If an individual listed in 414-205-0040(2)(a) or (b) has been charged with, arrested for, or a warrant is out for any crime which CCD has determined indicates behavior that would have a detrimental effect on a child, the provider's application will be denied or registration will be suspended or revoked until the charge, arrest, or warrant has been resolved.
  - (7) Registration will be denied, suspended or revoked if an individual listed in OAR 414-205-0040(2)(a) or (b) has been convicted of or sentenced for offenses that would disqualify the individual from the Central Background Registry.
  - (8) Registration will be denied, suspended or revoked if an individual listed in OAR 414-205-0040(2)(a) or (b) has a founded child protective services case or an open child protective services or law enforcement case that would disqualify the individual from the Central Background Registry.
  - (9) A provider whose registration has been revoked shall not be eligible to reapply for three years after the effective date of the revocation.
  - (10) A provider who violates these rules or the terms and conditions of registration under these rules may be subject to a civil penalty.
    - (a) For a serious violation, as defined in OAR 414-250-0010(23) a provider may be subject to a civil penalty of \$100 for the first violation after a written warning with time to correct is issued; and \$100 for each subsequent violation, not to exceed \$1,000 in a quarter for all rule violations.
    - (b) For other violations, a provider may be subject to a civil penalty of \$50 for the first violation after a written warning with time to correct is issued; \$100 for a second violation, and \$100 for each subsequent violation, not to exceed \$1,000 in a quarter for all rule violations.
  - (11) The provider has the right to appeal any decision to deny, suspend, or revoke registration or to impose a civil penalty, subject to the provisions of Chapter 183, Oregon Revised Statutes.
- Stat. Auth.: ORS 657.610 & 657A.260  
Stats. Implemented: ORS 657A.260

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Hist.: CCD 1-2000, f. 3-31-00, cert. ef. 4-2-00; CCD 5-2004, f. & cert. ef. 11-16-04; CCD 1-2005, f. & cert. ef. 4-29-05; CCD 2-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10

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**Rule Caption:** Amends rules regarding Certified Child Care Centers and adopts rules regarding civil penalties for Certified Child Care Centers.

**Adm. Order No.:** CCD 3-2009(Temp)

**Filed with Sec. of State:** 12-30-2009

**Certified to be Effective:** 1-1-10 thru 6-30-10

**Notice Publication Date:**

**Rules Adopted:** 414-300-0415

**Rules Amended:** 414-300-0000, 414-300-0005, 414-300-0010, 414-300-0015, 414-300-0020, 414-300-0030, 414-300-0040, 414-300-0050, 414-300-0060, 414-300-0070, 414-300-0080, 414-300-0090, 414-300-0100, 414-300-0110, 414-300-0115, 414-300-0120, 414-300-0130, 414-300-0140, 414-300-0150, 414-300-0160, 414-300-0170, 414-300-0180, 414-300-0190, 414-300-0200, 414-300-0210, 414-300-0215, 414-300-0220, 414-300-0230, 414-300-0240, 414-300-0250, 414-300-0260, 414-300-0270, 414-300-0280, 414-300-0290, 414-300-0295, 414-300-0300, 414-300-0310, 414-300-0320, 414-300-0330, 414-300-0340, 414-300-0350, 414-300-0360, 414-300-0380, 414-300-0390, 414-300-0400, 414-300-0410

**Subject:** Amends rules to change the reference to the Criminal History Registry to the Central Background Registry, changes the term "special needs child" to child with special needs, specifies the licensing requirements and adopts rules regarding imposition of civil penalties on Certified Child Care Centers. This rule also prohibits providers who have had certain negative actions taken against their license or enrollment in the Central Background Registry from doing certain types of exempt child care.

**Rules Coordinator:** Janet Orton—(503) 947-1679

## 414-300-0000

### Applicability of Rules

(1) OAR 414-300-0000 through 414-300-0410 set forth the Child Care Division's requirements for inspecting and certifying those child care facilities subject to Oregon laws governing child care facilities, ORS 657A.030, 657A.250 through 657A.310, 657A.350 through 657A.460 and 657A.990, that:

(a) Serve thirteen or more children; or

(b) Serve twelve or fewer children and are located in a building constructed as other than a single-family dwelling.

(c) Care for three or fewer children if the caregiver's enrollment in the Central Background Registry has been denied or the person has been removed for cause, or suspended; or their child care facility certification or registration has been denied or revoked for cause, or suspended, or the person has voluntarily withdrawn their application or closed their registration or certification while under investigation by CCD; or

(d) Provide care that is primarily educational to children age 36 months or older but not attending kindergarten for four hours or less a day if the caregiver's enrollment in the Central Background Registry has been denied or the person has been removed for cause, or suspended; or their child care facility certification or registration has been denied or revoked for cause, or suspended, or the person has voluntarily withdrawn their application or closed their registration or certification while under investigation by CCD; or

(e) Provide care on an occasional basis by a person not ordinarily engaged in providing child care if the caregiver's enrollment in the Central Background Registry has been denied or the person has been removed for cause, or suspended; or their child care facility certification or registration has been denied or revoked for cause, or suspended, or the person has voluntarily withdrawn their application or closed their registration or certification while under investigation by CCD; or

(f) Provide care for children from only one family other than the person's own family if the caregiver's enrollment in the Central Background Registry has been denied or the person has been removed for cause, or suspended; or their child care facility certification or registration has been denied or revoked for cause, or suspended, or the person has voluntarily withdrawn their application or closed their registration or certification while under investigation by CCD.

(2) These rules do not apply to child care facilities specifically excluded by law. Excluded facilities are those which:

(a) Are primarily educational and provide care to children 36 months old or older but not yet attending kindergarten for less than four hours a day except as provided in 414-300-0000(1)(d);

(b) Are primarily supervised, child-focused training in a specific subject, including, but not limited to, dancing, drama, music, or religion. This exclusion applies only to the time children are involved in training; or

(c) Are primarily an incident of group athletic or social activities sponsored by or under the supervision of an organized club or hobby group. This exclusion applies only to the time engaged in the group athletic or social activities and if the children can come and go as they please or

(d) Are operated by a school district, political subdivision of this state, or a government agency; or

(e) Are operated on an occasional basis by a person, sponsor, or organization not ordinarily engaged in providing child care except as provided in 414-300-0000(1)(e); or

(f) Operate as a parent cooperative for no more than four hours a day; or

(g) Provide care while the child's parent remains on the premises and is engaged in an activity offered by the facility or in other nonwork activity or

(h) Provide care for three children other than the person's own children except as provided in 414-300-0000(1)(c); or

(i) Provide care for children from only one family other than the person's own family except as provided in 414-300-0000(1)(f).

(3) If any court of law finds that any clause, phrase, or provision of these rules is unconstitutional or invalid for any reason whatsoever, this finding shall not affect the validity of the remaining portion of these rules.

(4) For purposes of these rules, the determination of compliance or non-compliance shall be made by CCD.

(5) Providers have a right to review any action or decision affecting them. The CCD grievance procedures are available upon request to all applicants for child care certification or operators of centers.

Stat. Auth.: ORS 657A

Stats. Implemented: ORS 657A.

Hist.: CSD 21-1988, f. & cert. ef. 9-29-88; CSD 10-1990, f. & cert. ef. 4-23-90; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-010-0600; CCD 1-1995, f. 10-30-95, cert. ef. 11-1-95; CCD 4-2001, f. 7-13-01, cert. ef. 7-15-01; CCD 6-2003, f. 12-23-03, cert. ef. 12-28-03; CCD 3-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10

## 414-300-0005

### Definitions

The following words and terms, when used in OAR 414-300-0000 through 414-300-0410, have the following meanings:

(1) "Activity Area" means the area of the center that is available, during all the hours of operation, for the children's activities. This area excludes kitchens, hallways, toilet rooms, multi-purpose areas used by all children, lockers, office, storage areas, isolation quarters, staff room, furnace room, and that part of rooms occupied by heating stoves, or stationary equipment not used by children. Additional exclusions may apply for specific age groups.

(2) "Attendance" means children actually present in the center at any given time.

(3) "Capacity" means the total number of children allowed in the center at any one time, based on the available indoor and outdoor square footage, the number of toilets in the center and the number of qualified staff.

(4) "Caregiver" means any person in the child care center who works directly with the children, providing care, supervision, and guidance.

(5) "Central Background Registry" means CCD's Registry of individuals who have been approved to work in a child care facility in Oregon pursuant to ORS 657A.030 and OAR 414-061-0000 through 414-061-0120.

(6) "Certification" means the certification that is issued by CCD to a child care center pursuant to ORS 657A.280.

(7) "Child Care" means the care, supervision, and guidance on a regular basis of a child, unaccompanied by a parent, guardian, or custodian, during a part of the 24 hours of the day, with or without compensation. Child care does not include the care provided:

(a) In the home of the child;

(b) By the child's parent or guardian, or person acting in loco parentis;

(c) By a person related to the child by blood or marriage within the fourth degree as determined by civil law;

(d) On an occasional basis by a person, sponsor, or organization not ordinarily engaged in providing child care; or

(e) By providers of medical services.

(8) "Child Care Area" means that indoor and outdoor area specifically certified for use by the center and includes all activity areas and other areas of the facility used to provide child care, such as kitchen, toilet rooms, offices, storage areas, and rooms used solely for napping or eating. This may be a specific portion or portions of the building and grounds of a larger facility or one or more buildings at the same location.

(9) "Child Care Child" means any child six weeks of age or older and under 13 years of age, or a child with special needs under the age of 18 who requires a level of care over and above the norm for his/her age, for whom the child care center has supervisory responsibility in the temporary absence of the parent.

(10) "Child Care Center" or "Center" means a child care facility that is certified to care for thirteen or more children, or a facility that is certified to care for twelve or fewer children and located in a building constructed as other than a single family dwelling.

(11) "Child with Special Needs" means a child under the age of 18 who requires a level of care over and above the norm for his/her age due to a physical, developmental, behavioral, mental or medical disability.

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(12) "CCD" means the Child Care Division of the Employment Department or the Administrator or staff of the Division.

(13) "Child Care Facility" means any facility that provides child care to children, including a child care center, certified family child care home, and registered family child care home. It includes those known under a descriptive name, such as nursery school, preschool, kindergarten, child play school, before or after school care, or child development center, except those excluded under ORS 657A.250. This term applies to the total child care operation and includes the physical setting, administration, staff, equipment, program, and care of children.

(14) "Civil Penalty" means a fine imposed by CCD on a facility for violation of these rules.

(15) "Comparable group care program" means a program which has the following elements:

- (a) Staff are supervised by knowledgeable professionals;
- (b) Training of staff is provided or required annually;
- (c) Group size is similar to a certified child care facility;
- (d) Curriculum is age appropriate; and
- (e) The program is not providing uncertified drop-in care.

(16) "Contracted services" means activities (e.g., tumbling, music) provided by an organization or program other than the center, where non-center staff come into the center or the children are transported to another location.

(17) "Director" means a person who is designated by the operator as director or administrator of the center and who meets the qualifications of director pursuant to OAR 414-300-0080.

(18) "Drop-in Care" means care provided on an unscheduled, irregular basis, any time of the day or night, exclusively for drop-in children in a child care center.

(19) "Enrollment" means all children registered to attend the center.

(20) "Group" means a specific number of children assigned to specific staff.

(21) "Guidance and discipline" means the on-going process of helping children develop self control and assume responsibility for their own acts.

(22) "Head Teacher" means the person, or persons, who is responsible for the development and implementation of the program of activities for each infant and toddler, preschool age, and school-age program in the center.

(23) "Infant" means a child who is at least six weeks of age but is not yet walking alone.

(24) "Infant and Toddler Age Program" means care and education provided in a center, or part of a center, to children between the ages of six weeks and thirty-six months.

(25) "Night Care" means care given to children who sleep at the child care center for all or part of the night.

(26) "Occasional" means infrequently or sporadically, including but not limited to care that is provided during summer or other holiday breaks when children are not attending school, but not to exceed 70 calendar days in a year.

(27) "Operator" means the person, group, corporation, partnership, governing body, association, or other public or private organization legally responsible for the overall operation of the center and who has the authority to perform the duties necessary to meet certification requirements. If the operator is other than the owner, an individual must be appointed as the operator by the owner.

(28) "Oregon Registry" means the voluntary registry at the Oregon Center for Career Development in Childhood Care and Education at Portland State University that documents the training, education and experience of individuals who work in childhood care and education.

(29) "Outbreak of a communicable disease" means two cases from separate households associated with a suspected common source.

(30) "Owner" means the person, group, corporation, partnership, governing body, association, or other public or private organization which holds the child care center as property and has a major financial stake in the operation of the center. The owner may or may not be active in the operation of the center; the owner may also be the operator.

(31) "Parent" means parent(s), custodian(s), or guardian(s), exercising physical care and legal custody of the child.

(32) "Parent cooperative" means a child care program in which:

- (a) Care is provided by parents on a rotating basis;
- (b) Membership in the cooperative includes parents;
- (c) There are written policies and procedures; and
- (d) A board of directors that includes parents of the children cared for by the cooperative controls the policies and procedures of the program.

(33) "Preschool-Age Child" means a child who is 36 months of age to eligible to be enrolled in the first grade and, during the months of summer vacation from school, eligible to be enrolled in the first grade in the next school year. For purposes of these rules, children attending kindergarten may be considered school-age children.

(34) "Preschool-Age Program" means care and education provided in a center, or part of a center, to children 36 months of age to attending kindergarten.

(35) "Program" means all activities and care provided for the children during their hours of attendance at the center.

(36) "Qualifying Teaching Experience" means:

(a) For infant/toddler and preschool age groups, 1,500 hours, gained with a group of the same age children in at least three-hour blocks, within a 36-month period;

(b) For school-age groups, 600 hours, gained with a group of the same age children in at least three-hour blocks, within a 36-month period. Qualifying teaching experience must be documented. Time spent in a college practicum or practice teaching is considered qualifying teaching experience. The following does not constitute qualifying teaching experience: leader of a scout troop; Sunday school teacher; and coaching.

(37) "Sanitizing" means using a bactericidal treatment that provides enough heat or concentration of chemicals for enough time to reduce the bacterial count, including disease-producing organisms, to a safe level on utensils, equipment, and toys.

(38) "School-Age Child" means a child eligible to be enrolled in the first grade or above and, during the months of summer vacation from school, a child eligible to be enrolled in the first grade or above in the next school year. For purposes of these rules, children attending kindergarten may be considered school-age children.

(39) "School-Age Program" means care and education provided in a center, part of a center, school or other facility to children attending kindergarten or eligible to be enrolled in the first grade or above and, during the months of summer vacation from school, eligible to be enrolled in the first grade or above in the next school year.

(40) "Serious complaint" means a complaint filed against:

(a) A certified child care center by a person who has alleged that:

- (A) Children are in imminent danger;
- (B) There are more children in care than allowed by certified capacity;
- (C) Corporal punishment is being used;
- (D) Children are not being supervised;
- (E) Multiple or serious fire, health or safety hazards are present in the center;

(F) Extreme unsanitary conditions are present in the center; or

(G) Adults are in the center who are not enrolled in the Central Background Registry; or

(b) A facility providing child care, as defined ORS 657A.250(3), which is not a certified child care center by a person who has alleged that there are more children in care than allowed by law.

(41) "Site Director/Supervisor" means the person in charge of the facility at a site which is part of a larger multi-site program.

(42) "Site Coordinator" means the person responsible for coordinating over-all management and operation of a number of sites in a multi-site program.

(43) "Staff" means an individual who is the director, an employee, or a volunteer who is in the center for more than a single activity.

(44) "Substitute Director" means the person in charge of the center during the hours of operation when the director is not on site.

(45) "Supervision" means the act of caring for a child or group of children. This includes awareness of and responsibility for the ongoing activity of each child. It requires physical presence, knowledge of program requirements and children's needs, and accountability for their care and well-being. Supervision also requires that staff be near and have ready access to children in order to intervene when needed.

(46) "Teacher" means a caregiver who plans and implements daily activities for a designated group of children and who meets the qualifications of teacher pursuant to OAR 414-300-0100.

(47) "Teacher Aide" means a caregiver who works under the direct supervision of a teacher and who meets the qualifications of Aide I or Aide II pursuant to OAR 414-300-0110.

(48) "Toddler" means a child who is able to walk alone but is under 36 months of age. "Younger toddler" means a child who is able to walk alone but is under 24 months of age; "older toddler" means a child who is 24 months of age but under 36 months of age.

(49) "Usable Exit" means an unobstructed door or window through which caregivers and children can evacuate the center in case of a fire or emergency. Doors must be able to be opened from the inside without a key, and window openings must be at least 20 inches wide and 22 inches in height, with a net clear opening of 5 square feet and a sill no more than 48 inches above the floor.

Stat. Auth.: ORS 657A.260

Stats. Implemented: ORS 657A.260

Hist.: CSD 21-1988, f. & cert. ef. 9-29-88; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-010-0605; CCD 1-1995, f. 10-30-95, cert. ef. 11-1-95; CCD 4-1999(Temp), f. 10-21-99, cert. ef. 10-23-99 thru 1-1-00; CCD 9-1999, f. 12-29-99, cert. ef. 1-1-00; CCD 4-2001, f. 7-13-01, cert. ef. 7-15-01; CCD 6-2003, f. 12-23-03, cert. ef. 12-28-03; CCD 1-2007(Temp), f. & cert. ef. 3-20-07 thru 9-16-07; CCD 2-2007, f. & cert. ef. 7-13-07; CCD 3-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10

## 414-300-0010

### Application for a Child Care Certificate

(1) Unless exempted by Oregon laws governing child care facilities, no person or organization shall operate a child care center without a valid certification issued by the Child Care Division (CCD).

(2) Application for certification shall be made on forms provided by CCD.

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- (3) A completed application is required:
  - (a) For the initial certification;
  - (b) For the annual renewal of certification; and
  - (c) Whenever there is a change of owner, operator or location.
- (4) The applicant shall complete and submit an application to CCD at least:

- (a) 45 days before the planned opening date of a new center; and
- (b) For renewal of certification, 30 days prior to the expiration of the certificate.

(A) If an application for renewal and payment of the required fee is received by CCD at least 30 days prior to the expiration date of the current certification, the current certification, unless officially revoked, remains in force until CCD has acted on the application for renewal and has given notice of the action taken.

(B) If an application for renewal and payment of the required fee is not received by CCD at least 30 days prior to the expiration date of the current certification, the certification will expire as of the date stated on the certificate and child care must cease at the facility, unless the renewal is completed before the expiration date.

(5) An application for certification shall be accompanied by a non-refundable filing fee.

(a) For the initial application, a change of owner/operator, the reopening of a center after a lapse in certification, or a change of location (except when a facility is forced to move due to circumstances beyond the control of the operator), the fee is \$100 plus \$2 for each certified space (e.g., the fee for a child care center certified to care for 30 children is \$60 + \$100 = \$160).

(b) For a renewal application, the fee is \$2 for each certified space.

(6) An application for certification must be completed by the applicant and approved by CCD within 12 months of submission or the application will be denied. If an application is denied, an applicant must submit a new application for certification.

(7) All civil penalties must be paid in full.

(8) A floor plan shall be submitted with the initial application and/or when a facility is being constructed or remodeled. The floor plan shall show dimensions of all rooms to be used (length and width), the planned use of each room, the placement and number of toilets, handwashing sinks, and diaper changing tables, and the location of the fixtures and plumbing in the kitchen. Similar plans shall be submitted to the environmental health specialist, the fire marshal and the buildings department prior to initial construction or remodel.

(9) If the facility is located within or attached to a building used for purposes other than child care, the floor plan shall describe the other activities which are carried out in adjoining rooms or buildings.

(10) If the applicant is a firm, association, corporation, public agency, or governmental entity, the application shall be signed by the chief executive officer or a person designated in writing to have the authority to sign for the applicant. If the applicant is a partnership, the application shall be signed by each partner.

(11) A management list shall be submitted with the application and updated annually. The list must specify who is responsible for each of the following:

- (a) Financial management;
- (b) Maintaining records;
- (c) Budgeting;
- (d) Policy Development;
- (e) Staff management, orientation and training;
- (f) Maintenance of building and grounds;
- (g) Meal planning and preparation;
- (h) Transportation of children, if provided; and
- (i) Ensuring the appropriateness of program activities according to age and development of the children.

(12) An operator shall provide verification to CCD that the center meets all applicable building codes and zoning requirements that apply to child care facilities:

- (a) Before the initial certification is issued; and
- (b) Whenever the facility is remodeled.

(13) The center shall be approved by an environmental health specialist registered under ORS chapter 700, or an authorized representative of the Health Division, and by a state or local fire marshal, before a certificate is issued by CCD.

(a) If structural, emergency or permit problems occur, CCD may request that the operator have the center inspected by the appropriate authority; and

(b) The operator is responsible for payment of any applicable fees for fire safety and sanitation inspections.

(14) Upon receipt of a completed application, a representative of CCD shall evaluate the center and all aspects of the proposed operation to determine if the center meets certification requirements (OAR 414-300-0000 through 414-300-0410).

Stat. Auth.: ORS 657A.260  
Stats. Implemented: ORS 657A.260

Hist.: CSD 21-1988, f. & cert. ef. 9-29-88; CSD 10-1990, f. & cert. ef. 4-23-90; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-010-0610; CCD 1-1995, f. 10-30-95, cert. ef. 11-1-95; CCD 2-1995(Temp), f. 12-28-95, cert. ef. 1-1-96; CCD 2-1996, f. 3-19-96, cert. ef.

4-1-96; CCD 4-2001, f. 7-13-01, cert. ef. 7-15-01; CCD 8-2003, f. 12-23-03, cert. ef. 12-28-03; CCD 3-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10

## 414-300-0015

### Issuance of a Child Care Certificate

(1) A certification shall be issued by CCD when it has been determined the center is in compliance with OAR 414-300-0000 through 414-300-0410. There are two types of certifications. These are:

(a) A regular certification, which, except as provided in OAR 414-300-0010(4)(b)(A), is valid for no more than one year; and

(b) A temporary certification. A child care center may not operate under a temporary certification for more than 180 days in any 12-month period. A temporary certification is issued when:

- (A) The center is in compliance with most requirements;
- (B) There are no deficiencies identified by CCD that are hazardous to children; and
- (C) The operator demonstrates an effort to be in full compliance.

(2) Certification is not transferable to any other location or to another organization or individual.

(3) Any changes in the conditions of certification shall be requested in writing to CCD and approved by CCD before the condition(s) of the current certification may be changed. Changes include, but are not limited to, facility capacity, age range of children, or hours of operation.

Stat. Auth.: ORS 657A.260

Stats. Implemented: ORS 657A.260

Hist.: CSD 21-1988, f. & cert. ef. 9-29-88; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-010-0615; CCD 4-2001, f. 7-13-01, cert. ef. 7-15-01; CCD 3-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10

## 414-300-0020

### Exceptions to Rules

(1) CCD may grant an exception to an individual rule (OAR 414-300-0000 through 414-300-0410) for a specified period of time when:

- (a) A requirement does not apply to the facility; or
- (b) The intent of the requirement can be met by a method not specified in the applicable rule.

(2) The operator shall request an exception to a rule on a form provided by CCD. The request shall include:

- (a) A justification for the requested exception; and
  - (b) An explanation of how the center will meet the intent of the rule.
- (3) No exception to a rule shall be granted:
- (a) If the requirement is established by statute; or
  - (b) Unless the health, safety, and well-being of the children are ensured.

(4) Exceptions may not be implemented until approval is received from CCD.

(5) The granting of an exception to a rule shall not set a precedent, and each request shall be evaluated on its own merits.

(6) CCD may withdraw approval of an exception at any time, if deemed necessary to ensure the health, safety and well-being of the children.

Stat. Auth.: ORS 657A.260

Stats. Implemented: ORS 657A.260

Hist.: CSD 21-1988, f. & cert. ef. 9-29-88; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-010-0618; CCD 4-2001, f. 7-13-01, cert. ef. 7-15-01; CCD 3-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10

## 414-300-0030

### General Requirements

(1) The operator shall display the following near the entrance, or in some other area of the center, where they may be viewed by parent(s) of children in care:

- (a) The most current certification issued by CCD;
- (b) Name of the director and/or the substitute director;
- (c) Notice of planned field trips away from the immediate neighborhood, showing the date and place of each excursion;
- (d) The current week's menu for all meals and snacks, if meals are provided by the center. Any substitution shall be recorded on the menu;
- (e) A notice that the items identified in section (2) of this rule are available for review on request;
- (f) Information on how to report a complaint to CCD regarding certification requirements;
- (g) Notice that custodial parents have access to the center during the hours of operation and without advance notice; and
- (h) Notice of center closures (vacation days, holidays, etc.).

(2) The operator shall have available for review on request:

(a) A copy of OAR 414-300-0000 through 414-300-0410, Rules for the Certification of Child Care Centers; and

- (b) The most recent CCD, sanitation, and fire safety inspection reports.
- (3) The operator shall report to CCD:
  - (a) An accident at the center resulting in the death of a child, within 48 hours after the occurrence;
  - (b) Injuries to a child at the center which require attention from a licensed health care professional, such as a physician, EMT or nurse, within 7 days after the occurrence;
  - (c) Damage to the building which affects the operator's ability to comply with these requirements, within 48 hours after the occurrence; and



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(d) Any change in director prior to the director being on site. Such prior notification must include the replacement person's qualifications for the position and documentation that the person is enrolled in the Central Background Registry. An e-mail or a phone call, followed by written documentation, or a FAX will serve as notification.

(4) Information provided to CCD on applications, in records or reports, or any other written or verbal communication, shall be current, complete, and accurate.

(5) Staff shall report suspected child abuse or neglect immediately, as required by the Child Abuse Reporting Law (ORS 419B.005 through 419B.050), to the Department of Human Services Child Welfare (DHS) or to a law enforcement agency. By statute, this requirement applies 24 hours per day.

(6) The child care center shall comply with state and federal laws related to child safety systems and seat belts in vehicles, bicycle safety, civil rights laws, and the Americans With Disabilities Act (ADA).

(7) The following information shall be in writing and made available to staff, CCD, and to parent(s) at the time of enrollment:

(a) Name, business address, and business telephone number of the person(s) who have immediate responsibility for the daily operation of the center;

(b) Guidance and discipline policy;

(c) Arrival and departure procedures;

(d) Emergency plan, as specified in OAR 414-300-0170(3);

(e) Procedures for field trips; and

(f) Information on transportation, when provided by the center;

(8) Representatives of all agencies involved in certification and custodial parents shall have immediate access to all parts of the center during hours of operation. CCD staff shall have the right to enter and inspect the center, including access to all staff, records of children enrolled in the center, and all records and reports related to the center operation regarding compliance with these rules.

(9) The center shall comply with the Health Division's administrative rules relating to:

(a) Immunization of children (OAR 333-050-0010 through 333-050-0140);

(b) Reporting communicable diseases (OAR 333-019-0000);

(c) Child care restrictable diseases (OAR 333-019-0010); and

(d) Dishwashing (OAR 333-150-0000).

(10) A center shall have written health policies and procedures approved by the Health Division or the county health department which cover, but are not limited to, the following:

(a) Storage and handling of food;

(b) Diaper changing and disposal, if applicable. The diaper changing procedure must be posted in the diaper changing area;

(c) Bathing infants, if the center cares for infants;

(d) Care of bed linen;

(e) Hand washing procedures. The hand washing procedures must be posted at hand washing sinks; and

(f) Serving formula, storage and handling of bottles, and feeding infants, if the center cares for infants.

(11) Parental request or permission to waive any of the rules for the certification of child care centers does not give the center permission to do so.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 657A.260

Stats. Implemented: ORS 657A.260

Hist.: CSD 21-1988, f. & cert. ef. 9-29-88; CSD 5-1989, f. & cert. ef. 3-15-89; CSD 10-1990, f. & cert. ef. 4-23-90; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-010-0620; CCD 1-1995, f. 10-30-95, cert. ef. 11-1-95; CCD 4-2001, f. 7-13-01, cert. ef. 7-15-01; CCD 2-2007, f. & cert. ef. 7-13-07; CCD 3-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10

## 414-300-0040

### Enrollment

(1) Children shall be admitted only in accordance with the conditions of the certification, including, but not limited to, capacity, hours of operation, age range, and special conditions.

(2) All children visiting the center on a regular basis will count in capacity. Children attending with a non-staff parent do not count as enrolled as long as the parent remains with and is responsible for non-enrolled children.

(3) As required by state and federal civil rights laws and the Americans with Disabilities Act (ADA), the center shall not discriminate against any child on the basis of race, religion, color, national origin, gender, marital status of parent, or because of a need for special care.

(a) Refusal by the operator to care for a child with a need for special care because of lack of related skills and degree of competence, or because of structural barriers in the center, shall not in itself establish a prima facie case of discrimination. The decision to enroll/not enroll a child shall be made on an individual basis after the child's child care needs have been assessed using information from parents and professionals who are knowledgeable about the specific disability. The operator shall record the assessment that was made for each child with special needs.

(b) If a child with special needs is enrolled who needs a specific plan for caring for that child, such a plan shall be developed in writing between

center staff, parent(s), and if necessary, outside specialists. All staff who come in contact with that child shall be fully aware of the plan.

(4) The operator shall obtain the following information in writing from parent(s) of each child before admission. The information shall be kept current at all times.

(a) Name and birth date of child;

(b) Date child entered care;

(c) Name(s), home and business address(es) and telephone number(s) of the custodial parent(s);

(d) The school attended by a school-age child;

(e) Name and telephone number of child's medical provider(s) and dentist, if applicable;

(f) Name and telephone number of person to be called in an emergency if the parent cannot be located; and

(g) Name and telephone number of person(s) to whom the child may be released.

(5) The operator shall obtain the following information in writing from parent(s) of each infant and toddler before admission:

(a) Schedule of feeding;

(b) Types of food introduced and timetable for new foods;

(c) Toilet and diapering schedule;

(d) Sleep schedule;

(e) Child's way of communicating and being comforted; and

(f) Developmental and health history of any problems that could affect the child's participation in child care.

(6) The operator shall obtain the following written authorizations from parent(s) of each child before admission:

(a) Permission for the center to obtain emergency medical treatment for the child. The emergency medical release shall be:

(A) On a form accepted by the medical treatment facility used by the operator for emergency medical services; and

(B) Immediately accessible to all staff.

(b) Permission for the center to call an ambulance or take a child to an available physician or medical treatment facility; and

(c) Approval when applicable for:

(A) Participation in field trips; and

(B) Participation in swimming or wading activities, both on and off the premises of the center.

(7) A center shall maintain separate information and authorization forms on each child in care.

(8) An opportunity shall be given for each child, with his/her parent(s), to have a pre-placement visit to the center and for the center staff to exchange information with the parent(s).

(9) No child under six weeks of age shall be enrolled in a center.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 657A.260

Stats. Implemented: ORS 657A.260

Hist.: CSD 21-1988, f. & cert. ef. 9-29-88; CSD 10-1990, f. & cert. ef. 4-23-90; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-010-0622; CCD 1-1995, f. 10-30-95, cert. ef. 11-1-95; CCD 4-2001, f. 7-13-01, cert. ef. 7-15-01; CCD 3-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10

## 414-300-0050

### Arrival and Departure

(1) A center shall require that the person bringing a child to the center remain with the child until the child is accepted by staff.

(2) A center shall release a child only to a parent or another person named and identified by the parent(s). The operator shall verify the identification of any person, other than the parent, who picks up a child.

(3) If a school-age child arrives at or leaves the center without a parent, there shall be arrangements in advance, in writing, from the parent(s) for the arrival and departure times and what to do if a child has not arrived at the center by the expected time.

Stat. Auth.: ORS 657A.260

Stats. Implemented: ORS 657A.260

Hist.: CSD 21-1988, f. & cert. ef. 9-29-88; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-010-0624; CCD 4-2001, f. 7-13-01, cert. ef. 7-15-01; CCD 3-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10

## 414-300-0060

### Record Keeping

(1) The operator shall keep all records, except those specified in OAR 414-300-0060(1)(d)(F), for at least two years, and staff and children's records for two years after termination of employment or care. These records shall be available at all times to CCD:

(a) Complete and current information on each child as required in OAR 414-300-0040(4) and (6);

(b) Records of daily attendance showing:

(A) The date of employment, time of arrival and departure, and room assignment for each staff; and

(B) The date, name of each child in attendance, and time of arrival and departure. The record must show the children in attendance at any given time;

(C) The current day's attendance record shall be maintained in the child's classroom in paper format.

(c) Personnel record for each staff, which shall include:

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- (A) Name, address and telephone number of staff;
  - (B) Position in center;
  - (C) Written verification (such as transcripts, payroll records, time sheets, documented resumes, notes regarding telephone conversations, etc.) that the person possesses the qualifications for the position;
  - (D) Verification that the staff is currently enrolled in the Central Background Registry;
  - (E) Statement of the staff's duties;
  - (F) Record of current health-related training, such as CPR, Life Support, Life Saving, and First Aid, and current food handler certifications, as appropriate;
  - (G) Driving record, driver's license number and expiration date if the person is to transport children; and
  - (H) Documentation of dates and participation in orientation, training, and staff development activities, as required in OAR 414-300-0120.
- (d) A written record of:
- (A) A death of or injury to a child, as specified in OAR 414-300-0030(3);
  - (B) Dates and times of the practices of emergency procedures;
  - (C) Child abuse reports made to the Department of Human Services Child Welfare (DHS) or a law enforcement agency;
  - (D) Authorizations to administer medication to a child, as specified in OAR 414-300-0230(1)(a);
  - (E) Medications dispensed, as specified in OAR 414-300-0230(1)(d);
  - (F) Meals and snacks provided by the center for the previous three weeks;
  - (G) The program of activities for each group of children, as specified in OAR 414-300-0300; and
  - (H) The daily schedule for each group of children, as specified in OAR 414-300-0290.

(2) The operator shall allow custodial parent(s), upon request, to review records and reports, except for child abuse reports, maintained on their own children.

Stat. Auth.: ORS 657A.260  
Stats. Implemented: ORS 657A.260  
Hist.: CSD 21-1988, f. & cert. ef. 9-29-88; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-010-0626; CCD 1-1995, f. 10-30-95, cert. ef. 11-1-95; CCD 4-2001, f. 7-13-01, cert. ef. 7-15-01; CCD 2-2007, f. & cert. ef. 7-13-07; CCD 3-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10

## 414-300-0070

### General Requirements

(1) The operator shall establish a system of job descriptions, staff selection, and staff evaluation that ensures that staff:

- (a) Have competence, sound judgment, and self-control in working with children;
- (b) Are mentally, physically, and emotionally capable of performing assigned duties related to child care; and
- (c) Have the required training and/or experience for the position for which they are hired.

(2) There shall be a person or persons on the staff who meet(s) the qualifications of director (OAR 414-300-0080) and head teacher (OAR 414-300-0090). A person assigned the duties of the position must meet the qualifications of the position.

(3) Notwithstanding OAR 414-300-0120(3), there shall be at least one person in the center at all times who has current certification in first aid and CPR.

(4) Any staff with evidence of a child care-restrictable disease, as defined in OAR 333-019-0010, symptom of physical illness, as defined in OAR 414-300-0220(1), or mental incapacity that poses a threat to the health or safety of children shall be relieved of his/her duties.

(5) If there is evidence which casts doubt on the physical or mental competence of a person to care for children or have access to children, CCD may require that the operator provide CCD with an evaluation, or other information, as specified by CCD.

(6) No one shall have access to child care children or be in the center during child care hours who has demonstrated behavior that may have a detrimental effect on a child. This includes any individual in the center who has or may have unsupervised access, however brief, to child care children (i.e., the owner, the operator, all child care staff, maintenance staff who work on-site during hours of operation, volunteers who may be left alone with children, etc.). This does not apply to parents of children in care when they drop off and pick up their children:

(a) The operator, all child care staff and others as described in section (6) above 18 years of age or older shall be enrolled in CCD's Central Background Registry prior to the issuance of an initial or renewal certification;

(b) Prior to any new staff, including a director, or individual being on-site at the center during child care hours, the staff/individual shall be enrolled in the Central Background Registry and the center shall receive verification from CCD of the enrollment. This does not apply to parents of children in care unless they are assisting in the provision of child care. Volunteers may be exempt from this rule, as specified in OAR 414-300-0070(7);

(c) When a center is notified by CCD that a staff member or other individual has been removed from the Central Background Registry, the center shall not permit the staff member or other individual to have access to child care children;

(d) If any person listed in section (6) and section (6)(a) of this rule has been charged with, arrested for, or a warrant is out for any of the crimes which CCD has determined indicate behavior which may have a detrimental effect on a child, with final disposition not yet reached, certification will be denied or suspended until the charge, arrest, or warrant has been resolved if the person continues to operate, be employed in, or have access to children in the center;

(e) If a criminal record check shows that a warrant has been issued for any person checked, CCD will inform the originating law enforcement agency of the person's name, address, and telephone number.

(7) Volunteers must meet the following requirements:

(a) If volunteers are counted in determining the staff/child ratios, they must meet the qualifications of the position they are filling and be enrolled in the Central Background Registry;

(b) If volunteers may have unsupervised access to children, they must be enrolled in the Central Background Registry;

(c) If volunteers do not have unsupervised access to children at any time, including during emergencies, the center must have a written policy to this effect, the policy must be known to all center staff and volunteers, and the volunteers do not have to be enrolled in the Central Background Registry.

(8) No person shall smoke or use smokeless tobacco in the child care area during child care hours. No person shall smoke or use smokeless tobacco in motor vehicles while child care children are passengers.

(9) Alcohol and non-prescribed controlled substances shall not be consumed or stored in the child care area during child care hours. Staff or volunteers who appear to be under the influence of alcohol or non-prescribed controlled substances shall not be in the center during child care hours.

Stat. Auth.: ORS 657A.260  
Stats. Implemented: ORS 657A.060  
Hist.: CSD 21-1988, f. & cert. ef. 9-29-88; CSD 10-1990, f. & cert. ef. 4-23-90; CSD 4-1991, f. & cert. ef. 3-7-91; CSD 8-1991, f. & cert. ef. 7-1-91; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-010-0630; CCD 1-1995, f. 10-30-95, cert. ef. 11-1-95; CCD 4-2001, f. 7-13-01, cert. ef. 7-15-01; CCD 2-2007, f. & cert. ef. 7-13-07; CCD 3-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10

## 414-300-0080

### Director — Qualifications and Duties

(1) The director shall:

(a) Be at least 21 years of age; and

(b) Have:

(A) At least one year of training and/or experience in management and supervision of adults; and

(B) Have knowledge of child development for the primary ages served in the center, as evidenced by a combination of professional references, education, experience or training; or

(C) Documentation of attaining at least step nine in the Oregon Registry, or

(c) Have:

(A) One year of training and/or experience in management and supervision of adults OR have knowledge of child development for the primary ages served by the center as evidenced by a combination of professional references, education, experience or training; and

(B) A plan, approved by CCD, that shows how the missing component in (A) above will be addressed and how the program will be operated until the director has obtained the training, experience or knowledge.

(2) The director of the center shall be accountable for:

(a) Administrative functions, including, but not limited to: financial management; maintaining records; budgeting; policy development; ensuring the appropriateness of program activities according to age and developmental levels of children; staff orientation; management and training; maintenance of buildings and grounds; meal planning and preparation; and transportation, if provided; and

(b) Operating the center in compliance with certification requirements (OAR 414-300-0000 through 414-300-0410).

(3) If head teacher qualifications (OAR 414-300-0090) are met by the director, that person may serve as head teacher for the age range of children for which she/he is qualified if she/he works full-time in the center:

(a) If the center is certified for less than 40 children, the director may serve as head teacher and have regular teaching duties, if qualified;

(b) If the center is certified for 40 or more children, the director may serve as head teacher, but shall have no regular teaching duties.

(4) A director responsible for a center certified for fewer than 100 children shall be in the center at least one-third of the hours that the center is in operation. The hours shall be calculated on a weekly basis, except for planned vacations and emergency absences. The time on-site must include time spent directly observing staff and children.

(5) A director responsible for a center certified for more than 100 children can be responsible for only one site. The director shall be in the center at least half of the hours that the center is in operation. The hours shall be calculated on a weekly basis, except for planned vacations and emergency

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absences. The time on-site must include time spent directly observing staff and children.

(6) The director, or a substitute director, shall be on the premises during all hours of operation.

(7) The substitute director shall:

- (a) Meet at least the qualifications of a teacher;
- (b) Be familiar with the certification requirements;
- (c) Be authorized, able, and available to correct a deficiency that might be an immediate threat to children's health or safety; and
- (d) Have on file documentation of an orientation and training in these administrative rules and the functions and duties of a director.

(8) Whenever a director is absent from the center, the name of the substitute director shall be posted in the center, as required in OAR 414-300-0030(1).

Stat. Auth.: ORS 657A.260  
Stats. Implemented: ORS 657A.260  
Hist.: CSD 21-1988, f. & cert. ef. 9-29-88; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-010-0632; CCD 1-1995, f. 10-30-95, cert. ef. 11-1-1995; CCD 4-2001, f. 7-13-01, cert. ef. 7-15-01; CCD 1-2007(Temp), f. & cert. ef. 3-20-07 thru 9-16-07; CCD 2-2007, f. & cert. ef. 7-13-07; CCD 3-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10

## 414-300-0090

### Head Teacher — Qualifications and Duties

(1) For each infant and toddler, preschool age, and school age program in the center, there shall be a qualified person designated as head teacher who is at least 18 years of age.

(2) The head teacher shall be accountable for:

- (a) The development and implementation of the center's program of activities for that age group or groups; and
- (b) Ensuring the appropriateness of program activities according to the age, interests, and developmental level of the children.

(3) A head teacher shall meet the qualification requirements of one of the options listed in Table 1 of this rule.

(4) A person may serve as head teacher for more than one age group as long as the qualifications for head teacher for each age group are met.

(5) Head teachers shall be in the center at least one-fourth of the hours, calculated on a weekly basis, that the center is in operation. Table 1

[ED NOTE: Tables referenced are available from the agency.]  
Stat. Auth.: ORS 657A.260  
Stats. Implemented: ORS 657A.260  
Hist.: CSD 21-1988, f. & cert. ef. 9-29-88; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-010-0633; CCD 1-1995, f. 10-30-95, cert. ef. 11-1-1995; CCD 4-2001, f. 7-13-01, cert. ef. 7-15-01; CCD 2-2007, f. & cert. ef. 7-13-07; CCD 3-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10

## 414-300-0100

### Teacher

(1) For each group of children, a person shall be designated as the teacher. This person shall:

- (a) Be at least 18 years of age;
- (b) Be responsible for and supervise a designated group of children; and
- (c) Supervise the activities of an aide assigned to his/her group.

(2) A teacher shall meet the qualification requirements of one of the options listed in Table 2 of this section. Table 2

[ED NOTE: Tables referenced are available from the agency.]  
Stat. Auth.: ORS 657A.260  
Stats. Implemented: ORS 657A.260  
Hist.: CSD 21-1988, f. & cert. ef. 9-29-88; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-010-0634; CCD 1-1995, f. 10-30-95, cert. ef. 11-1-1995; CCD 4-2001, f. 7-13-01, cert. ef. 7-15-01; CCD 2-2007, f. & cert. ef. 7-13-07; CCD 3-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10

## 414-300-0110

### Teacher Aides

(1) Aide I shall be:

- (a) At least 15 years of age; and
- (b) Directly supervised, i.e., within sight and sound of, a staff person who meets at least the qualifications of a teacher.

(2) Aide II in infant/toddler/preschool-age programs shall:

- (a) Be at least 18 years of age;
- (b) Have worked at least six months at the center where they are now employed; and
- (c) Have current certification in first aid and CPR.

(3) Aide II in school-age programs shall:

- (a) Be at least 18 years of age;
- (b) Have worked at least four months in the school-age program where they are now employed; and
- (c) Have current certification in first aid and CPR.

(4) Staff at Aide II level may, with the approval of the director, be out of sight and sound of a teacher for brief, necessary events, such as taking a child to the bathroom or bringing a child in for minor medical attention.

(5) An Aide II may not be left alone with a group of children, except as described in OAR 414-300-0130(2)(a) and 414-300-0350(5)(b).

(6) Staff at Aide II level shall be trained in the policies and procedures appropriate to tasks assigned prior to even brief periods of unsupervised access to children.

Stat. Auth.: ORS 657A.260

Stats. Implemented: ORS 657A.260  
Hist.: CSD 21-1988, f. & cert. ef. 9-29-88; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-010-0635; CCD 4-2001, f. 7-13-01, cert. ef. 7-15-01; CCD 3-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10

## 414-300-0115

### School-Age Multi-Site Programs — Additional Staff

(1) In a multi-site program, the operator shall develop a written plan which shows:

- (a) How the administrative functions in section OAR 414-300-0080(2)(a) will be met; and
- (b) How Head Teacher functions in OAR 414-300-0090(2)(a) and (b) will be met.

(2) All staff of school-age multi-site programs shall meet qualifications for the position they hold, as specified in OAR 414-300-0080, -0090, -0100 and -0110, unless otherwise specified in this section.

(3) If the multi-site program does not have a director, the site coordinator and the site director/supervisor shall jointly perform the functions of director.

(4) A site coordinator shall:

- (a) Be at least 21 years of age;
- (b) Have at least one year of training and/or experience in management and supervision of adults;
- (c) Be authorized, able and available to correct deficiencies; and
- (d) If acting as a substitute teacher, be teacher qualified.

(5) A site coordinator shall be at each site on a monthly basis during the hours of operation. The time at each site must include time spent directly observing staff and children.

(6) A site director/supervisor shall:

- (a) Be at least 18 years of age;
- (b) Be at least teacher-qualified;
- (c) Be authorized, able and available to correct deficiencies; and
- (d) If the facility is certified for 40 or more children, not have teaching duties unless the number of children on site is less than 40.

(7) A site director/supervisor shall be on site at least one-half of the hours, calculated on a weekly basis, that the school-age program is in operation.

(8) If a school-age multi-site program does not have a head teacher at each site, a designated head teacher for the multi-site program shall observe at each site on a monthly basis during the hours of operation.

Stat. Auth.: ORS 657A.260  
Stats. Implemented: ORS 657A.260  
Hist.: CCD 4-2001, f. 7-13-01, cert. ef. 7-15-01; CCD 3-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10

## 414-300-0120

### Staff Training

(1) All new staff shall receive an orientation within the first two weeks of employment. Orientation shall ensure that staff are familiar with the contents of the orientation, as described below, and shall include, but is not limited to:

- (a) Individual responsibilities in the event:
  - (A) The building must be evacuated (e.g., fire);
  - (B) An emergency requires staff and children to remain inside under unusual circumstances (e.g., power outage, environmental hazard); or
  - (C) A child or staff is injured or becomes ill;
- (b) These requirements (OAR 414-300-0000 through 414-300-0410);
- (c) The center policies, as required in OAR 414-300-0030; and
- (d) Procedures for reporting suspected child abuse or neglect.

(2) The operator shall have documentation for each staff person of the date and type of orientation received and the person providing the orientation.

(3) Within the first 90 days of employment, all staff who function as teachers and count in staff/child ratios, with the exception of substitute teachers, shall:

- (a) Complete training on recognizing and reporting child abuse and neglect or have documentation of having completed such training; and
- (b) Complete first aid and CPR training or have current certification in first aid and CPR on file. First aid and CPR training must be kept current during employment at the center. First aid training shall include the following components: bleeding; burns; poisoning; choking; injuries; shock; seizures; sprains and breaks; dental emergencies; and head injuries.

(4) Key people in food preparation must have food handler certification, pursuant to ORS 624.570, within 30 days of employment or have current certification on file. Food handler's training must be kept current during employment at the center. Key people include cooks, kitchen staff who handle food, and classroom staff who serve meals from a communal source.

(5) The director, head teacher, and all teachers shall participate yearly in at least 15 clock hours of training or education related to child care, of which at least eight clock hours shall be in child development or early childhood education:

- (a) A head teacher whose qualifications for the position are based solely on work experience shall emphasize training in child development and early childhood education for the first two years of employment;

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(b) Training may include correspondence courses, conferences, workshops, or audiovisual programs.

(c) A planned reading program of professional materials may count for up to 6 hours of the fifteen clock hours of training and must include a written assessment of reading materials completed by each participating staff person.

(d) The center shall record each person's training showing the subject matter, the date completed, and the number of clock hours of training in each certification year.

(6) During the first year of employment, a staff person may count orientation, first aid and CPR, food handler's training, if applicable, and child abuse and neglect training as part of the 15 clock hours of training.

(7) During subsequent years of employment, a staff person may count 5 hours of first aid and CPR training or food handler's training as part of the 15 clock hours of training.

(8) Staff meetings shall not count as training.

Stat. Auth.: ORS 657A.260

Stats. Implemented: ORS 657A.260

Hist.: CSD 21-1988, f. & cert. ef. 9-29-88; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-010-0637; CCD 4-2001, f. 7-13-01, cert. ef. 7-15-01; CCD 3-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10

## 414-300-0130

### Staff/Child Ratios and Group Size

(1) The number of caregivers and group size shall be determined by the number and ages of the children in attendance.

(2) The maximum number of children in a group and the ratio of caregivers to children specified in Table 3A of this rule shall apply, except that:

(a) When all toddler, preschool and school-age children are at rest, the situation permits, and the room is arranged so all children are supervised, there may be one teacher or Aide II supervising the resting room. As children awaken and become active, additional staff shall be added to return ratios to those in Table 3A. Sufficient staff to meet the required ratio shall be in the facility and able to be summoned by the caregiver without leaving the resting room; and

(b) Maximum group size shall not apply to field trips, outdoor play, planned large group activities, napping and eating. Staff/child ratios shall apply to these activities.

(c) Centers with certification in effect on July 15, 2001, shall comply with age groupings, staff/child ratios and group size in either Table 3A or Table 3B for as long as the facility is continuously used for child care, under the following conditions:

(A) The center must choose to operate under Table 3A or Table 3B; centers shall not operate under a combination of both;

(B) If centers wish to change from operating under one set of ratios to operating under the other set of ratios, the change shall occur at the time of certification renewal; and

(C) Centers may change options only twice. [Table not included. See ED. NOTE.]

(3) Children shall at all times have the full attention of the appropriate number of staff. Children shall be within sight and sound of a caregiver at all times, except as specified below.

(a) School-age children shall be within sight and/or sound of staff at all times, and staff shall be near enough to children to respond when needed. Children out of direct visual contact shall be monitored regularly and frequently and must be in approved activity areas. A written plan regarding the use and monitoring of these activity areas must be approved by CCD.

(b) School age programs with toilet facilities or activities off-site shall have a written plan, approved by CCD, to assure accountability for all children.

(4) At least one caregiver who meets the qualifications of a teacher (OAR 414-300-0100) shall supervise each group of children.

(5) In a mixed group of older toddler, preschool and school-age children, the number of caregivers shall be determined by the age of the youngest child in the group.

(6) If there are four or fewer children of any age in care for 45 minutes or less directly after opening or directly before closing, OAR 414-300-0300(10) does not apply and infants and younger toddlers may be included with older children. The staff shall be teacher-qualified in one of the represented age groups and the staff/child ratio must be 1:4.

(a) Each age group must have age appropriate activities, equipment and toys available for use; and

(b) If infants or toddlers are part of the multiple age group, a diaper changing area must be located in the room being utilized for care.

(7) Any time there are children in care,

(a) There shall be a staff person and one other adult on site. The other adult shall be enrolled in the Central Background Registry and shall be physically available to be called on by staff, if needed; or

(b) There shall be a written plan, approved by CCD, for a second caregiver to be available within 5 minutes for emergencies. The name and telephone number of the emergency back-up shall be known to all staff who work alone.

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

Stat. Auth.: ORS 657A.260

Stats. Implemented: ORS 657A.260.

Hist.: CSD 21-1988, f. & cert. ef. 9-29-88; CSD 10-1990, f. & cert. ef. 4-23-90; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-010-0639; CCD 4-2001, f. 7-13-01, cert. ef. 7-15-01; CCD 3-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10

## 414-300-0140

### Indoor Space

(1) There shall be a minimum of 35 square feet of indoor activity area per child. Space considered in determining the facility capacity shall be available for use by children at all times, shall be used exclusively for child care during the hours of operation and shall be determined on a room-by-room basis. The following shall not be counted as part of the 35 square feet per child requirement: heating units; storage areas; teachers' desks; large permanent equipment; any space not useable by children. Cribs will be counted as useable space if the space underneath the cribs is accessible to children.

(2) A school-age program shall have a minimum of 50 square feet of indoor activity area per child or may have a minimum of 35 square feet of indoor activity area per child if:

(a) The children in care have access to a larger gross motor area, either indoor or outdoor, on a daily basis; or

(b) The center has a plan, approved by CCD, which addresses how the gross motor needs of children in care will be met.

(3) In a room used by more than one group of children not yet attending kindergarten, the area occupied by each group shall be defined by use of portable or permanent room dividers or program equipment that stand above the eye level of the children who use the area. Rooms used only for large group activities (e.g., eating, napping, large muscle activities) are exempt from this requirement.

(4) Storage space shall be available for each child's clothing and personal possessions.

(5) Storage space shall be available for play equipment, teaching equipment and supplies, records and files, cots, mats, and cleaning equipment and supplies.

Stat. Auth.: ORS 657A.260

Stats. Implemented: ORS 657A.260

Hist.: CSD 21-1988, f. & cert. ef. 9-29-88; CSD 10-1990, f. & cert. ef. 4-23-90; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-010-0640; CCD 1-1995, f. 10-30-95, cert. ef. 11-1-95; CCD 4-2001, f. 7-13-01, cert. ef. 7-15-01; CCD 3-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10

## 414-300-0150

### Outdoor Space

(1) There shall be an outdoor activity area which the children can reach safely. If an outdoor activity area is not next to the center, or not under the control of the center during hours of operation, it cannot be used without the specific approval of CCD.

(2) There shall be at least 75 square feet of outdoor space for each child using the area at one time. In centers where groups of children are scheduled at different times for outdoor play, there shall be 75 square feet times one-third of the center's capacity, if permitted by local zoning regulations

(3) The outside activity area shall:

(a) Be suitably surfaced. All pieces of playground equipment shall be surrounded by a resilient surface of an acceptable depth or by rubber mats manufactured for such use, according to standards of the US Consumer Product Safety Commission;

(b) Be well drained;

(c) Be kept free of litter, solid waste and refuse, ditches, or other conditions presenting a potential hazard; and

(d) Be equipped to provide age-appropriate activities for gross motor development.

(4) The outdoor activity area of a center serving children not yet attending kindergarten shall be enclosed by a barrier (fence, wall, or building) at least four feet high. Centers with certification in effect on July 15, 2001, must comply with a barrier at least three feet high until such time as the existing barrier is replaced. Spacing between vertical slats of a fence shall be no greater than 4 inches. Fences must meet applicable local codes.

Stat. Auth.: ORS 657A.260

Stats. Implemented: ORS 657A.260

Hist.: CSD 21-1988, f. & cert. ef. 9-29-88; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-010-0641; CCD 4-2001, f. 7-13-01, cert. ef. 7-15-01; CCD 3-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10

## 414-300-0160

### Fire Protection

(1) The building, occupant load and means of egress, including the number of exits, exiting distances, doors and exit illumination and signs, shall meet the requirements of the Oregon Structural Specialty Code.

(2) Rooms used for child care shall not be located above or below the ground floor, except as allowed by the Oregon Structural Specialty Code.

(3) Fire Extinguishers

(a) There shall be at least one 2A-10BC-rated fire extinguisher in the center;

(b) Fire extinguisher(s) shall be placed as recommended by the fire marshal.

(4) Smoke Detectors:

(a) Smoke detectors shall be installed in all areas where children nap;

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(b) When the center's capacity is 50 or more, an approved manual fire alarm system shall be provided, as required by the Oregon Structural Specialty Code;

(c) Smoke detectors shall be tested each month.

(5) Obstructions, including furniture, storage of supplies, or any other items shall not be placed in corridors, stairwells or exit ways.

(6) Candles or other open flame decorative devices are prohibited, except for the brief use of celebratory candles.

(7) There shall be written evidence that any wood stove in the building has been inspected and approved for use by the local building official.

Stat. Auth.: ORS 657A.260

Stats. Implemented: ORS 657A.260

Hist.: CSD 21-1988, f. & cert. ef. 9-29-88; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-010-0642; CCD 4-2001, f. 7-13-01, cert. ef. 7-15-01; CCD 3-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10

## 414-300-0170

### Hazards and Emergencies

(1) Protection from Hazards:

(a) Glass surfaces subject to impact by children shall be of safety glass and marked at a child's eye level or have a protective barrier in place.

(b) Electrical outlets accessible to children not yet attending kindergarten shall have protective caps or safety devices when not in use.

(c) All stairways with three steps or more used by children shall have handrails installed a minimum of thirty inches to a maximum of thirty-four inches above the stair tread.

(d) Protective barriers shall be used in any hazardous location accessible to a child.

(e) A movable barrier, such as a mesh-type gate, shall be placed at the top and/or bottom of all stairways accessible to infants and toddlers. Gates and enclosures should have the Juvenile Products Manufacturers Assn. (JPMA) certification seal to ensure safety.

(f) Lights shall be protected from hazards or breakage by installation of covers or shields.

(g) All rooms used by staff and children shall have adequate lighting.

(h) Floors shall be free of splinters, large or unsealed cracks, sliding rugs, and other hazards.

(i) Items of potential danger to children (e.g., cleaning supplies and equipment, poisonous and toxic materials, paints, plastic bags, aerosols, detergents) shall be:

(A) Kept in the original container or labeled;

(B) Secured by a child-proof lock or latch;

(C) Stored in an area not used by children; and

(D) Stored separately from food service equipment and supplies.

(j) Lead-based paint or other toxic finishing materials shall not be used on walls, furnishings, toys, or any other equipment, materials or surface which may be used by children or are within their reach.

(k) The possession and/or storage of firearms and ammunition are prohibited in the center.

(l) Other hazards observed in the certification process must be corrected.

(2) Preparation for Emergencies

(a) A portable emergency light source, in working condition, shall be available with each group of children.

(b) Telephone service shall be accessible and available in the center at all times when children are in care.

(c) The center must have a system in place to ensure that parents can have contact with facility staff at all times when children are in care.

(d) Telephone numbers for fire, emergency medical care, and poison control shall be posted on or near all telephones. Portable telephones must have emergency numbers on the phone.

(e) Written instructions for evacuating the building, including a map illustrating exiting, shall be posted in each room children use.

(3) Emergency Plan

(a) The center shall have a written plan for handling emergencies, including, but not limited to, fire, acute illness of a child or staff, floods, earthquakes, and evacuation of the facility. The plan must include:

(A) How the center will ensure that parents or the parents' emergency contacts can be reached in person;

(B) Designation of an alternate site in the event of evacuation;

(C) How the center will inform parents where children will be located in the event of evacuation;

(D) An accessible file of emergency contact numbers for children and staff; and

(E) Designation of a staff member(s) to take the emergency contact numbers file to the evacuation site in the event of an evacuation.

(b) All staff shall be familiar with the emergency telephone numbers and emergency procedures.

(c) Fire drills shall be practiced monthly. In addition, one other aspect of the emergency plan shall be practiced every other month.

(A) The director shall keep a written record of the type, date, time, and duration of the practices.

(B) If a center has on-site swimming or is responsible for off-site swimming, the practices must include pool and swimming safety.

(d) Fire and other emergency exiting shall not be through a swimming pool area.

Stat. Auth.: ORS 657A.260

Stats. Implemented: ORS 657A.260

Hist.: CSD 21-1988, f. & cert. ef. 9-29-88; CSD 10-1990, f. & cert. ef. 4-23-90; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-010-0643; CCD 4-2001, f. 7-13-01, cert. ef. 7-15-01; CCD 3-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10

## 414-300-0180

### Sanitation

(1) Water Supply:

(a) The center's water supply shall be continuous in quantity and from a water supply system approved by the Health Division.

(b) There shall be safe drinking water available to children that is supplied in a sanitary manner. Drinking water shall not be obtained from bathroom sinks or diaper changing sinks.

(2) Heat and Ventilation:

(a) The center shall be ventilated, by natural or mechanical means, and shall be free of excessive heat, condensation, and obnoxious odors.

(b) Room temperature shall be at least 68° F. (20 C.) and not so warm as to be dangerous or unhealthy in the center when children are present.

(c) After painting or laying carpet, the building must be aired out completely for at least 24 hours with good ventilation before children are allowed to return.

(3) Insect and Rodent Control:

(a) The center shall be in such condition as to prevent the infestation of rodents and insects.

(b) Doors and windows used for ventilation shall be equipped with fine-meshed screens.

(c) Automatic insecticide dispensers, vaporizers, or fumigants shall not be used.

(4) Maintenance:

(a) The building, toys, equipment, and furniture shall be maintained in a clean and sanitary condition:

(A) Kitchen and toilet rooms shall be cleaned when soiled and at least daily;

(B) The isolation area shall be thoroughly cleaned after each use and all bedding laundered before it is used again;

(C) Door knobs and cabinet pulls in toilet rooms and diaper changing areas shall be sanitized daily;

(D) All clean linen shall be stored in a sanitary manner;

(E) Soiled bed linen and clothing shall not be stored in food preparation or food storage areas, and shall be inaccessible to children;

(F) Floors, walls, ceilings, and fixtures of all rooms shall be kept clean and in good repair;

(G) All food storage areas shall be kept clean and free of food particles, dust, dirt, and other materials;

(H) Cribs, mats, and cots shall be sanitized with a sanitizing solution at least once a week and upon change of occupant. If visibly soiled, items must be cleaned prior to sanitizing.

(I) Bedding shall be cleaned when soiled, upon change of occupant and at least once a week;

(J) Water tables and toys used in water tables shall be emptied and sanitized daily;

(K) When a chemical, such as chlorine, is used for sanitizing, a test kit that measures the parts per million concentration of the solution shall be used to ensure the proper concentration; and

(L) Cloths, both single use and multiple use, used for wiping food spills on utensils and food-contact surfaces shall be kept clean and used for no other purpose. Cloths that are reused shall be stored in a sanitizing solution between uses.

(b) The center shall be kept hazard-free, in good repair, and free of litter or rubbish and unused or inoperable equipment and utensils.

(5) Infant and Toddler Care:

(a) The following shall be sanitized immediately after each use. If visibly soiled, items must be cleaned prior to sanitizing:

(A) A bathtub or other receptacle used for bathing a child;

(B) A diaper-changing table;

(C) High chairs, tables and chairs;

(D) Toys that infants and toddlers put in the mouth; and

(E) Toilet training seat inserts.

(b) Pacifiers must be labeled, stored individually and sanitized after contamination. The health department must approve methods of sanitation.

(c) A sanitizing solution shall be kept in each diaper changing area ready for immediate use. This solution need not be stored in a locked cabinet but must be out of children's reach.

(6) Hand washing:

(a) Staff and children shall wash their hands with soap and warm running water after using the toilet or wiping the nose, and before and after eating.

(b) Staff shall wash their hands with soap and warm running water before and after changing a diaper, before and after feeding a child or handling food and after assisting a child with toileting or wiping the nose.

# ADMINISTRATIVE RULES

(c) Infants' and children's hands shall be washed with soap and warm running water after diaper changing.

(d) Commercial products labeled "hand sanitizers" shall not replace hand washing. If hand sanitizers are present in the center, they shall be kept under child-proof lock and shall not be used by children.

(e) When hand washing is not possible, e.g. on field trips and on the playground, moist towelettes shall be used.

(7) Waste Disposal:

(a) All sewage and liquid wastes shall be collected, treated, and disposed of in compliance with the requirements of the Department of Environmental Quality.

(b) All garbage, solid waste, and refuse shall be disposed of at least once a week.

(c) All garbage shall be kept in watertight, non-absorbent, and easily washable containers with close-fitting lids.

(d) Diaper disposal containers shall be approved by the environmental health specialist.

(e) All garbage storage areas and garbage containers shall be kept clean.

(f) All rubbish and garbage storage shall be inaccessible to children.

Stat. Auth.: ORS 657A.260

Stats. Implemented: ORS 657A.260

Hist.: CSD 21-1988, f. & cert. ef. 9-29-88; CSD 10-1990, f. & cert. ef. 4-23-90; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-010-0644; CCD 4-2001, f. 7-13-01, cert. ef. 7-15-01; CCD 8-2003, f. 12-23-03, cert. ef. 12-28-03; CCD 3-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10

## 414-300-0190

### Toilet Facilities

(1) Toilets:

(a) Toilet rooms shall have at least one flush toilet for each 15 children in the center 36 months old or older.

(b) Urinals may be substituted for not more than one-half the required number of toilets, as long as there is at least one toilet in each toilet room and at least two toilets in the center. Facilities built after July 15, 2001, specifically as child care centers shall not substitute urinals for the required number of toilets.

(c) Toilet facilities shall provide privacy for school age children.

(2) Hand washing Sinks:

(a) There shall be at least one hand washing sink with mixing faucets for every two toilets. Centers with certification in effect on July 15, 2001, shall comply with the requirement for mixing faucets when toilet facilities are remodeled.

(b) A sink used for hand washing, bathing, or diaper-changing shall not be used in any way for preparation of food or drinks, or for dish washing.

(c) Hot and cold running water, as well as soap and paper towels dispensed in a sanitary manner, shall be provided at each hand washing sink. Other hand drying options must be approved by the environmental health specialist.

(d) Self-closing metered faucets shall be designed to provide water flow for at least 15 seconds without the need to reactivate the faucet. Centers with certification in effect on July 15, 2001, shall comply with the water flow requirement for self-closing metered faucets when toilet facilities are remodeled.

(e) Drinking fountains shall not be installed at sinks. If installed at sinks, the fountains shall not be used as a source of drinking water.

(3) If toilets or hand washing sinks are adult size, easily-cleanable steps or blocks shall be provided so that preschool age children can use the toilets and sinks without adult assistance.

(4) Bathrooms shall have smooth, washable, easily-cleanable walls and floors.

(5) Infants and Toddlers — In a center serving children under 36 months old, there shall be:

(a) At least one flush toilet in or adjacent to each older toddler area;

(b) One toilet with training seat, or child-size toilet, for every ten older toddlers. Potty chairs are prohibited;

(c) At least one diaper-changing table in or adjacent to each activity and sleeping room. Each table shall have a surface that is non-absorbent and easily cleaned. The diaper-changing policy shall be posted above each table;

(d) A hand-washing sink in each diaper changing area, except that centers with certification in effect on July 15, 2001, shall comply with this requirement when the diaper changing area is remodeled; and

(e) A bathtub, bathinette, plastic basin, or similar size shallow sink available for bathing children.

Stat. Auth.: ORS 657A.260

Stats. Implemented: ORS 657A.260

Hist.: CSD 21-1988, f. & cert. ef. 9-29-88; CSD 10-1990, f. & cert. ef. 4-23-90; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-010-0645; CCD 1-1995, f. 10-30-95, cert. ef. 11-1-95; CCD 4-2001, f. 7-13-01, cert. ef. 7-15-01; CCD 8-2003, f. 12-23-03, cert. ef. 12-28-03; CCD 3-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10

## 414-300-0200

### Kitchens

(1) Kitchens shall have facilities for dish washing, storage, and preparation of food. The kitchen shall be separate from any child caring areas.

(2) If there is no kitchen in the center and if meals or snacks are not catered, the center shall observe the requirements in OAR 414-300-0280(8).

(3) The walls, floors, and floor coverings of all rooms in which food or drink is prepared or stored, or utensils are washed or stored, shall be smooth, washable, and easily cleanable.

(4) All equipment and utensils used for food service, including plastic ware and food-contact surfaces, shall be:

(a) Easily cleanable;

(b) Durable;

(c) Nontoxic;

(d) Nonabsorbent; and

(e) Maintained in a clean and sanitary condition.

(5) All equipment used for food preparation shall be installed and maintained in a manner providing ease of cleaning beneath, between, and behind each unit.

(6) A center shall have a:

(a) Mechanical dishwasher that meets the requirements in the Health Division's administrative rules, OAR 333-150-0000; or

(b) Compartmentalized sink that meets the requirements in the Health Division's administrative rules, OAR 333-150-0000;

(c) Centers with a maximum capacity of 19 children may use a light commercial dishwasher approved by the National Sanitation Foundation.

(7) There shall be separate sinks in the kitchen designated by the environmental health specialist for hand washing, for food preparation activities, and for dishwashing activities:

(a) The sink designated for hand washing shall be equipped with soap and paper towels dispensed in a sanitary manner and posted with a hand washing sign;

(b) In centers in which there is not a sink provided for food preparation, a sink used for dishwashing may be used as long as dishwashing activities do not interfere with sanitary food preparation, and the sink is sanitized before being used for food preparation;

(c) Sinks in the kitchen shall be used exclusively for food service activities;

(d) Centers newly constructed or remodeled after July 15, 2001, shall meet the requirements for hand washing sinks established by State Building Code, as defined in ORS Chapter 455.

(8) Children shall not be allowed in the kitchen except for a supervised learning activity.

Stat. Auth.: ORS 657A.260

Stats. Implemented: ORS 657A.260

Hist.: CSD 21-1988, f. & cert. ef. 9-29-88; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-010-0646; CCD 1-1995, f. 10-30-95, cert. ef. 11-1-95; CCD 4-2001, f. 7-13-01, cert. ef. 7-15-01; CCD 8-2003, f. 12-23-03, cert. ef. 12-28-03; CCD 2-2007, f. & cert. ef. 7-13-07; CCD 3-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10

## 414-300-0210

### Furniture

(1) Furniture shall:

(a) Be durable;

(b) Have cleanable or non-absorbent surfaces;

(c) Be safely constructed, with no sharp, rough, loose, or pointed edges; and

(d) Be in good repair.

(2) Tables and seating shall be scaled to the height and size of a child.

(3) There shall be a safe, washable cot or rest mat for each toddler and preschool age child in the center at nap time and for each school-age child who wants to rest.

(4) Each mat used for napping shall be:

(a) Covered with a waterproof cover; and

(b) At least one inch thick.

(5) Mats or cots shall be placed at least two feet apart if children are placed head to toe; or three feet apart otherwise. They shall be arranged in a manner that allows for a direct, unobstructed passage to each child.

(6) Each child who is resting shall have individual bedding consisting of at least a sheet or blanket.

(7) Mats, cots and bed linen shall be properly stored, as recommended by the environmental health specialist.

Stat. Auth.: ORS 657A.260

Stats. Implemented: ORS 657A.260

Hist.: CSD 21-1988, f. & cert. ef. 9-29-88; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-010-0648; CCD 4-2001, f. 7-13-01, cert. ef. 7-15-01; CCD 8-2003, f. 12-23-03, cert. ef. 12-28-03; CCD 3-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10

## 414-300-0215

### Infant and Toddler Furniture and Equipment

(1) Each infant shall have a crib, portable crib, or play pen with a clean, non-absorbent mattress that meets the following requirements:

(a) Each crib shall be of sturdy construction with vertical slats no more than 2 3/8" apart;

(b) Locks and latches on the dropside of a crib shall be safe and secure from accidental release or release by the infant inside the crib;

(c) Cribs shall not be used with the dropside down;

(d) Each mattress shall fit snugly;

(e) Each mattress shall be covered by a sheet;

# ADMINISTRATIVE RULES

(f) Crib bumpers, if used, shall be easily cleanable, durable, and not dangerous to children;

(g) There shall be no restraining devices of any type used unless prescribed by a physician; and

(h) Wall or stacking cribs shall not be used.

(2) Sleeping arrangements other than cribs, portable cribs or playpens must be approved by CCD.

(3) There shall be at least two feet of space between cribs, portable cribs or play pens when in use. They shall be arranged in a manner that allows for a direct, unobstructed passage to each child.

(4) If high chairs are used, they shall have:

(a) A broad base to prevent tipping;

(b) A latch to keep a child from raising the tray; and

(c) Straps to prevent a child from sliding out.

(5) If clip-on table chairs are used, they shall have straps to prevent a child from sliding out.

(6) There shall be at least one adult-sized chair for each group of infants and toddlers.

(7) Cribs, portable cribs, playpens, and high chairs must meet US Consumer Product Safety Commission or equivalent standards.

(8) The use of infant walkers is prohibited.

(9) Car seats are to be used for transportation purposes only. Children who arrive at the center asleep in a car seat may remain in the car seat until they awake.

(10) The use of baby equipment shall not substitute for providing a variety of stimulating experiences.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 657A.260

Stats. Implemented: ORS 657A.260

Hist.: CCD 4-2001, f. 7-13-01, cert. ef. 7-15-01; CCD 3-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10

## 414-300-0220

### Illness or Injury

(1) Illness:

(a) A center shall not admit or retain in care, except with the written approval of the local health officer, a child who:

(A) Is diagnosed as having or being a carrier of a child care-restrictable disease, as defined in Health Division administrative rules, OAR 333-019-0010; or

(B) Has one of the following symptoms, or combination of symptoms, of illness:

(i) Fever over 100 degrees F taken under the arm;

(ii) Diarrhea (more than one abnormally loose, runny, watery or bloody stool);

(iii) Vomiting;

(iv) Nausea;

(v) Severe cough;

(vi) Unusual yellow color to skin or eyes;

(vii) Skin or eye lesions or rashes that are severe, weeping, or pus-filled;

(viii) Stiff neck and headache with one or more of the symptoms listed above;

(ix) Difficult breathing or abnormal wheezing; or

(x) Complaints of severe pain.

(b) A child who shows signs of illness, as defined in this rule, shall be isolated and the parent(s) notified and asked to remove the child from the center as soon as possible;

(c) If a child has mild cold symptoms that do not impair his/her functioning, the child may remain in the center and the parent(s) notified when they pick up their child;

(d) A specific place for isolating a child who becomes ill shall be provided. The isolation area:

(A) Shall be located where the child can be seen and heard by staff; and

(B) Shall be equipped with a cot, mat, or bed for each sick child.

(e) An outbreak of a child care restrictable disease, as defined in OAR 333-019-0010, or food poisoning shall be reported immediately to the local health department and posted for the parents of all children who attend the facility.

(2) Injuries:

(a) The operator shall have written procedures for handling injuries that shall be made known to all staff, including:

(A) Procedure for taking a child to emergency medical care;

(B) Routine for treatment of minor injuries; and

(C) First aid measures for serious accidents.

(b) First aid supplies and a chart or handbook of first aid instructions shall be maintained in one identified place away from food and food-contact surfaces and be available for staff use but kept out of reach of children:

(A) The first aid supplies shall include Band-Aids, adhesive tape, sterile gauze pads, soap or sealed antiseptic towelettes or solution to be used as a wound cleaning agent, scissors, disposable plastic gloves for handling blood spills, chlorine bleach for sanitizing after a blood spill, and a sanitary temperature-taking device;

(B) Separate first aid supplies and a copy of each child's medical release form shall be taken on all field trips away from the immediate neighborhood.

(c) Injuries or accidents shall be reported to the child's parent(s) on the day of occurrence:

(A) A written report of the injury or accident shall be maintained on file;

(B) The report shall include the date, child's full name, nature of the injury, witnesses, action taken, and the signatures of reporting staff and parent(s).

(d) The injury to or death of a child shall be reported to CCD in accordance with OAR 414-300-0030(3)(a) and (b).

(3) Emergency Medical Care:

(a) The operator shall identify a licensed physician, hospital, or clinic to be used for emergency medical care;

(b) In the event of an illness or injury which requires immediate medical care, the director or the substitute director is responsible for securing such care and notifying the parent(s).

Stat. Auth.: ORS 657A.260

Stats. Implemented: ORS 657A.260

Hist.: CSD 21-1988, f. & cert. ef. 9-29-88; CSD 10-1990, f. & cert. ef. 4-23-90; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-010-0650; CCD 1-1995, f. 10-30-95, cert. ef. 11-1-95; CCD 4-2001, f. 7-13-01, cert. ef. 7-15-01; CCD 2-2007, f. & cert. ef. 7-13-07; CCD 3-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10

## 414-300-0230

### Medications

(1) No prescription medication or non-prescription medication, including, but not limited to, pain relievers, sunscreen, cough syrup, diapering and first aid ointments or nose drops, may be given to a child except under the following conditions:

(a) A signed, dated, written authorization by the parent(s) is on file;

(b) Prescription medication is in the original container and labeled with the child's name, name of the drug, dosage, directions for administering, date, and physician's name;

(c) Non-prescription medication is in the original container, labeled with the child's name, dosage, and directions for administering; and

(d) A written record of all medications administered listing, as a minimum, the name of the child, type of medication, the signature of the person administering the medication, date, time, and dosage given, shall be kept.

(2) All medications shall be:

(a) Secured in a tightly-covered container with a child-proof lock or latch; and

(b) Stored in an area not used by children.

(3) Medications requiring refrigeration shall be kept in the refrigerator in a separate tightly-covered container, with a child-proof lock or latch, clearly marked "medication".

(4) Parent(s) shall be informed daily of medication administered to their child.

Stat. Auth.: ORS 657A.260

Stats. Implemented: ORS 657A.260

Hist.: CSD 21-1988, f. & cert. ef. 9-29-88; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-010-0652; CCD 4-2001, f. 7-13-01, cert. ef. 7-15-01; CCD 3-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10

## 414-300-0240

### Animals in the Center

(1) Animals shall be in good health, show no evidence of carrying any disease, and be a friendly companion for the children.

(a) When immunizations are required, proof of current compliance signed by a veterinarian shall be on file at the center.

(b) Dogs and cats shall be maintained on a flea, tick and worm control program. Products toxic to humans are prohibited.

(c) Animals shall be cared for as recommended by a veterinarian.

(2) Reptiles (e.g., lizards, turtles, snakes, iguanas), frogs, monkeys, hook-beaked birds, baby chicks, ferrets, and potentially aggressive animals are prohibited. Educational programs which include prohibited animals and are run by zoos, museums and other professional animal handlers are permitted.

(3) Parent(s) shall be informed in writing of any animal in the center.

(4) Animals, except fish, shall not be in classrooms for infants or toddlers.

(5) The center shall have and follow written procedures for the care and maintenance of the animals in the center.

(6) Animals shall be kept in an approved cage for the type of animal. Cages shall have removable bottoms and shall be kept clean and sanitary.

(7) Animal litter boxes shall not be located in areas accessible to children.

(8) There shall be assigned staff who are responsible for the handling, care and feeding of the animal(s).

(a) The cleaning of cages shall not be done in areas used for food preparation, storage or serving.

(b) Staff must immediately and thoroughly wash their hands after handling animals or cleaning cages.

# ADMINISTRATIVE RULES

(c) The cleaning of cages shall be scheduled when children are not present.

(d) Animal food supplies shall be kept out of the reach of children and stored separately from food supplies and equipment. Animal food shall be stored in a manner that does not attract rodents or insects.

(e) Chemicals related to the care of animals shall be kept under lock.

(9) Caregivers shall always be present when children are exposed to animals.

(10) If children are allowed to handle animals, they shall immediately and thoroughly wash their hands after handling.

Stat. Auth.: ORS 657A.260

Stats. Implemented: ORS 657A.260

Hist.: CSD 21-1988, f. & cert. ef. 9-29-88; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-010-0654; CCD 1-1995, f. 10-30-95, cert. ef. 11-1-95; CCD 4-2001, f. 7-13-01, cert. ef. 7-15-01; CCD 3-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10

## 414-300-0250

### Food Selection, Storage, and Preparation

(1) All food and drink provided by the center shall be selected, stored, prepared, and served in a sanitary manner.

(2) Selection:

(a) All food products served by the center shall be obtained from commercial suppliers, except that:

(A) Fresh fruits and vegetables and center-frozen fruits or vegetables may be served;

(B) Home-canned or processed food may be served to a child only when supplied by the child's parent(s); and

(C) The serving of unpasteurized juice is prohibited.

(b) Only Grade A pasteurized and fortified milk shall be served to children.

(A) Powdered milk shall be used only in cooking.

(B) The serving of unpasteurized milk is prohibited.

(3) Storage:

(a) A center shall have at least one refrigerator, in good operating condition, that is adequate to store all potentially hazardous foods. "Potentially hazardous food" means any food or beverage that contains milk or milk products, eggs, meat, fish, shellfish, poultry, cooked rice or beans, and all other previously cooked foods.

(A) A spirit stem (alcohol filled - usually red) thermometer in working condition shall be affixed to the door, or the front edge of the top shelf, of each refrigerator.

(B) Refrigerators equipped with a temperature gauge visible from the exterior are acceptable.

(b) All potentially hazardous food shall, except when being prepared, be kept at 45 degrees Fahrenheit (F) or below, or 140 degrees F or above.

(A) Foods requiring refrigeration after preparation shall be rapidly cooled to a temperature of 45 degrees F or below.

(B) Refrigerated storage space at 45 degrees F or less shall be used to store lunches which contain potentially hazardous food that children bring from home.

(C) A metal stem-type probe thermometer shall be used to ensure food requiring hot storage is maintained at 140 degrees F or above.

(D) Foods that have been cooked, and then refrigerated, shall be reheated rapidly to at least 165 degrees F before being served or placed in a hot food storage unit.

(4) Preparation:

(a) Food shall be prepared with a minimum of manual contact.

(b) Raw fruits and vegetables shall be washed in a clean, sanitized sink before being cooked or served.

(c) Food shall be prepared on food-contact surfaces and with utensils that are clean and have been sanitized.

(d) Food-contact surfaces and utensils shall be cleaned and sanitized after each use and/or whenever there is a change in processing from raw to ready-to-eat foods.

(e) Only approved food additives and preservatives shall be used by the center.

(5) Service:

(a) Each child shall be provided with his/her own individual use utensils for eating and drinking. These may be:

(A) Single service paper and plastic which shall be used once only; or

(B) Multiple use utensils which shall be washed in the prescribed manner between each use (OAR 414-300-0260).

(b) To protect food from contamination:

(A) A suitable dispensing utensil, that is not used for any other purpose, shall be used to transfer a food item to each child's plate or bowl; and

(B) A bowl, platter, pitcher, or dispensing utensil used for serving food or drink shall not be refilled or reused without first being washed and sanitized.

(c) Milk and fluid milk products shall be dispensed from a commercially filled plastic container of not more than one-gallon capacity, individual half-pint containers, or from a refrigerated bulk container equipped with an approved dispensing device.

(A) Milk containers shall be opened immediately before pouring.

(B) Any unused portions left in the original container shall be returned immediately to refrigeration.

(C) Unused portions of milk left in a pitcher shall be discarded.

(d) All food, once removed from the kitchen for service, shall be discarded.

(e) Leftover prepared food which has not been served shall be labeled and dated, rapidly cooled, and used within 36 hours, or frozen immediately for later use.

Stat. Auth.: ORS 657A.260

Stats. Implemented: ORS 657A.260

Hist.: CSD 21-1988, f. & cert. ef. 9-29-88; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-010-0660; CCD 4-2001, f. 7-13-01, cert. ef. 7-15-01; CCD 3-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10

## 414-300-0260

### Cleaning, Sanitizing, and Storage of Food Service Equipment and Utensils

(1) Tableware and kitchenware (e.g., pots, pans and equipment) shall be washed, rinsed, and sanitized after each use:

(a) When mechanical cleaning and sanitizing methods are used, the requirements in the Health Division's administrative rules, OAR 333-150-0000, Food Sanitation Rules, shall be met;

(b) When manual washing, rinsing, and sanitizing of dishes and equipment is used, the requirements in the Health Division's administrative rules, OAR 333-150-0000, Food Sanitation Rules, shall be met.

(2) Food-contact surfaces of equipment shall be washed, rinsed, and sanitized after each use.

(3) All multi-use utensils and counters, shelves, tables, refrigeration equipment, sinks, drain boards, dish tables, cutting boards, appliances, and other equipment or utensils used for food preparation shall be kept clean and in good repair.

(4) After being sanitized, all tableware, equipment, and utensils shall be air dried.

(5) After being cleaned and sanitized, tableware and utensils shall be:

(a) Stored in a clean, dry place protected from insects, dust, and other contamination; and

(b) Handled in a way that protects them from contamination.

Stat. Auth.: ORS 657A.260

Stats. Implemented: ORS 657A.260

Hist.: CSD 21-1988, f. & cert. ef. 9-29-88; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-010-0662; CCD 4-2001, f. 7-13-01, cert. ef. 7-15-01; CCD 2-2007, f. & cert. ef. 7-13-07; CCD 3-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10

## 414-300-0270

### Nutrition

(1) An operator shall provide or ensure the availability of adequate and nutritious meals and snacks appropriate for the ages and needs of the children served. USDA guidelines will be used to determine if meals and snacks are adequate and nutritious. Foods of minimal nutritional value (e.g., Jell-O, popcorn, desserts, potato chips) shall only be served occasionally and not replace nutritious foods.

(2) Each lunch and dinner served shall equal at least 1/3 of a child's daily nutritional needs. Every meal shall meet USDA guidelines and shall include at least one serving from each of the following groups: fluid milk; breads and grains; meat, fish, poultry or meat alternatives (e.g., dried beans, peanut butter, yogurt or cheese). Each meal shall include two servings of fruits and vegetables. No liquids other than milk and 100% fruit juice shall be counted as part of the daily nutrition.

(3) Each breakfast served shall meet USDA guidelines and shall include at least one serving each of milk, fruit or vegetable, and bread or grain.

(4) Snacks (mid-morning or mid-afternoon) shall meet USDA guidelines and shall consist of food or beverage from at least two of the following food groups: fluid milk; breads and grains; meat, fish, poultry or meat alternatives (e.g., dried beans, peanut butter, yogurt or cheese); fruits and vegetables. No liquids other than milk and 100% fruit juice shall be counted as part of the daily nutrition. A snack shall not consist of only two beverages.

(5) No liquids other than milk, formula, water, and 100 percent fruit juices shall be served to the children in care.

(6) Water shall be freely available to children.

(7) Nutrient concentrates and supplements (protein powders, liquid proteins, vitamins, minerals, and other nonfood substances) shall not be served to a child without a written statement of parental consent and written instructions from a medical practitioner. Special diets, not including vegetarian diets, shall not be served to a child without written instructions from a registered dietician or medical practitioner and written parental consent.

[Publications referenced are available from the agency.]

Stat. Auth.: ORS 657A.260

Stats. Implemented: ORS 657A.260

Hist.: CSD 21-1988, f. & cert. ef. 9-29-88; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-010-0664; CCD 4-2001, f. 7-13-01, cert. ef. 7-15-01; CCD 3-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10

## 414-300-0280

### Meals and Snacks

(1) Meals and snacks provided to children shall meet the following requirements:



# ADMINISTRATIVE RULES

(a) Food services hours may be flexible but there shall be no more than 3-1/2 hours between meals and snacks in any center providing care for the same children 3 1/2 or more consecutive hours;

(b) In a center open morning through afternoon, lunch and morning and afternoon snacks shall be served to the children in care. If breakfast is served in the center to all children, a midmorning snack is not required, as long as there is no more than 3 1/2 hours between meals;

(c) School age children arriving after school shall be served a snack; and

(d) When the planned attendance is prior to 7 a.m. or after 6:30 p.m., a child shall be offered a complete meal if it is not provided or arranged for by the parent(s).

(2) Meals for children shall be:

(a) Prepared on-site;

(b) Catered; or

(c) Provided by the parent(s).

(3) During the service and eating of meals and snacks, the appropriate number of staff to meet staff/child ratios shall be engaged with the children in food-related activities.

(4) Proper hand washing, as specified in OAR 414-300-0180(6) shall be practiced prior to and after eating meals or snacks.

(5) When parent(s) provide food for the meal:

(a) Food shall be brought on a daily basis and be ready to eat;

(b) All food and beverage containers shall be labeled with the child's name;

(c) The center shall provide at least one serving of milk to each child at meals and shall provide morning and afternoon snacks;

(d) Each child's food shall be monitored daily to ensure that the food meets nutritional requirements as defined in OAR 414-300-0270;

(e) The center shall have sufficient food available to supplement any lunch that does not meet nutrition requirements as defined in OAR 414-300-0270;

(f) If parents bring food for all the children as snacks or for celebrations, the food shall be commercially prepared and served by the center in an approved manner; and

(g) There shall be a refrigerator on site to store foods needing refrigeration.

(6) Catered foods shall be:

(a) Prepared in a kitchen approved by the State Health Division or a county health department; and

(b) Delivered in a safe, sanitary manner with food maintained at the required temperature (OAR 414-300-0250).

(c) If meals are catered, the process of receiving, holding and serving food shall be approved by the environmental health specialist.

(7) To serve family style meals, where food is brought to the table in larger quantities and served to the plates from the table, a center must have a written plan, approved by the environmental health specialist and CCD, which includes at least the following elements:

(a) Provision for handwashing immediately prior to eating;

(b) Separate serving portions for each table;

(c) Serving utensils distinct from eating utensils;

(d) Table accommodations for group sizes no larger than those stated in OAR 414-300-0130, Table 3A or Table 3B, for that age group;

(e) Provision for serving mildly ill children so as to prevent the spread of the illness; and

(f) The discarding of any food brought to the table and not eaten.

(8) If there is no kitchen in the center and if meals or snacks are not catered:

(a) Only single service utensils shall be used;

(b) Either commercially-prepared, individually-packaged, single-serving foods shall be served or the serving of bulk food shall be approved by the environmental health specialist;

(c) Utensils that require washing shall not be used or stored on site;

(d) Food shall be stored in a space used only for food, beverages and single-service utensils; and

(e) If foods needing refrigeration are served, the center shall have a refrigerator.

(9) A center serving children under 12 months of age shall comply with the following requirements for those children:

(a) Each child shall be fed on his/her own feeding schedule;

(b) When formula is provided by the center, it shall be either the commercially prepared, iron-enriched, ready-to-feed type or shall be prepared from powder or concentrate and diluted according to manufacturers' instructions. When formula is prepared on site, it must be mixed in a kitchen approved by the environmental health specialist, and the program must have a written plan for mixing formula and sanitizing bottles and nipples. The plan must be approved in writing by the environmental health specialist;

(c) Formula, breast milk, and food provided by the parent(s) shall be clearly marked with the child's name and refrigerated if required;

(d) Whole milk, skim milk, 1%, and 2% milk shall not be served unless requested in writing by the child's parent(s) and with a medical provider's written permission.

(e) Any bottles used for feeding liquid must be sterilized at the center by boiling or must come from home labeled by the parent with the child's name. Nipples must be stored in a closed container after sterilizing;

(f) Solid foods fed to infants shall be selected from the food groups specified in OAR 414-300-0270(2):

(A) Solid foods shall not be fed to infants less than four months of age without parental consent;

(B) Solid food shall not be served directly from the container;

(C) Leftovers in the serving container shall be discarded; and

(D) Solid foods, with the exception of finger foods, shall be fed with a spoon.

(g) Honey or foods containing honey shall not be served to children under 12 months of age; and

(h) Children who cannot feed themselves shall be held or, if able to sit alone, fed in an upright position.

(A) Infants up to six months of age shall be held while bottle fed.

(B) Bottles shall never be propped. The child or a staff person shall hold the bottle.

(C) Infants no longer being held for feeding shall be fed in a manner that provides safety and comfort.

Stat. Auth.: ORS 657A.260

Stats. Implemented: ORS 657A.260

Hist.: CSD 21-1988, f. & cert. ef. 9-29-88; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-010-0666; CCD 4-2001, f. 7-13-01, cert. ef. 7-15-01; CCD 8-2003, f. 12-23-03, cert. ef. 12-28-03; CCD 3-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10

## 414-300-0290

### Program Plan

(1) The center shall develop and post a written daily schedule for each group of children, according to their ages, interests and abilities. The schedule shall:

(a) Cover all hours of operation;

(b) Include regularity of routine activities such as eating, napping and toileting;

(c) Include periods of outdoor play each day when weather permits; and

(d) Include one or more regularly scheduled rest periods. Children who do not sleep after 20-45 minutes of quiet time must be provided with an alternative quiet activity. The activity may be in the same room where children are sleeping if it is not distracting to sleeping children.

(2) The center shall follow the written daily schedule, allowing flexibility to respond to the needs of individual children and/or groups of children.

Stat. Auth.: ORS 657A.260

Stats. Implemented: ORS 657A.260

Hist.: CSD 21-1988, f. & cert. ef. 9-29-88; CSD 10-1990, f. & cert. ef. 4-23-90; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-010-0670; CCD 4-2001, f. 7-13-01, cert. ef. 7-15-01; CCD 3-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10

## 414-300-0295

### Program of Activities for All Children

(1) The center shall provide a written program of activities for each group of children according to their developmental ages, interests, and abilities. The program of activities must allow for change and flexibility and show evidence of the preplanning.

(2) The program of activities shall be planned to provide:

(a) Positive learning experiences appropriate to the individual developmental needs of children in care;

(b) Individual and group activities;

(c) A balance of active and quiet activities;

(d) Opportunities for free choice by children; and

(e) Daily indoor and outdoor activities in which children use both large and small muscles.

(3) The center shall follow the written program of activities.

(4) The center shall inform parents when children are participating in contracted services (e.g., tumbling, music) that the contracted services have not been certified by CCD.

Stat. Auth.: ORS 657A.260

Stats. Implemented: ORS 657A.260

Hist.: CCD 4-2001, f. 7-13-01, cert. ef. 7-15-01; CCD 3-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10

## 414-300-0300

### Infant and Toddler Program of Activities

(1) Each infant and toddler shall be:

(a) Allowed to form and follow his or her own pattern of sleeping and waking periods; and

(b) Given opportunities during each day to move freely by creeping and crawling in a safe, clean, open, warm, and uncluttered area.

(2) Throughout the day, each child shall receive physical contact and individual attention (e.g., being held, rocked, talked to, sung to, and taken on walks inside and outside the center).

(3) Routines relating to activities such as bedtime, feeding, diapering, and toileting shall be used as opportunities for language development, building the child's self esteem, and other learning experiences.

(4) Children shall be encouraged to play with a variety of safe toys and objects.

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(5) Children shall be given appropriate opportunities to use the five senses through sensory play.

(6) Infants must be put to sleep on their backs.

(7) Immediate attention shall be given to the emotional and physical needs of children.

(8) Staff shall encourage the development of self-help skills (dressing, toileting, washing, eating) as children are ready.

(9) In addition to those activities specified in OAR 414-300-0295(2), toddlers shall be given opportunities to participate in:

(a) A variety of activities encouraging creative expression through the arts; and

(b) Running, climbing, and other vigorous physical activities.

(10) Infants and younger toddlers shall have an activity area not used by older children at the same time.

(11) The center shall provide the following information to each parent of an infant and toddler on a daily basis:

(a) Their child's schedule of feeding;

(b) Their child's toilet and diapering activities; and

(c) Their child's sleep schedule.

Stat. Auth.: ORS 657A.260

Stats. Implemented: ORS 657A.260

Hist.: CSD 21-1988, f. & cert. ef. 9-29-88; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-010-0671; CCD 4-2001, f. 7-13-01, cert. ef. 7-15-01; CCD 3-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10

## 414-300-0310

### Preschool-Age Program of Activities

In addition to those activities specified in OAR 414-300-0295(2), preschool age children shall have opportunities, on a daily basis, to choose from a variety of activities and experiences, which shall include:

(1) Creative expression through the arts;

(2) Dramatic play;

(3) Gross motor development;

(4) Fine motor development;

(5) Music and movement;

(6) Opportunities to listen and speak;

(7) Concept development;

(8) Appropriate sensory play; and

(9) A supervised nap or rest period.

Stat. Auth.: ORS 657A.260

Stats. Implemented: ORS 657A.260

Hist.: CSD 21-1988, f. & cert. ef. 9-29-88; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-010-0672; CCD 4-2001, f. 7-13-01, cert. ef. 7-15-01; CCD 3-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10

## 414-300-0320

### School-Age Program of Activities

(1) School age programs shall provide an environment where adults' actions demonstrate respect for school age children's changing physical, emotional and intellectual needs.

(2) School age children shall have the opportunity to take part, on a daily basis, in activities which support their need to practice and build skills in problem-solving, making responsible choices, cooperation, creativity, and appropriate social interactions.

(3) In addition to those activities specified in OAR 414-300-0295(2), school age children shall have opportunities to choose from a variety of activities, including:

(a) Creative expression through the arts;

(b) Individual projects, which may include homework;

(c) Exposure to individual and team physical activities;

(d) Opportunities to experience or learn about the tasks of adulthood (e.g., the world of work, taking responsibility, budgeting); and

(e) Opportunities to rest if tired. The center shall provide a space that encourages rest for those children who wish to rest.

(4) The center shall have age-appropriate activities and equipment for school age children.

Stat. Auth.: ORS 657A.260

Stats. Implemented: ORS 657A.260

Hist.: CSD 21-1988, f. & cert. ef. 9-29-88; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-010-0673; CCD 4-2001, f. 7-13-01, cert. ef. 7-15-01; CCD 3-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10

## 414-300-0330

### Guidance and Discipline

(1) A center shall have a written policy on guidance and discipline of children. The policy shall be posted in the center.

(2) All staff, volunteers and parents shall be familiar with the guidance and discipline policy.

(3) The guidance and discipline policy shall:

(a) Provide for positive guidance, redirection, and the setting of clear-cut limits; and

(b) Be designed to help the child develop self-control, self-esteem, and respect for others.

(4) Only staff, excluding volunteers, shall provide guidance or discipline to a child.

(5) Guidance and discipline shall be fair, consistently applied, timely, and appropriate to the infraction and the age of the child. Positive statements or redirection of behaviors shall be used.

(6) Prohibited punishment includes, but is not limited to:

(a) Hitting, slapping, shaking, striking with hand or instrument, pinching, tying or binding or inflicting any other form of corporal punishment;

(b) Mental or emotional punishment including, but not limited to, name calling, ridicule, yelling, or threats;

(c) Non-prescription chemical restraints used for discipline or to control behavior;

(d) Confining a child in an enclosed area (e.g., a locked or closed room, closet, box);

(e) Forcing or withholding meals, snacks, rest, or necessary toilet use; or

(f) Belittling a child for or forcing a child to clean up after toileting accidents.

(7) The center shall not accept parental permission to use any form of punishment listed in subsection (6) of this rule.

Stat. Auth.: ORS 657A.260

Stats. Implemented: ORS 657A.260

Hist.: CSD 21-1988, f. & cert. ef. 9-29-88; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-010-0674; CCD 4-2001, f. 7-13-01, cert. ef. 7-15-01; CCD 3-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10

## 414-300-0340

### Equipment and Materials

(1) The center shall have play equipment and materials that are:

(a) Appropriate to the developmental needs and interests of the children;

(b) Sturdy and free of sharp points or corners, splinters, protruding nails or bolts, loose rusty parts, hazardous small parts, or paint that contains lead or other toxic materials;

(c) In good condition; and

(d) Easily accessible to the children.

(2) The quantity and variety of play materials (i.e., toys, books and games) shall be sufficient to:

(a) Avoid excessive competition;

(b) Provide a variety of choices to each child;

(c) Provide a balance of:

(A) Active/quiet activities; and

(B) Individual/group activities;

(d) Meet the developmental needs of each group of children; and

(e) Provide the variety of activities required in OAR 414-300-0295, 414-300-0300, 414-300-0310, and 414-300-0320, as appropriate.

(3) The center shall have a variety of age-appropriate toddler, preschool and school age toys, materials and equipment which give children choices from the following:

(a) Blocks;

(b) Manipulatives;

(c) Books;

(d) Sensory experiences;

(e) Gross motor activities;

(f) Music;

(g) Art;

(h) Dramatic play;

(i) Science and/or exploration; and

(j) Discovery of nature.

(4) Infants shall have a variety of appropriate infant toys stimulating to the senses.

Stat. Auth.: ORS 657A.260

Stats. Implemented: ORS 657A.260

Hist.: CSD 21-1988, f. & cert. ef. 9-29-88; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-010-0676; CCD 4-2001, f. 7-13-01, cert. ef. 7-15-01; CCD 3-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10

## 414-300-0350

### Transportation

When transportation is provided by or arranged for by the center, the following requirements shall be met:

(1) Drivers shall:

(a) Be at least 18 years of age;

(b) Hold a current driver's license. If required by the Motor Vehicles Division (DMV), a commercial driver's license shall be obtained; and

(c) Maintain a safe driving record.

(2) The operator shall obtain a copy of the driving record from DMV for each staff whose job description includes driving duties. The DMV check shall be updated annually.

(3) The vehicle shall be:

(a) In compliance with all applicable state and local motor vehicle laws; and

(b) Maintained in a safe operating condition.

(4) If transportation is provided between the center and the child's school or other destination, the center shall have in writing an acknowledgment from the parent(s) that they are aware of the time of day their child is to be picked up and/or delivered by the center. If the pick-up schedule results in

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children being unsupervised at school or other location, the center shall notify parents of this fact.

(5) When transporting children on a regular basis, there shall be sufficient staff to meet the required staff/child ratios (OAR 414-300-0130) for each age group of children being transported.

(a) The driver may count in the staff/child ratios.

(b) Staff shall be teacher-qualified or Aide II qualified. Aide I qualified staff may count in the staff/child ratios if one other staff is teacher-qualified.

(c) If none of the staff is teacher-qualified, an adult in the vehicle shall be trained in first aid and the vehicle shall be equipped with a cell phone or other communication device.

(6) When transporting children on field trips, the center shall follow its procedures for field trips (OAR 414-300-0030(7)(e)). The procedures shall include, but not be limited to, requirements regarding drivers and adult supervision.

(7) When transporting children for any and all purposes:

(a) Children shall be transported only in sections of vehicles designed for and equipped to carry passengers;

(b) A seat that fully supports the passenger shall be provided for each child;

(c) All children, shall be transported in accordance with ORS 811.210. The child safety system and safety belts shall comply with ORS 815.055 and the standards adopted by the Oregon Department of Transportation;

(d) Infants, toddlers, and preschool age children shall leave the vehicle on the same side of the street as the building they will enter;

(e) Drivers delivering children to their homes shall not depart until the child has been received by an authorized person; and

(f) No child shall be left unattended inside or outside a vehicle.

(8) The center shall maintain a written plan for transportation.

Stat. Auth.: ORS 657A.260

Stats. Implemented: ORS 657A.260

Hist.: CSD 21-1988, f. & cert. ef. 9-29-88; CSD 10-1990, f. & cert. ef. 4-23-90; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-010-0678; CSD 11-1994, f. & cert. ef. 5-23-94; CCD 4-2001, f. 7-13-01, cert. ef. 7-15-01; CCD 3-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10

## 414-300-0360

### Night Care

A center providing night care to children shall meet all the requirements for child care centers contained in OAR 414-000-0300 through 414-300-0410, except for 414-300-0150, 414-300-0290 through 414-300-0320, and 414-300-0340(2)(e). In addition, the center shall comply with the following requirements:

(1) Staffing:

(a) During the hours of night care, the required staff/child ratio shall be maintained in the center.

(b) There shall be at least two staff persons present and awake at all times.

(c) All sleeping and awake children shall be within sight and sound of staff at all times. Audio and/or video monitoring devices shall not substitute for sight and sound supervision.

(2) Safety:

(a) No one shall be allowed to enter except authorized persons including, but not limited to, the child's family, persons authorized by the parent(s), staff, CCD certification representatives, fire safety officials, and environmental health specialists.

(b) The center shall provide staff training for evacuating sleeping children in an emergency.

(c) There shall be emergency lighting in each room used by children.

(3) Activities:

(a) The center shall provide a program of activities for children according to their ages, interests, and abilities.

(b) There shall be quiet time activities, such as story-time, games, arts and crafts, and reading, for each child arriving before bedtime.

(c) There shall be toys and equipment available to meet the needs of children in night care.

(d) There shall be an activity area away from sleeping children where the awake children may engage in activities.

(4) Sleeping Arrangements:

(a) Space shall be arranged so that children may go to sleep at various times, based on their age and need for rest.

(b) All sleeping rooms used by children shall have two usable exits. A sliding door or window that can be used to evacuate children may be considered a usable exit.

(c) Each child who spends the majority of his/her sleeping hours per night in night care shall have a bed and mattress, or another sleeping arrangement that provides adequate support to a child's body with a waterproof cover and of a size appropriate to the age of the child:

(A) Cribs shall comply with OAR 414-300-0215(1).

(B) The upper level of bunk beds shall not be used for children under 10 years of age.

(C) The upper level of bunk beds may be used for children 10 years or older if a bed rail and safety ladder are provided.

(d) Each child who does not spend the majority of his/her sleeping hours in night care shall have a crib, cot, or mat with bedding that complies with OAR 414-300-0210 and 414-300-0215.

(e) Children who attend the center for the evening hours, but do not spend the whole night, shall have an opportunity to sleep, if needed.

(f) No children shall share a bed.

(g) Each sleeping arrangement occupied by a child shall have sheets, pillows, pillowcases, and blankets.

(h) Bed linens shall be changed upon change of occupant and at least once a week.

(5) Personal Hygiene:

(a) Each child shall have an individual washcloth, towel, toothbrush, comb or brush, and sleepwear.

(b) Children staying the night shall have the opportunity to bathe and brush their teeth:

(A) There shall be at least one bathtub or shower for each 15 children. Bathtubs and showers shall be equipped to prevent slipping.

(B) When bathing, showering, or brushing teeth, children shall be supervised by staff.

(C) Privacy between the sexes shall be maintained for school age children.

(D) Tubs or showers shall be cleaned after each use. If visibly soiled, tubs and showers must be cleaned prior to sanitizing.

(E) Glass shower doors or glass tub enclosures shall be constructed of safety glass.

(6) Meals and Snacks:

(a) Each child present at the time the evening meal is scheduled shall be served a meal.

(b) A nutritious nighttime snack (OAR 414-300-0270(4)) shall be available to all children in care.

(c) Each child present at the time breakfast is scheduled shall be served breakfast, unless the parent(s) specifies otherwise.

Stat. Auth.: ORS 657A.260

Stats. Implemented: ORS 657A.260

Hist.: CSD 21-1988, f. & cert. ef. 9-29-88; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-010-0680; CCD 1-1995, f. 10-30-95, cert. ef. 11-1-95; CCD 4-2001, f. 7-13-01, cert. ef. 7-15-01; CCD 8-2003, f. 12-23-03, cert. ef. 12-28-03; CCD 3-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10

## 414-300-0380

### Swimming Activities

The following requirements apply to swimming/water activities provided on the premises of a child care center, or off premises by another organization, public or private, when part of the center's program.

(1) Definitions:

(a) "Beginning swimmer" means a child who has mastered the skills required to:

(A) Hold his breath with his head submerged;

(B) Perform a front and back float;

(C) Perform the flutter kick on his front and back;

(D) Be able to level off from a vertical entry into a float position; and

(E) Do a combined stroke (front or back) for at least 20 feet without stopping.

(b) "Non-swimmer" means a child who does not meet the definition of beginning swimmer.

(c) "Lifeguard" means a person holding current certification and meeting the requirements of OAR 333-060-0015(13).

(d) "Swimming pool" means a swimming or wading pool licensed by the Oregon Health Division or one of its delegated agents under the requirements of OAR 333-060-0005 through 333-060-0225.

(e) "Wading" means water activities in which the water's depth is no higher than the child's knee.

(2) General Health and Safety:

(a) Children with diarrhea or who have had diarrhea within the last two weeks shall not use the pool.

(b) Children who are not toilet trained shall wear swim diapers.

(c) Children shall use the toilet and shower before entering the pool.

(d) Proper supervision shall be maintained, as specified in OAR 414-300-0380(3)(e), (f) and (g) and 414-300-0380(4)(d).

(e) The pool operator shall maintain water quality as required in OAR 333-060-0200 or pool use shall cease until the water quality is restored.

(f) Children using the pool shall participate in basic water safety instruction based on their ages and developmental levels.

(g) Recreational swimming is not allowed for non-swimmers ages 6 weeks to 36 months in swimming pools with water depth 24 inches and over.

(h) Portable-style wading pools are not permitted.

(3) On-Premises Pool Facilities:

(a) On-premises pool facilities shall be licensed by the Oregon Health Division or its delegated agent and shall comply with the requirements in OAR 333-060-0005 through 333-060-0225.

(b) On-premises pool facilities shall have toilets and showers for use by the swimmers.

(c) All new pools or pools at centers certified after July 15, 2001, shall have dressing areas for each sex, with storage for the children's clothes.

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(d) All activities occurring in a pool shall be under the direction and direct supervision of lifeguards.

(e) Center staff/child ratios shall be maintained at all times children are in the pool area, as specified in Table 4 of this rule.

(A) All adults counted in the staff/child ratios in Table 4 shall be able to swim if the water is more than 48 inches deep and, regardless of the water depth, shall be dressed for swimming.

(B) For children 6 weeks to 36 months, one of the required staff must be in the water. Other staff may be on deck.

(f) Lifeguard/child ratios shall be maintained at all times children are in the pool area:

(A) For children not yet attending kindergarten, there shall be one lifeguard for every 20 children;

(B) For children attending kindergarten and older, there shall be one lifeguard for every 40 children; and

(C) For mixed age groups of children, the age of the youngest child shall determine the lifeguard/child ratio.

(g) During all periods of pool operation, the appropriate number of life guards shall be on duty in the pool area. During periods of recreational swimming, at least one of the required number of life guards shall be stationed on the pool deck.

(h) Water activities that involve a sprayer or spray feature using potable water that is not re-circulated or collected may be conducted by the center. [Table not included. See ED. NOTE.]

(i) A written plan for pool emergencies shall be available to all staff. The plan shall cover procedures for medical emergencies, chemical emergencies and severe weather.

(A) Staff shall be familiar with emergency procedures, the use of safety equipment and emergency contacts.

(B) The center shall provide in-service training and/or drills of the emergency procedures for the pool at least every six months. The director shall keep a written record of the type, date, time and duration of the training/drills.

(C) Emergency telephone numbers shall be posted near the telephone in the pool area and near a centrally-located and accessible telephone in the center.

(j) Safety equipment shall be provided and comply with OAR 333-060-0005 through 333-060-0225. In addition:

(A) All pools shall have an emergency telephone located in the pool area. The telephone shall be able to dial directly for emergency assistance, unless otherwise approved by the Oregon Health Division.

(B) A bodily-fluid spill clean-up kit shall be provided in the pool area. The kit shall consist, at a minimum, of protective gloves, disinfectant, clean-up materials (e.g., bucket, sponge, paper towels), and a biohazard waste bag, be stored in a complete condition, and be replaced or restocked immediately after use.

(C) A rescue tube, of the type required by the lifeguard certifying agency, shall be provided for each lifeguard on duty.

#### (4) Off-Premises Pool Facilities:

(a) Off-premises pool facilities used by the center shall be licensed by the Oregon Health Division as public swimming pools.

(b) The off-premises pool management shall be made aware of the child care center rules regarding swimming activities.

(c) Center staff and children shall comply with the rules and regulations of the public swimming pool.

(d) Center staff shall comply with the staff/child ratios in Table 4 of this rule. Lifeguard/child ratios shall be determined by the public swimming pool.

(e) Children shall be within sight and sound of center staff at all times.

(f) First aid supplies and a copy of each child's medical release form shall be taken to off-premises pool facilities.

#### (5) Natural Bathing Areas:

(a) The center shall not conduct swimming activities in areas with flowing water.

(b) Wading is the only water activity permitted in shallow surf, lakes, rivers and streams.

Stat. Auth.: ORS 657A.260  
Stats. Implemented: ORS 657A.260

Hist.: CSD 21-1988, f. & cert. ef. 9-29-88; CSD 16-1990, f. & cert. ef. 6-12-90; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-010-0682; CCD 1-1995, f. 10-30-95, cert. ef. 11-1-95; CCD 4-2001, f. 7-13-01, cert. ef. 7-15-01; CCD 3-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10

### 414-300-0390

#### Drop-in Care

(1) A Drop-In Center shall meet all the requirements for child care centers contained in OAR 414-300-0000 through 414-300-0420, except for 414-300-0150.

(2) The center shall comply with the following requirements which apply to Drop-In Care provided exclusively for drop-in children as a single primary service or as a separate component of a child care center.

(a) The child care area used for Drop-In Care shall not be used by the children from any other component of the center.

(b) Staff assigned to provide Drop-In Care shall not be responsible for children from any other component of the center at the same time.

(c) The planned attendance for a child in Drop-In Care shall not exceed two and one half full days per week, or twenty-five hours per week.

Stat. Auth.: ORS 657A.260  
Stats. Implemented: ORS 657A.260

Hist.: CSD 21-1988, f. & cert. ef. 9-29-88; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-010-0686; CCD 1-1995, f. 10-30-95, cert. ef. 11-1-95; CCD 4-2001, f. 7-13-01, cert. ef. 7-15-01; CCD 3-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10

### 414-300-0400

#### Denial and Revocation of Certification

(1) Certification may be denied or revoked if a center fails to meet requirements, provide CCD with information requested, allow an inspection, correct deficiencies, or is operated or maintained in a manner which is harmful to the health, safety or wellbeing of children in care.

(2) Revocation of a certification shall occur only after the director receives notification of deficiencies, has adequate time to make corrections, and fails to do so.

(3) The operator has the right to appeal any decision to deny or revoke the certification, subject to the provisions of Chapter 183, Oregon Revised Statutes.

(4) An operator whose certification has been revoked shall not be eligible to reapply for three years after the revocation is effective.

(5) If necessary to protect children, CCD may give public notice of denial or revocation action taken. The type of notice will depend on individual circumstances.

Stat. Auth.: ORS 657A  
Stats. Implemented: ORS 657A.260

Hist.: CSD 21-1988, f. & cert. ef. 9-29-88; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-010-0688; CCD 4-2001, f. 7-13-01, cert. ef. 7-15-01; CCD 3-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10

### 414-300-0410

#### Suspension of Certification

(1) The Child Care Division (CCD) may immediately, and without prior notice, suspend the child care certification when, in the opinion of CCD, such action is necessary to protect the children from physical or mental abuse or a substantial threat to health, safety or well-being. Such action may be taken before an investigation is completed.

(a) An operator whose certification has been suspended must immediately notify, verbally or in writing, all parents of the suspension.

(b) An operator whose certification has been suspended must post the suspension on the main entry door where it can be viewed by parents and others.

(2) The operator has the right to appeal any decision to suspend the certification, subject to the provisions of chapter 183, Oregon Revised Statutes.

(3) If the operator does not request a hearing and the conditions which resulted in suspension have not been corrected, the certification shall be revoked (OAR 414-300-0400).

(4) If necessary to protect children, CCD may give public notice of suspension action taken. The type of notice will depend on individual circumstances.

Stat. Auth.: ORS 657A.260  
Stats. Implemented: ORS 657A.260

Hist.: CSD 21-1988, f. & cert. ef. 9-29-88; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-010-0690; CCD 1-1995, f. 10-30-95, cert. ef. 11-1-95; CCD 4-2001, f. 7-13-01, cert. ef. 7-15-01; CCD 3-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10

### 414-300-0415

#### Civil Penalty

(1) A facility that violates these rules or the terms and conditions of certification under these rules may be subject to a civil penalty.

(2) For a serious violation, as defined in OAR 414-300-0005(40) a facility may be subject to a civil penalty of \$100 for the first violation after a written warning with time to correct is issued; and an additional \$100 for each subsequent violation up to \$500 per violation, not to exceed \$1,000 in a quarter for all rule violations.

(3) For other violations, a provider may be subject to a civil penalty of \$75 for the first violation after a written warning with time to correct is issued, \$150 for a second violation, \$250 for a third violation and an additional \$100 for each subsequent violation up to \$500 per violation, not to exceed \$1,000 in a quarter for all rule violations.

(4) The operator has the right to appeal any decision to impose a civil penalty, subject to the provisions of chapter 183, Oregon Revised Statutes.

Stat. Auth.: ORS 657A.260  
Stats. Implemented: ORS 657A.260

Hist.: CCD 3-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10

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**Rule Caption:** Amends rules regarding Certified Family Child Care Centers and adopts rules regarding civil penalties for Certified Family Child Care Centers.

**Adm. Order No.:** CCD 4-2009(Temp)

**Filed with Sec. of State:** 12-30-2009

**Certified to be Effective:** 1-1-10 thru 6-30-10

**Notice Publication Date:**

**Rules Adopted:** 414-350-0405

# ADMINISTRATIVE RULES

**Rules Amended:** 414-350-0000, 414-350-0010, 414-350-0020, 414-350-0030, 414-350-0040, 414-350-0050, 414-350-0060, 414-350-0070, 414-350-0080, 414-350-0090, 414-350-0100, 414-350-0110, 414-350-0115, 414-350-0120, 414-350-0130, 414-350-0140, 414-350-0150, 414-350-0160, 414-350-0170, 414-350-0180, 414-350-0190, 414-350-0200, 414-350-0210, 414-350-0220, 414-350-0230, 414-350-0235, 414-350-0240, 414-350-0250, 414-350-0375, 414-350-0380, 414-350-0390, 414-350-0400

**Subject:** Amends rules to change the reference to the Criminal History Registry to the Central Background Registry, changes the term “special needs child” to child with special needs, specifies the licensing requirements and adopts rules regarding imposition of civil penalties on Certified Child Care Centers for rule violations. This rule also prohibits providers who have had certain negative actions taken against their license or enrollment in the Central Background Registry from doing certain types of exempt child care.

**Rules Coordinator:** Janet Orton—(503) 947-1679

## 414-350-0000

### Applicability of Rules

(1) OAR 414-350-0000 through 414-350-0400 set forth the Child Care Division’s requirements for the inspection and certification of certified family child care homes subject to Oregon laws governing child care facilities (ORS 657A.030, 657A.250 through 657A.310, 657A.350 through 657A.460, and 657A.990) that:

(a) Care for no more than 16 children; and

(b) Are located in a building constructed as a single-family dwelling; and

(c) Care for three or fewer children if that person’s enrollment in the Central Background Registry has been denied or the person has been removed for cause, or suspended; or their child care facility certification or registration has been denied or revoked for cause, or suspended, or the person has voluntarily withdrawn their application or closed their registration or certification while under investigation by CCD; and

(d) Provide care that is primarily educational to children age 36 months or older but not attending kindergarten for four hours or less a day if that person’s enrollment in the Central Background Registry has been denied or the person has been removed for cause, or suspended; or their child care facility certification or registration has been denied or revoked for cause, or suspended, or the person has voluntarily withdrawn their application or closed their registration or certification while under investigation by CCD; and

(e) That provide care on an occasional basis by a person not ordinarily engaged in providing child care if that person’s enrollment in the Central Background Registry has been denied or the person has been removed for cause, or suspended; or their child care facility certification or registration has been denied or revoked for cause, or suspended, or the person has voluntarily withdrawn their application or closed their registration or certification while under investigation by CCD.

(f) That provide care for children from only one family other than the person’s own family if that person’s enrollment in the Central Background Registry has been denied or the person has been removed for cause, or suspended; or their child care facility certification or registration has been denied or revoked for cause, or suspended, or the person has voluntarily withdrawn their application or closed their registration or certification while under investigation by CCD.

(2) The following child care facilities are specifically excluded by law and are not required to comply with these rules:

(a) A registered family child care home;

(b) A facility that is primarily educational and provides care for less than four hours per day to children 36 months old or older but not yet attending kindergarten except as provided in 414-350-0000(1)(d);

(c) Care provided in the home of the child; or

(d) A facility that provides care on an occasional basis by a person, sponsor, or organization not ordinarily engaged in providing child care except as provided in 414-350-0000(1)(e); or

(e) A facility that provides care for no more than three children other than the person’s own children except as provided in 414-350-0000(1)(c);

(f) A facility that provides care for children from only one family other than the person’s own family except as provided in 414-350-0000(1)(f).

(3) If any court of law finds that any clause, phrase, or provision of these rules is unconstitutional or invalid for any reason whatsoever, this finding shall not affect the validity of the remaining portion of these rules.

(4) For purposes of these rules, the determination of compliance or non-compliance shall be made by CCD.

(5) Providers have a right to review any action or decision affecting them. The CCD grievance procedures are available upon request to all applicants for child care certification or operators of certified family child care homes.

(6) These rules apply only during the hours the provider is conducting the certified family child care business.

Stat. Auth.: ORS 657A

Stats. Implemented: ORS 657A.260 & 657A.280

Hist.: CSD 21-1988, f. & cert. ef. 9-29-88; CSD 10-1990, f. & cert. ef. 4-23-90; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-010-0700; CCD 1-1995, f. 10-30-95, cert. ef. 11-1-95; CCD 3-2002, f. 10-14-02, cert. ef. 10-15-02; CCD 6-2005(Temp), f. 12-29-05, cert. ef. 1-1-06 thru 6-29-06; CCD 3-2006, f. & cert. ef. 6-13-06; CCD 4-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10

## 414-350-0010

### Definitions

The following words and terms, when used in OAR 414-350-0000 through 414-350-0400, have the following meanings:

(1) “Activity Area” means the area of the home that is available, during all the hours of operation, for the children’s activities. This area excludes the food preparation area of the kitchen, bathrooms, storage areas, and those parts of rooms occupied by heating stoves, furniture and stationary equipment not used by children.

(2) “Attendance” means children actually present in the home at any given time.

(3) “Capacity” means the total number of children allowed in the certified family child care home at any one time, based on the available square footage, the ages of the children to be served and the total number of staff.

(4) “Caregiver” means any person, including the provider, who cares for the children in the certified family child care home and works directly with the children, providing care, supervision and guidance.

(5) “Central Background Registry” means CCD’s Registry of individuals who have been approved to work in a child care facility in Oregon pursuant to ORS 657A.030 and OAR 414-061-0000 through 414-061-0120.

(6) “Certification” means the certification that is issued by CCD to a certified family child care home pursuant to ORS 657A.280.

(7) “Certified Family Child Care Home” or “Home” means: a child care facility located in a building constructed as a single family dwelling that has certification to care for a maximum of 16 children at any one time.

(8) “Child Care” means the care, supervision, and guidance on a regular basis of a child, unaccompanied by a parent, guardian, or custodian, during a part of the 24 hours of the day, with or without compensation. Child care does not include the care provided:

(a) In the home of the child;

(b) By the child’s parent or guardian, or person acting in loco parentis;

(c) By a person related to the child by blood or marriage within the fourth degree as determined by civil law;

(d) On an occasional basis by a person, sponsor, or organization not ordinarily engaged in providing child care;

(e) By providers of medical services; or

(f) By a person who is a member of the child’s extended family, as determined by the division on a case-by-case basis.

(9) “Child Care Child” means any child six weeks of age or older and under 13 years of age, or a child with special needs under the age of 18 who requires a level of care over and above the norm for his/her age, and for whom the provider has supervisory responsibility in the temporary absence of the parent.

(10) “Child with Special Needs” means a child under the age of 18 who requires a level of care over and above the norm for his/her age due to a physical, developmental, behavioral, mental or medical disability.

(11) “CCD” means the Child Care Division of the Employment Department or the Administrator or staff of the Division.

(12) “Child Care Facility” means any facility that provides child care to children, including a child care center, certified family child care home, and registered family child care home. It includes those known under a descriptive name, such as nursery school, preschool, kindergarten, child play school, before and after school care, or child development center, except those excluded under ORS 657A.250. This term applies to the total child care operation. It includes the physical setting, equipment, staff, provider, program, and care of children.

(13) “Civil Penalty” means a fine imposed by CCD on a provider for violation of these rules.

(14) “Enrollment” means all children registered to attend the certified family child care home.

(15) “Guidance and Discipline” means the on-going process of helping children develop self control and assume responsibility for their own acts.

(16) “Infant” means a child who is at least 6 weeks of age but is not yet walking alone.

(17) “Night Care” means care given to children who sleep at the home for all or part of the night.

(18) “Occasional” means infrequently or sporadically, including but not limited to care that is provided during summer or other holiday breaks when children are not attending school, but not to exceed 70 calendar days in a year.

(19) “Operator” means the person responsible for the overall operation of the home and who has the authority to perform the duties necessary to meet certification requirements. In a certified family child care home, the operator is the provider.

# ADMINISTRATIVE RULES

(20) "The Oregon Registry" means Pathways for Professional Recognition in Childhood Care and Education is a voluntary, statewide program to document and recognize the professional achievements of people who work in the childhood care and education profession.

(21) "Owner" means the person who holds the certified family child care business as property and has a major financial stake in the operation of the home.

(22) "Parent" means parent(s), custodian(s), or guardian(s) exercising physical care and legal custody of the child.

(23) "Potentially hazardous food" means any food or beverage containing milk or milk products, eggs, meat, fish, shellfish, poultry, cooked rice, beans or pasta, and all other previously cooked foods, including leftovers.

(24) "Pre-school Age Child" means a child 36 months of age to eligible to be enrolled in the first grade and, during the months of summer vacation from school, eligible to be enrolled in the first grade in the next school year.

(25) "Program" means all activities and care provided for the children during their hours of attendance at the certified family child care home.

(26) "Provider" means the person in the certified family child care home who is responsible for the children in care, is the children's primary caregiver, and in whose name the certification is issued. In a certified family child care home, the provider is the operator.

(27) "Qualifying Teaching Experience" means 1,500 hours, gained in at least three-hour blocks, within a 36-month period, with a group of children in an on-going group setting. Such a setting includes a kindergarten, preschool, child care center, certified or registered family child care home, Head Start program, or equivalent. Qualifying teaching experience must be documented. Time spent in a college practicum or practice teaching is considered qualifying teaching experience. The following does not constitute qualifying teaching experience: leader of a scout troop; Sunday school teacher; and coaching.

(28) "Sanitizing" means using a bactericidal treatment that provides enough heat or concentration of chemicals for enough time to reduce the bacterial count, including disease-producing organisms, to a safe level on utensils, equipment, and toys.

(29) "School-Age Child" means a child eligible to be enrolled in the first grade or above and, during the months of summer vacation from school, a child eligible to be enrolled in the first grade or above in the next school year.

(30) "Serious complaint" means a complaint filed against a certified child care home by a person who has alleged that:

- (a) Children are in imminent danger;
- (b) There are more children in care than allowed by certified capacity;
- (c) Corporal punishment is being used;
- (d) Children are not being supervised;
- (e) Multiple or serious fire, health or safety hazards are present in the home;

(f) Extreme unsanitary conditions are present in the home; or  
(g) Adults are in the home who are not enrolled in the Central Background Registry.

(31) "Substitute Caregiver" means a person who acts as the children's primary caregiver in the certified family child care home in the temporary absence of the provider.

(32) "Supervision" means the act of caring for a child or group of children. This includes awareness of and responsibility for the ongoing activity of each child. It requires a caregiver to be within sight and/or sound of the children. Knowledge of children's needs, and accountability for children's care and well-being. Supervision also requires that staff be near and have ready access to children in order to intervene when needed.

(33) "Toddler" means a child who is able to walk alone but is under 36 months of age. "Younger toddler" means a child who is able to walk alone but is under 24 months of age; "older toddler" means a child who is at least 24 months of age but under 36 months of age.

(34) "Useable Exit" means an unobstructed door or window through which caregivers and children can evacuate the home in case of a fire or emergency. Doors must be able to be opened from the inside without a key, and window openings must be at least 20 inches wide and 22 inches in height, with a net clear opening of 5 square feet and a sill no more than 48 inches above the floor.

Stat. Auth.: ORS 657A.260  
Stats. Implemented: ORS 657A.260  
Hist.: CSD 12-1988, f. 6-29-88, cert. ef. 7-1-88; CSD 2-1989, f. & cert. ef. 1-25-89; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-010-0705; CCD 1-1995, f. 10-30-95, cert. ef. 11-1-95; CCD 5-1999(Temp), f. 10-21-99, cert. ef. 10-23-99 thru 1-1-00; CCD 10-1999, f. 12-29-99, cert. ef. 1-1-00; CCD 3-2002, f. 10-14-02, cert. ef. 10-15-02; CCD 6-2003, f. 12-23-03, cert. ef. 12-28-03; CCD 7-2003, f. 12-23-03, cert. ef. 12-28-03; CCD 3-2004, f. 7-30-04, cert. ef. 8-1-04; CCD 6-2005(Temp), f. 12-29-05, cert. ef. 1-1-06 thru 6-29-06; CCD 3-2006, f. & cert. ef. 6-13-06; CCD 1-2007(Temp), f. & cert. ef. 3-20-07 thru 9-16-07; CCD 2-2007, f. & cert. ef. 7-13-07; CCD 4-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10

## 414-350-0020 Application for a Child Care Certificate

(1) No person, unless exempted by Oregon laws governing child care facilities, shall operate a certified family child care home without a valid certification issued by the Child Care Division (CCD).

(2) Application for certification shall be made on forms provided by CCD.

(3) A completed application is required:

- (a) For the initial certification;
- (b) For the annual renewal of certification; and
- (c) Whenever there is a change of provider or location.

(4) The applicant shall complete and submit an application to CCD at least:

(a) 45 days before the planned opening date of the certified family child care home; and

(b) For renewal of certification, 30 days prior to the expiration of the certificate.

(A) The expiration date of the current certification, the current certification, unless officially revoked, remains in force until CCD has acted on the application for renewal and has given notice of the action taken.

(B) If an application for renewal and payment of the required fee is not received by CCD at least 30 days prior to the expiration date of the current certification, the certification will expire as of the date stated on the certificate and child care must cease at the facility, unless the renewal is completed before the expiration date.

(C) An application for certification shall be accompanied by a non-refundable filing fee.

(D) For the initial application, a change of provider, the reopening of a facility after a lapse in certification, or a change of location, the fee is \$25 plus \$2 for each certified space (e.g., the fee for a certified family child care home certified to care for 12 children is \$24 + \$25 = \$49).

(E) For a renewal application, the fee is \$2 for each certified space.

(5) All civil penalties must be paid in full.

(6) An application for certification must be completed by the applicant and approved by CCD within 12 months of submission or the application will be denied. If an application is denied, an applicant will be required to submit a new application for certification.

(7) The applicant shall submit with the initial application or when the home is being remodeled a drawing showing the dimensions of all rooms to be used (length and width), the planned use of each room, the location of required exits, the placement of the kitchen and bathrooms, and the location of plumbing fixtures.

(8) The applicant shall provide verification to CCD that the home meets all applicable building codes and zoning requirements that apply to certified family child care homes:

- (a) Before the initial certification is issued; and
- (b) Whenever the home is remodeled.

(9) The home shall be approved by an environmental health specialist registered under ORS Chapter 700 or an authorized representative of the Department of Human Services before a certification is issued by CCD.

(10) The home may be inspected by the local fire jurisdiction when local ordinances require a fire life safety survey as part of a business license or when CCD determines there is a need to do so.

(11) If the provider applies to care for more than 12 children, the provider must complete a fire life safety self evaluation. CCD staff and the provider will review the self evaluation. If fire safety concerns are identified, CCD staff may consult with the fire marshal and after consultation, may request that the fire marshal complete a fire life safety inspection.

(12) Upon receipt of a completed application, a representative of CCD shall evaluate the home and all aspects of the proposed operation to determine if certification requirements (OAR 414-350-0000 through 414-350-0400) are met.

Stat. Auth.: ORS 657A.260  
Stats. Implemented: ORS 657A.260, 657A.270, 657A.280 & 657A.310  
Hist.: CSD 12-1988, f. 6-29-88, cert. ef. 7-1-88; CSD 2-1989, f. & cert. ef. 1-25-89; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-010-0710; CCD 1-1995, f. 10-30-95, cert. ef. 11-1-95; CCD 2-1995(Temp), f. 12-28-95, cert. ef. 1-1-96; CCD 2-1996, f. 3-19-96, cert. ef. 4-1-96; CCD 3-2002, f. 10-14-02, cert. ef. 10-15-02; CCD 8-2003, f. 12-23-03, cert. ef. 12-28-03; CCD 6-2005(Temp), f. 12-29-05, cert. ef. 1-1-06 thru 6-29-06; CCD 3-2006, f. & cert. ef. 6-13-06; CCD 4-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10

## 414-350-0030 Issuance of a Child Care Certificate

(1) A certification shall be issued by CCD when it has been determined the home is in compliance with OAR 414-350-0000 through 414-350-0400. There are two types of certification. These are:

(a) A regular certification which, except as provided in OAR 414-350-0020(4)(b)(A), is valid for no more than one year; and

(b) A temporary certification. A certified family child care home may not operate under a temporary certification for more than 180 days in any 12-month period. A temporary certification is issued when:

(A) The home is in compliance with most requirements;

(B) There are no deficiencies identified by CCD that are hazardous to children; and

(C) The provider demonstrates an effort to be in full compliance.

(2) Certification is not transferable to any other location or to another organization or individual.

(3) A certification is granted in the name of the operator/provider. An operator/provider is limited to one certification at one address.

(4) An owner can have multiple sites under the following conditions:

# ADMINISTRATIVE RULES

(a) If the owner is the provider/operator in one of the homes, the owner can have two certified family child care homes; or

(b) If the owner does not directly care for any children, the owner can have more than two certified family child care homes.

(c) If the owner is the provider/operator in a home certified for more than 12 children, the owner may be the provider for only that certified family child care home. The provider may be the owner of other facilities. See OAR 414-350-0100(5).

(5) Any changes in the conditions of certification shall be requested in writing to CCD and approved by CCD before the condition(s) of the current certification may be changed. Changes include, but are not limited to, facility capacity, age range of children, or hours of operation.

Stat. Auth.: ORS 657A.260

Stats. Implemented: ORS 657A.260, 657A.280, 657A.300 & 657A.310

Hist.: CSD 12-1988, f. 6-29-88, cert. ef. 7-1-88; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-010-0715; CCD 1-1995, f. 10-30-95, cert. ef. 11-1-95; CCD 3-2002, f. 10-14-02, cert. ef. 10-15-02; CCD 6-2005(Temp), f. 12-29-05, cert. ef. 1-1-06 thru 6-29-06; CCD 3-2006, f. & cert. ef. 6-13-06; CCD 4-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10

## 414-350-0040

### Exceptions to Rules

(1) CCD may grant an exception to an individual rule (OAR 414-350-0000 through 414-350-0400) for a specified period of time when:

(a) A requirement does not apply to the home; or

(b) The intent of the requirement can be met by a method not specified in the applicable rule.

(2) The provider shall request an exception to a rule on a form provided by CCD. The request shall include:

(a) A justification for the requested exception; and

(b) An explanation of how the provider plans to meet the intent of the rule.

(3) No exception to a rule shall be granted:

(a) If the requirement is established by statute;

(b) To any home safety requirement (OAR 414-350-0170);

(c) Unless the health, safety, and well-being of the children are ensured;

or

(d) That would place the facility in violation of local zoning or state building codes.

(4) Exceptions may not be implemented until approval is received from CCD.

(5) The granting of an exception to a rule shall not set a precedent, and each request shall be considered on its own merits.

(6) CCD may withdraw approval of an exception at any time, if deemed necessary to ensure the health, safety and well-being of the children.

Stat.: ORS 657A.260

Stats. Implemented: ORS 657A.260 & 657A.280

Hist.: CSD 12-1988, f. 6-29-88, cert. ef. 7-1-88; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-010-0718; CCD 1-1995, f. 10-30-95, cert. ef. 11-1-95; CCD 3-2002, f. 10-14-02, cert. ef. 10-15-02; CCD 4-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10

## 414-350-0050

### General Requirements

(1) The following items shall be posted in the certified family child care home where they may be viewed by parents:

(a) The child care certification document;

(b) Notification of a communicable disease outbreak at the home;

(c) The evacuation plan; and

(d) A notice that the following items are available for parents to review:

(A) The guidance/discipline policy;

(B) The current week's menus, with substitutions recorded;

(C) The description of the general routine;

(D) Information on how to report a complaint to CCD regarding certification requirements; and

(E) The most recent CCD and sanitation inspection reports and, if applicable, fire life safety self evaluation (or fire marshal inspection report if completed).

(2) The provider shall ensure that a copy of these administrative rules is available in the certified family child care home to all parents and staff.

(3) Caregivers shall report suspected child abuse or neglect immediately, as required by the Child Abuse Reporting Law (ORS 419B.005 through 419B.050) to the Department of Human Services Child Welfare (DHS) or to a law enforcement agency. By statute, this requirement applies 24 hours per day.

(4) The certified family child care home shall comply with state and federal laws related to child safety systems and seat belts in vehicles, bicycle safety, civil rights laws, and the Americans With Disabilities Act (ADA).

(5) Representatives of all agencies involved in certification shall have immediate access to all parts of the home whenever the provider is conducting the child care business:

(a) CCD staff shall have the right to enter and inspect the home, including access to all caregivers, records of children enrolled in the home, and all records and reports related to the child care operation regarding compliance with these rules; and

(b) Representatives of the Department of Human Services Child Welfare (DHS) and the State Fire Marshal have the right to enter and inspect the home when an inspection has been requested by CCD.

(6) Custodial parents of all children enrolled shall have access to the home during the hours their child(ren) are in care.

(7) The provider shall develop the following information in writing and shall make it available to CCD, to staff, and to parent(s) at the time of enrollment:

(a) Guidance and discipline policy;

(b) Information on transportation, when provided by the provider or other caregiver; and

(c) The plan for handling emergencies and/or evacuations, including, but not limited to, fire, acute illness of a child or staff, natural disasters, power outages, and situations which do not allow reentry to the home after evacuation.

(8) The provider shall comply with the Department of Human Services' administrative rules relating to:

(a) Immunization of children (OAR 333-019-0021 through 333-019-0090);

(b) Reporting communicable diseases (OAR 333-019-0215 through 333-019-0415); and

(c) Child care restrictable diseases (OAR 333-019-0010).

(9) The provider shall report to CCD:

(a) An accident at the home resulting in the death of a child, within 48 hours after the occurrence; and

(b) Injuries to a child at the certified family child care home which require attention from a licensed health care professional, such as a physician, EMT or nurse, within 7 days after the occurrence.

(10) Documentation of meals and snacks provided by the certified family child care home shall be made available to CCD upon request, if the home does not participate in the USDA Child and Adult Care Food Program. Documentation is limited to the three weeks prior to the request.

(11) The provider is responsible for compliance with these requirements (OAR 414-350-0000 through 414-350-0400).

(12) Parental request or permission to waive any of the rules for certified family child care homes does not give the provider permission to do so.

Stat. Auth.: ORS 657A.260

Stats. Implemented: ORS 657A.260, 657A.280, 657A.290, 657A.300, 657A.390 & 657A.400

Hist.: CSD 21-1988, f. & cert. ef. 9-29-88; CSD 10-1990, f. & cert. ef. 4-23-90; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-010-0720; CSD 9-1994, f. & cert. ef. 5-23-94; CCD 1-1995, f. 10-30-95, cert. ef. 11-1-95; CCD 3-2002, f. 10-14-02, cert. ef. 10-15-02; CCD 6-2005(Temp), f. 12-29-05, cert. ef. 1-1-06 thru 6-29-06; CCD 3-2006, f. & cert. ef. 6-13-06; CCD 5-2006(Temp), f. & cert. ef. 8-25-06 thru 2-21-07; CCD 6-2006, f. & cert. ef. 12-1-06; CCD 2-2007, f. & cert. ef. 7-13-07; CCD 4-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10

## 414-350-0060

### Enrollment

(1) Children shall be admitted only in accordance with the conditions of the certification, including, but not limited to, capacity, hours of operation, age range, and special conditions.

(2) As required by state and federal civil rights laws and the Americans with Disabilities Act (ADA), the certified family child care home shall not discriminate against any child on the basis of race, religion, color, national origin, gender, marital status of parent, or because of a need for special care.

(a) Refusal by the provider to care for a child with a need for special care because of lack of related skills and degree of competence or because of structural barriers in the certified family child care home, shall not in itself establish a prima facie case of discrimination. The decision to enroll/not enroll a child shall be made on an individual basis after the child's child care needs have been assessed using information from parents and professionals who are knowledgeable about the specific disability. The provider shall record the assessment that was made for each child with special needs.

(b) If a child with special needs is enrolled who needs a specific plan for caring for that child, such a plan shall be developed in writing between the provider, parent(s) and, if necessary, outside specialists. The provider shall be responsible for ensuring that all caregivers have knowledge of the plan and act in compliance with the plan.

(3) The provider shall obtain the following information in writing from parent(s) of each child before admission. The information shall be kept current at all times.

(a) Name and birth date of child;

(b) Name(s), home and business addresses and telephone numbers, and the working hours of custodial parent(s) or guardian(s);

(c) The school attended by a school-age child;

(d) Name and telephone number of child's medical provider(s) and dentist, if applicable.

(e) Name and telephone number of person to be called in an emergency if the parent cannot be located; and

(f) Name and telephone number of person(s) to whom the child may be released.

(4) The provider shall obtain the following written authorizations from parent(s) of each child before admission. The authorizations shall be kept current at all times.

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(a) Permission for the provider to obtain emergency medical treatment for the child. The emergency medical release shall be on a form accepted by the medical treatment facility used by the provider for emergency medical services;

(b) Permission for the provider to call an ambulance or take a child to an available physician or medical treatment facility;

(c) If applicable, permission for the child to participate in field trips; and

(d) If applicable, permission for the child to participate in swimming or wading activities, both on and off the premises of the home.

(5) No child under six weeks of age shall be enrolled in the certified family child care home.

Stat. Auth.: ORS 657A.260

Stats. Implemented: ORS 657A.260 & 657A.280

Hist.: CSD 12-1988, f. 6-29-88, cert. ef. 7-1-88; CSD 2-1989, f. & cert. ef. 1-25-89; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-010-0722; CCD 1-1995, f. 10-30-95, cert. ef. 11-1-95; CCD 3-2002, f. 10-14-02, cert. ef. 10-15-02; CCD 4-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10

## 414-350-0070

### Arrival and Departure

(1) The provider shall require that the person bringing the child to the certified family child care home remain with the child until the child is accepted by a caregiver.

(2) The provider shall release a child only to a parent or another person named and identified by the parent. The provider shall verify the identification of any person who picks up a child.

(3) If a school-age child arrives at or leaves the home without a parent, there shall be arrangements in advance, in writing, from the parent for the arrival and departure times and what the provider will do if the child has not arrived by the expected time.

(4) The provider must notify parents if there will be a substitute caregiver and the caregiver's name or if the children will be away from the home for any part of the day for visits, field trips, or any other activity off the premises. In the event of an emergency, a good faith effort will be made to notify parents that a substitute will be caring for the children.

Stat. Auth.: ORS 657A.260

Stats. Implemented: ORS 657A.260 & 657A.280

Hist.: CSD 12-1988, f. 6-29-88, cert. ef. 7-1-88; CSD 2-1989, f. & cert. ef. 1-25-89; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-010-0724; CCD 1-1995, f. 10-30-95, cert. ef. 11-1-95; CCD 3-2002, f. 10-14-02, cert. ef. 10-15-02; CCD 4-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10

## 414-350-0080

### Records

(1) The provider shall keep the following records:

(a) Complete and current information on each child, as required in OAR 414-350-0060(3) and (4);

(b) Daily attendance record for each child, including dates each child attended and arrival and departure times each day;

(c) Daily attendance record for the provider and each caregiver, including dates worked and arrival and departure times each day;

(d) Medication administered, as specified in OAR 414-350-0180(8)(d);

(e) Emergency plan practice sessions and evacuations, as specified in OAR 414-350-0170(15);

(f) An injury to or death of a child, as specified in OAR 414-350-0180(7);

(g) Child abuse reports made to the Department of Human Services Child Welfare (DHS) or a law enforcement agency;

(h) The general routine, as specified in OAR 414-350-0220(2);

(i) Verification of the provider's and each caregiver's:

(A) Qualifications for the position, as specified in OAR 414-350-0100 and 414-350-0110;

(B) Current health-related training, such as CPR and First Aid, as specified in OAR 414-350-0100(3) and 0100(6);

(C) Training as required in OAR 414-350-0115;

(D) Current enrollment in the Central Background Registry;

(E) Current food handler's certification pursuant to ORS 624.570, when required; and

(F) Caregiver participation in an orientation to the provider's policies and practices and these administrative rules.

(2) A provider shall allow custodial parent(s), upon request, to review all records and reports, except for child abuse reports, maintained on their own children.

(3) Records shall be kept for at least two years, and caregivers' and children's records for two years after termination of employment or care. These records shall be available at all times to CCD.

Stat. Auth.: ORS 657A.260

Stats. Implemented: ORS 657A.260 & 657A.290

Hist.: CSD 12-1988, f. 6-29-88, cert. ef. 7-1-88; CSD 2-1989, f. & cert. ef. 1-25-89; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-010-0726; CCD 3-2002, f. 10-14-02, cert. ef. 10-15-02; CCD 2-2007, f. & cert. ef. 7-13-07; CCD 4-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10

## 414-350-0090

### General Requirements

(1) As required by Oregon civil rights law, ORS Chapter 659, the provider shall not discriminate in employment on the basis of race, color, gender, marital status, religion, national origin, age, or because of a mental or physical handicap unrelated to specific job performance.

(2) All caregivers, including the provider, shall:

(a) Have competence, sound judgment, and self-control in working with children;

(b) Be mentally, physically, and emotionally capable of performing assigned duties related to child care; and

(c) Have the required training and/or experience for the positions they hold, as specified in OAR 414-350-0100 and 0110.

(3) If there is evidence that casts doubt on the physical or mental competence of a person to care for children or have access to children, CCD may require that the provider provide CCD with an evaluation or other information, as specified by CCD.

(4) No one shall have access to child care children who has demonstrated behavior that may have a detrimental effect on a child. Residents of the home are considered to have access to the child care children even if they are not generally at home during hours of operation. This does not apply to parents of children in care when they drop off and pick up their children.

(a) The owner, the provider, all caregivers and other residents of the home 18 years of age or older must be enrolled in CCD's Central Background Registry prior to the issuance of an initial or renewal certification. Residents of the home who are under 18 years of age must be enrolled in the Registry by their 18th birthday. Certification may be denied, suspended, or revoked if the provider or other resident of the home has been removed or suspended from the Central Background Registry.

(b) Prior to any new caregiver caring for children or prior to an individual residing in the home, visiting the home on a regular basis, or substituting for or assisting the provider, the caregiver/individual shall be enrolled in the Central Background Registry and the provider shall receive verification from CCD of the enrollment. This does not apply to parents of children in care unless they are residing in the home or assisting in the provision of child care.

(c) When a provider is notified by CCD that a caregiver or other individual has been removed from the Central Background Registry, the provider shall not permit the caregiver or other individual to be in the home during hours the child care business is conducted or to have access to child care children.

(d) If any person listed in section (4)(a) & (b) of this rule has been charged with, arrested for, or a warrant is out for any of the crimes which CCD has determined indicate behavior which may have a detrimental effect on a child, with final disposition not yet reached, certification may be denied or suspended until the charge, arrest, or warrant has been resolved if the person continues to operate, be employed in or reside in the home, or have access to children in the home.

(e) If a criminal record check shows that a warrant has been issued for any person checked, CCD will inform the originating law enforcement agency of the person's name, employment address and telephone number.

(f) Any visitor to the home or other adult who is not enrolled in the Central Background Registry shall not have unsupervised access to children.

(5) Volunteers must meet the following requirements:

(a) If volunteers are counted in determining the staff/child ratios, they must meet the qualifications of the position they are filling and be enrolled in the Central Background Registry.

(b) If volunteers may have unsupervised access to children, they must be enrolled in the Central Background Registry.

(c) If volunteers do not have unsupervised access to children at any time, including during emergencies, the provider must have a written policy to this effect, the policy must be known to all caregivers and volunteers, and the volunteers do not have to be enrolled in the Central Background Registry.

(6) No person shall smoke or use smokeless tobacco in the certified family child care home during the hours the child care business is conducted. No person shall smoke or use smokeless tobacco in motor vehicles while child care children are passengers.

(7) No one shall consume alcohol or use non-prescription controlled substances in the certified family child care home during the hours the child care business is conducted. No one under the influence of alcohol or non-prescription controlled substances shall be in the home during the hours the child care business is conducted.

Stat. Auth.: ORS 657A.260

Stats. Implemented: ORS 657A.050, 657A.060 & 657A.290

Hist.: CSD 12-1988, f. 6-29-88, cert. ef. 7-1-88; CSD 10-1990, f. & cert. ef. 4-23-90; CSD 4-1991, f. & cert. ef. 3-7-91; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-010-0730; CCD 1-1995, f. 10-30-95, cert. ef. 11-1-95; CCD 3-2002, f. 10-14-02, cert. ef. 10-15-02; CCD 4-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10

## 414-350-0100

### The Provider

(1) The provider shall be:



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(a) At least 18 years of age if the facility is certified for 12 children; or at least 21 years of age if the facility is certified for more than 12 children; and

(b) Responsible for the operation of the certified family child care home, including those duties ordinarily considered to be administrative. These include, but are not limited to, financial management, maintaining records, maintenance of the building and grounds, meal planning and preparation, compliance with certification requirements, communication with CCD, and correcting deficiencies.

(2) The provider shall have:

(a) At least one year of qualifying teaching experience, as specified in OAR 414-350-0010(25), in the care of a group of children in an ongoing group setting such as a kindergarten, preschool, child care center, certified family child care home, registered family child care home, or Head Start program; or prior to applying to be certified for up to 16 children, completed one year of successful operation as a certified family child care facility for 12 children if the qualifying teaching experience is based on registered family child care; or

(b) Completion of 20 credits (semester system) or 30 credits (quarter system) of training in a college or university in early childhood education or child development; or

(c) Documentation of attaining at least step eight in the Oregon Registry.

(3) The provider shall provide evidence of the following training prior to being certified:

(a) A current certification in infant and child first aid and cardiopulmonary resuscitation;

(b) A current food handler certification pursuant to ORS 624.570; and

(c) Completion of two hours of training on child abuse and neglect issues.

(4) Prior to a facility providing care to more than two children under 24 months of age, the provider shall have at least 30 clock hours of training specific to infant and toddler care. The provider of facilities certified on October 15, 2002, who are providing care for more than two children under 24 months of age must have documentation of 30 hours of prior training in infant and toddler care or a plan, approved by CCD, that shows how the training will be attained.

(5) The provider/operator shall be on-site at least half of the hours of operation that are reflected on the certification. If the facility is certified for more than 12 children, the provider shall be on site at least 2/3 of the hours of operation that are reflected on the certification. The hours shall be calculated on a weekly basis, except for planned vacations and emergency absences.

(6) The provider shall have no other employment, either in or out of the home, during the hours the provider is directly caring for children.

(7) The provider, or a substitute caregiver, shall be present during all the hours the certified family child care business is conducted.

(8) A caregiver substituting for the provider shall:

(a) Be at least 18 years old;

(b) Have current certification in first aid and infant and child cardiopulmonary resuscitation (CPR);

(c) Have current food handler certification pursuant to ORS 624.570, if the substitute will be preparing or serving food;

(d) Be familiar with the provider's policies and procedures and with these requirements (OAR 414-350-0000 through 414-350-0400);

(e) Be authorized and able to correct a deficiency that might be an immediate threat to children; and

(f) Have on file documentation of an orientation and training in these administrative rules and the functions and duties of a provider;

(g) Meet the qualifications in (a)–(f), have completed child abuse and neglect training, and have worked in the facility at least 60 hours when substituting for the provider in a facility certified to care for more than 12 children.

Stat. Auth.: ORS 657A.260

Stats. Implemented: ORS 657A.260, 657A.280 & 657A.290

Hist.: CSD 12-1988, f. 6-29-88, cert. ef. 7-1-88; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-010-0732; CCD 1-1995, f. 10-30-95, cert. ef. 11-1-95; CCD 3-2002, f. 10-14-02, cert. ef. 10-15-02; CCD 6-2005(Temp), f. 12-29-05, cert. ef. 1-1-06 thru 6-29-06; CCD 3-2006, f. & cert. ef. 6-13-06; CCD 5-2006(Temp), f. & cert. ef. 8-25-06 thru 2-21-07; CCD 6-2006, f. & cert. ef. 12-1-06; CCD 2-2007, f. & cert. ef. 7-13-07; CCD 4-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10

## 414-350-0110

### Assistants

(1) Assistants may be included in the caregiver/child ratio calculation.

(2) An Assistant I shall:

(a) Be at least 15 years of age;

(b) Work under the direct supervision, i.e., within sight and sound of the provider or substitute provider; and

(c) Have on file documentation of an orientation and be familiar with the provider's policies and procedures and these requirements (OAR 414-350-0000 through 414-350-0400).

(3) An Assistant II shall:

(a) Be at least 18 years of age;

(b) Have on file documentation of an orientation and be familiar with the provider's policies and procedures and these requirements (OAR 414-350-0000 through 414-350-0380);

(c) Have worked at least 60 hours at the certified family child care home, in a minimum of 3-4 hour blocks of time;

(d) Have current certification in first aid and CPR; and

(e) With the approval of the provider, may be out of sight and sound of the provider with a group of children.

Stat. Auth.: ORS 657A.260

Stats. Implemented: ORS 657A.260 & 657A.290

Hist.: CSD 12-1988, f. 6-29-88, cert. ef. 7-1-88; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-010-0734; CCD 3-2002, f. 10-14-02, cert. ef. 10-15-02; CCD 5-2006(Temp), f. & cert. ef. 8-25-06 thru 2-21-07; CCD 6-2006, f. & cert. ef. 12-1-06; CCD 4-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10

## 414-350-0115

### Training Requirements

(1) All staff shall receive an orientation within the first two weeks of employment.

(2) The provider and all caregivers who function as substitute providers and Assistant II staff, including volunteers, shall participate yearly in at least 15 clock hours of training related to child care, of which at least eight clock hours shall be in child development or early childhood education. Substitute providers and volunteers who provide care in the home for less than 20 hours in a calendar year are not required to participate in the 15 clock hours of training.

(a) Training may include correspondence courses, conferences, workshops and audio-visual programs.

(b) If community resources are not available, training may include a planned reading program of professional materials.

(3) During the first year of certification (for provider) and the first year of employment (for other caregivers), staff may count orientation and the most recent training in first aid and CPR, food handler's and child abuse and neglect, as applicable, as part of the 15 clock hours of training.

(4) During subsequent years of certification (for providers) and subsequent years of employment (for other caregivers), staff may count 5 hours of first aid and CPR training or food handler's training as part of the 15 clock hours of training.

(5) The provider shall document each caregiver's training, showing the subject matter, the date completed, and the number of clock hours of training in each certification year.

Stat. Auth.: ORS 657A.260

Stats. Implemented: ORS 657A.260 & 657A.280

Hist.: CCD 3-2002, f. 10-14-02, cert. ef. 10-15-02; CCD 4-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10

## 414-350-0120

### Caregiver/Child Ratios and Supervision

(1) The number of caregivers and group size shall be determined by the number and ages of the children in attendance:

(a) All children in the home, including the provider's or other caregivers' own children, shall be counted in determining the caregiver/child ratio and group size;

(b) All children visiting the home on a regular basis will count in capacity. Children attending with a parent do not count as enrolled as long as the parent remains with and is responsible for non-enrolled children;

(c) The required caregiver/child ratios shall be met at all times.

(2) Children shall at all times have the full attention of and be supervised by the required number of caregivers:

(a) Children shall be within sight and/or sound of a caregiver at all times;

(b) A caregiver shall be near enough to children to respond when needed. Children out of direct visual contact shall be monitored regularly and frequently and must be in approved activity areas;

(c) Children may not be on a floor level of the home unless a caregiver is on the same floor level, except as specified in OAR 414-350-0120(2)(d);

(d) When bathroom facilities are not on the same floor level, a written plan for adequate supervision of both bathroom and child care areas shall be developed and implemented.

(3) The number of caregivers is determined by the age and number of the youngest child(ren) in the group. If the provider is certified to care for more than 12 children and plans to care for more than 8 infants and/or toddlers, the provider must develop a plan showing how infants and toddlers will be limited to a group size of not more than eight. The plan must be approved by CCD:

(a) If all children are in the same age group, the following table determines the staff/child ratio; [Table not included. See ED. NOTE.]

(b) If children in care include any infants and/or toddlers, the following table determines the staff/child ratio; [Table not included. See ED. NOTE.]

(c) If children in care include a mix of only preschool and school aged children, the following table determines the staff/child ratio; [Table not included. See ED. NOTE.]

(d) Even though staff/child ratios are specified in (a) and (b) above, a certified family child care provider may care for 10 children ages 6 weeks to school-age if:

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- (A) No more than 6 children are pre-school age or younger, including the provider's own children and any staff children;
- (B) Of the 6, only 2 children are under 24 months of age; and
- (C) Four of the children are school-age.
- (4) The maximum number of children allowed in a certified family child care home at any one time is 16.
- (5) If the home is certified to care for more than 12 children and the age blend is such that group separation is required:
- (a) Groups may be joined for: meals, naps, outdoor play, and limited quiet activities such as a video or circle time;
- (b) Provider must develop a plan that shows how the groups will be separated without requiring remodeling of the home. The plan must be approved by CCD.
- (6) If the facility provides care to more than two children under 24 months of age, the provider shall meet the requirements specified in OAR 414-350-0100(4).

(7) Prior to a facility providing care to more than four children under 24 months of age, at least one caregiver other than the provider shall meet the requirements specified in OAR 414-350-0100(4). In addition, the provider shall have an extra 20 clock hours of training specific to infant and toddler care above and beyond the original requirements. If the facility is certified to care for more than 12 children, there must be someone who meets the training requirements of OAR 414-350-100(4) on site at all times that five or more children under 24 months of age are in care.

[ED. NOTE: Tables referenced are available from the agency at [www.oregon.gov/EMPLOY/CCD/Rules\\_Summary.shtml](http://www.oregon.gov/EMPLOY/CCD/Rules_Summary.shtml)]  
Stat. Auth.: ORS 657A.260  
Stats. Implemented: ORS 657A.260 & 657A.290  
Hist.: CSD 12-1988, f. 6-29-88, cert. ef. 7-1-88; CSD 7-1989, f. & cert. ef. 3-17-89; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-010-0736; CCD 3-2002, f. 10-14-02, cert. ef. 10-15-02; CCD 6-2005(Temp), f. 12-29-05, cert. ef. 1-1-06 thru 6-29-06; CCD 3-2006, f. & cert. ef. 6-13-06; CCD 5-2006(Temp), f. & cert. ef. 8-25-06 thru 2-21-07; CCD 6-2006, f. & cert. ef. 12-1-06; CCD 2-2007, f. & cert. ef. 7-13-07; CCD 4-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10

## 414-350-0130

### General Requirements

- (1) The certified family child care home shall be:
- (a) Located in an area zoned residential or commercial:
- (A) "Residential zone" means any zone within an acknowledged urban growth boundary or an acknowledged residential exception area that allows a dwelling unit as a use permitted outright.
- (B) "Commercial Zone" means any zone within an acknowledged urban growth boundary or an acknowledged commercial exception area that allows sales or service or commercial and professional offices as uses permitted outright.
- (b) A building constructed as a single family dwelling; and
- (c) In space designed or remodeled for living quarters.
- (2) A home that is not the residence of the provider or a home located in a zone other than residential or commercial shall meet all state and local planning and zoning, occupancy, and building code requirements for a child care facility.
- (3) If there is a structural or maintenance problem that could present a health or safety hazard to children, CCD may request that the provider have the home inspected by the appropriate authority and the provider shall comply with the request.
- (4) The provider is responsible for payment of any applicable fees for inspections.

Stat. Auth.: ORS 657A.260  
Stats. Implemented: ORS 657A.260, 657A.280, 657A.290 & 657A.390  
Hist.: CSD 12-1988, f. 6-29-88, cert. ef. 7-1-88; CSD 2-1989, f. & cert. ef. 1-25-89; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-010-0740; CCD 1-1995, f. 10-30-95, cert. ef. 11-1-95; CCD 3-2002, f. 10-14-02, cert. ef. 10-15-02; CCD 4-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10

## 414-350-0140

### Indoor Area

- (1) The indoor area used for child care shall meet the following requirements:
- (a) If the provider is certified to care for 12 children or fewer, there shall be a minimum of 35 square feet of indoor activity area, as defined by OAR 414-350-0010(1), per child. If the provider is certified to care for more than 12 children, there shall be a minimum of 35 square feet of indoor activity area per child for 12 or fewer children, and 50 square feet of indoor activity area available per child for each of the additional four children. This space, considered in determining capacity of the home, shall be available for use by children at all times. The following shall not be counted as part of the 35 square feet per child requirement: heating units, storage areas; large permanent equipment; any space not useable by children.
- (b) There shall be a designated area for children under 24 months of age that is developmentally appropriate and safe.
- (c) If the facility is certified to care for more than 12 children, the provider must develop a written plan showing that the space accessible to the children meets their safety needs, there is adequate supervision and there is adequate availability of toileting and hand washing for the children in care. CCD must approve the plan.

(d) Activity areas shall be adequately lighted and ventilated. Room temperature shall be at least 68 degrees F. (20 degrees C.) and not so warm as to be dangerous or unhealthy to children in care.

(2) Indoor fixtures and equipment shall meet the following requirements:

(a) There shall be at least one flush toilet and one hand washing sink with mixing faucets available to the children at all times. If the facility is certified to care for more than 12 children, the provider must have a second flush toilet somewhere in the facility if: there are more than 15 children in care or if there are more than 12 toddlers in care. Homes with certification in effect on September 15, 2002, shall comply with the requirement for mixing faucets when bathroom facilities are remodeled.

(b) Easily cleanable steps or blocks shall be provided so that children can use the toilets and sinks without adult assistance.

(c) If bathroom facilities are not on the same floor level as the activity areas, the provider must comply with OAR 414-350-0120(2)(d).

(d) Telephone service shall be available in the home at all times when children are in care.

(e) Telephone numbers for fire, emergency medical care, and poison control, as well as the facility address, shall be posted on or near the telephone. Portable telephones must have emergency numbers and the facility address on the phone.

(f) There must be a system in place to ensure that parents can have contact with the provider and staff when children are in care.

Stat. Auth.: ORS 657A.260  
Stats. Implemented: ORS 657A.260, 657A.280 & 657A.290  
Hist.: CSD 12-1988, f. 6-29-88, cert. ef. 7-1-88; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-010-0742; CCD 1-1995, f. 10-30-95, cert. ef. 11-1-95; CCD 3-2002, f. 10-14-02, cert. ef. 10-15-02; CCD 6-2005(Temp), f. 12-29-05, cert. ef. 1-1-06 thru 6-29-06; CCD 3-2006, f. & cert. ef. 6-13-06; CCD 4-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10

## 414-350-0150

### Outdoor Area

(1) There shall be an outdoor activity area that children can reach safely. If the outdoor activity area is not under the control of the provider during the hours of operation of the home, written approval to use the area by CCD is required.

(2) A home shall have an outdoor play area of no less than 75 square feet for each child using the area at one time.

(3) The outside activity area shall be:

(a) Suitably surfaced and well drained. Playground equipment, such as slides, swings, climbing structures and other elevated equipment, shall be surrounded by a resilient surface of an acceptable depth or by rubber mats manufactured for such use, according to standards of the US Consumer Product Safety Commission;

(b) Kept free of litter, solid waste and refuse, ditches, or other conditions presenting a potential hazard; and

(c) Equipped to provide age-appropriate activities for gross motor development.

(4) The outdoor activity area of the home designated for use by child care children shall be enclosed by a barrier (fence, wall, or building) at least four feet high. Certified family child care homes with certification in effect on September 15, 2002, must comply with a barrier at least three feet high until such time as the existing barrier is replaced. Spacing between vertical slats of a fence shall be no greater than 4 inches. Fences must meet applicable local codes.

(5) The provider shall be aware of and protect children from any toxic or other harmful plants, shrubs, or trees.

(6) The use of swimming pools shall comply with OAR 414-350-0380. As specified in 414-350-0380(2)(h), portable-style wading pools are not permitted.

Stat. Auth.: ORS 657A.260  
Stats. Implemented: ORS 657A.260, 657A.280 & 657A.290  
Hist.: CSD 12-1988, f. 6-29-88, cert. ef. 7-1-88; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-010-0744; CCD 1-1995, f. 10-30-95, cert. ef. 11-1-95; CCD 3-2002, f. 10-14-02, cert. ef. 10-15-02; CCD 4-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10

## 414-350-0160

### Sanitation

(1) Water Supply:

(a) The home's water supply shall be continuous in quantity and from a water supply system approved by the Department of Human Services.

(b) If drinking water is from a private source, the provider shall provide evidence of bacterial and chemical analysis which establish safety of the water;

(c) The tests shall be conducted by the local health department, the Department of Human Services, or an approved commercial laboratory;

(d) The bacterial analysis shall be done quarterly;

(e) The chemical analysis shall be done only once for a well and yearly for other water sources;

(f) The provider shall have drinking water available to children that is supplied in a safe and sanitary manner. If drinking water is obtained from bathroom sinks or sinks used for handwashing after changing a diaper, the sink must be sanitized after each handwashing.

# ADMINISTRATIVE RULES

15-02; CCD 6-2005(Temp), f. 12-29-05, cert. ef. 1-1-06 thru 6-29-06; CCD 3-2006, f. & cert. ef. 6-13-06; CCD 4-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10

## (2) Hand Washing:

(a) Caregivers and children shall wash their hands with soap and warm running water after nose wiping, after using the toilet, and before and after eating;

(b) Caregivers shall wash their hands with soap and warm running water before and after changing a diaper, before and after feeding a child or handling food, and after assisting a child with toileting and nose wiping;

(c) Infants' and children's hands shall be washed with soap and warm running water after diaper changing;

(d) Staff shall immediately and thoroughly wash their hands after handling animals or cleaning cages;

(e) Commercial products labeled "hand sanitizers" shall not replace hand washing. If hand sanitizers are present in the home, they shall be kept under child-proof lock and shall not be used by children;

(f) When hand washing is not possible, e.g., on field trips or the neighborhood park, moist towelettes shall be used.

## (3) Maintenance:

(a) The building, toys, equipment, and furniture shall be maintained in a clean, sanitary, and hazard-free condition:

(A) Kitchen and bathrooms shall be cleaned when soiled and at least daily;

(B) Floors, walls, ceilings, and fixtures of all rooms shall be kept clean and in good repair;

(C) All kitchen counters, shelves, tables, refrigeration equipment, sinks, drain boards, cutting boards, and other equipment or utensils used for food preparation shall be kept clean and in good repair;

(D) All food storage areas shall be kept clean and free of food particles, dust, dirt and other materials;

(E) Cloths, both single use and multiple use, used for wiping food spills on utensils and food-contact surfaces shall be kept clean and used for no other purpose. Cloths that are reused shall be stored in a sanitizing solution between uses.

(F) The isolation area shall be thoroughly cleaned after use and all bedding laundered after each use;

(G) A diaper-changing table shall:

(i) Have a surface that is non-absorbent and easily cleaned;

(ii) Be cleaned and sanitized after each use;

(iii) Not be used for any purposes other than diapering, including food or drink preparation or storage, dish washing, storage of food service utensils, arts and crafts supplies or products, etc.; and

(iv) Comply with the requirements for diaper changing area specified in OAR 414-350-0235(2)(b).

(H) Bathtubs, showers, sinks, bathinets, or other receptacles used for bathing children shall be cleaned and sanitized after each use.

(I) Bedding shall be cleaned when soiled, with change of occupant, or at least once a week.

(b) Tableware, kitchenware (pots, pans and equipment), and food-contact surfaces of equipment shall be washed, rinsed, sanitized, and air-dried after each use. The cleaning and sanitizing of tableware and kitchenware shall be accomplished by using:

(A) A dishwasher that is operated according to the manufacturer's instructions; or

(B) A three-step manual process as follows:

(i) Washing in the first compartment;

(ii) Rinsing in a second compartment; and

(iii) Immersion in a third compartment or large dishpan or tub for at least two minutes in a sanitizing solution containing at least 2 teaspoons of household chlorine bleach in each gallon of warm water.

(c) A sink used for diapering or bathing activities shall not be used for any part of food or drink preparation or dish washing.

(d) Soap, paper towels dispensed in a sanitary manner, and mixing faucets with hot and cold running water shall be provided at each hand washing sink.

(e) The home and grounds shall be kept clean and free of litter or rubbish and unused or inoperable equipment, utensils, and vehicles.

(f) All garbage, solid waste, and refuse shall be disposed of at least once a week.

(A) All garbage shall be kept in watertight, non-absorbent, and easily washable containers with close-fitting lids;

(B) All garbage storage areas and garbage containers shall be kept clean; and

(C) All garbage storage shall be inaccessible to children.

(4) Insect and Rodent Control:

(a) The home shall be in such condition as to prevent the infestation of rodents and insects.

(b) Doors and windows which are opened for ventilation shall be equipped with fine-meshed screens.

(c) Automatic insecticide dispensers, vaporizers, or fumigants shall not be used.

Stat. Auth.: ORS 657A.260

Stats. Implemented: ORS 657A.260, 657A.280, 657A.290, 657A.400, 657A.420

Hist.: CSD 12-1988, f. 6-29-88, cert. ef. 7-1-88; CSD 10-1990, f. & cert. ef. 4-23-90; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-010-0746; CSD 10-1994, f. & cert. ef. 5-23-94; CCD 1-1995, f. 10-30-95, cert. ef. 11-1-95; CCD 3-2002, f. 10-14-02, cert. ef. 10-

## 414-350-0170

### Home Safety

(1) All floor levels used by children for play and napping shall have two usable exits to ground level.

(2) All rooms used by children for play and napping shall have two usable exits.

(3) Obstructions, including furniture, storage of supplies, or any other items shall not be placed in a manner that blocks usable exits.

(4) There shall be at least one 2-A-10 BC-rated fire extinguisher on each floor of the home. Fire extinguishers shall be easily accessible, kept out of the reach of children, and located along the path of emergency exiting.

(5) Smoke alarms shall be:

(a) Installed on each floor level of the home and in any area where children nap; and

(b) Maintained in operating order.

(6) Candles or other open flame decorative devices are prohibited, except for the brief use of celebratory candles.

(7) Matches and lighters shall be kept in locked storage when not in use.

(8) A portable light source, to be used in emergencies, shall be:

(a) Available in all activity areas used by children;

(b) In working condition; and

(c) Stored in an easily accessible place.

(9) Items of potential danger (e.g., cleaning supplies and equipment, paints, poisonous and toxic materials, plastic bags, aerosols, detergents) shall be:

(a) Kept in the original container or labeled;

(b) Stored under child-proof lock; and

(c) Kept away from food service supplies.

(10) The provider shall protect children from safety hazards, including but not limited to:

(a) A rigid screen or guard shall be installed to prevent children from falling into a fireplace or against a heater or wood stove;

(b) A movable barrier, such as mesh-type gate, shall be placed at the top and/or bottom of all stairways accessible to infants and toddlers. Gates and enclosures should have the Juvenile Products Manufacturers Assn. (JPMA) certification seal to ensure safety;

(c) Child-proof latches shall be installed on all cupboards, closets, and drawers that contain hazardous objects and may be accessible to preschool-age and younger children;

(d) Firearms, ammunition, and other potentially hazardous equipment, such as darts, other projectiles, power tools, and knives shall be kept under lock:

(A) Firearms, pellet or BB guns must be unloaded and kept in areas not used by child care children; and

(B) Ammunition shall be stored separately from firearms;

(e) Hot water heaters shall be equipped with a safety release valve and an overflow pipe that directs water to the floor or to another approved location;

(f) Unused appliances, such as old refrigerators or freezers, that present a risk for entrapment, shall be secured so as to prevent entry by children;

(g) Clear glass panels in doors shall be clearly marked at child level;

(h) All exposed electrical outlets in rooms used by preschool or younger children shall have hard-to-remove protective caps or safety devices when not in use;

(i) Extension cords shall not be used as permanent wiring. All appliance cords will be in good condition and multiple connectors for cords will not be used. A grounded power strip outlet with built-in over-current protection may be used;

(j) Floors shall be free of splinters, large unsealed cracks, sliding rugs, and other hazards;

(k) Devices which generate heat and are hot from recent use shall be inaccessible to children; and

(l) After painting or laying carpet, the certified home must be aired out completely for at least 24 hours with good ventilation before children are allowed to return.

(11) The provider shall have written evidence that any wood stove in the home has been inspected and approved for use by the local building official.

(12) All wood stove and fireplace flues shall be cleaned as needed or, at a minimum, once a year. A written record of cleaning shall be maintained on site.

(13) The use of unvented, fuel-fired space heaters is prohibited.

(14) Flammable and combustible liquids, such as paint thinner and gasoline, shall be stored in the original container or a safety container and, if over one gallon, kept in an unattached storage building.

(15) All caregivers and children shall practice at least one aspect of the emergency plan, as described in OAR 414-350-0050(7)(c), once per month.

(a) Evacuating the home shall be practiced at least eight times per year. If the facility is certified to care for more than 12 children and more than 4 children regularly in care are under 24 months of age, evacuating the home shall be practiced monthly.

# ADMINISTRATIVE RULES

(b) The provider shall maintain a written record showing the date, time of day, participants, and type of emergency of each emergency plan practice session.

(16) Other hazards observed in the certification process must be corrected.

Stat. Auth.: ORS 657A.260  
Stats. Implemented: ORS 657A.260, 657A.280, 657A.290 & 657A.420  
Hist.: CSD 12-1988, f. 6-29-88, cert. ef. 7-1-88; CSD 2-1989, f. & cert. ef. 1-25-89; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-010-0748; CSD 10-1994, f. & cert. ef. 5-23-94; CCD 1-1995, f. 10-30-95, cert. ef. 11-1-95; CCD 3-2002, f. 10-14-02, cert. ef. 10-15-02; CCD 6-2005(Temp), f. 12-29-05, cert. ef. 1-1-06 thru 6-29-06; CCD 3-2006, f. & cert. ef. 6-13-06; CCD 4-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10

## 414-350-0180 Illness or Injury

(1) A provider shall not admit, or retain in care, a child who:

(a) Is diagnosed as having or being a carrier of a child care-restrictable disease, as defined in Department of Human Services administrative rules, OAR 333-019-0010; or

(b) Has one of the following symptoms, or combination of symptoms, of illness:

(A) Diarrhea (more than one abnormally loose, runny, watery or bloody stool);

(B) Vomiting;

(C) Fever over 100 degrees F taken under the arm;

(D) Severe cough;

(E) Unusual yellow color to skin or eyes;

(F) Skin or eye lesions or rashes that are severe, weeping, or pus-filled;

(G) Stiff neck and headache with one or more of the symptoms listed

above;

(H) Difficult breathing or abnormal wheezing; or

(I) Complaints of severe pain.

(2) A child who, after being admitted, shows signs of illness, as defined in subsection (1) of this rule, shall be isolated and the parent(s) notified and asked to remove the child from the home as soon as possible.

(3) If a child has mild cold symptoms that do not impair his/her functioning, the child may remain in the home and the parent(s) notified when they pick up the child.

(4) A specific place for isolating a child who becomes ill shall be provided. The isolation area shall be:

(a) Located where the child can be seen and heard by a caregiver; and

(b) Equipped with a cot, mat, or bed for each sick child.

(5) The provider shall identify a licensed physician, hospital, or clinic to be used for emergency medical care:

(a) The provider shall have written procedures for taking a child to emergency medical care;

(b) In the event of an illness or injury which requires immediate medical care, the provider is responsible for securing such care and notifying the parent(s).

(6) First aid supplies and a chart or handbook of first aid instructions shall be maintained in one identified place but kept out of reach of children:

(a) The first aid supplies shall include bandaids, adhesive tape, sterile gauze pads, soap or sealed antiseptic towelettes or solution to be used as a wound cleaning agent, scissors, disposable plastic gloves for handling blood spills, chlorine bleach for sanitizing after a blood spill, a sanitary temperature taking device, and CPR mouthguards; and

(b) First aid supplies shall be taken on all field trips.

(7) Injuries or accidents shall be reported to the child's parent(s) on the day of occurrence:

(a) A written report of the injury or accident shall be maintained on file;

(b) The report shall include the date, child's full name, nature of the injury, witnesses, action taken, and the signatures of the provider and parent(s); and

(c) The injury to or death of a child shall be reported to CCD in accordance with OAR 414-350-0050(9).

(8) No prescription or non-prescription medication, including, but not limited to, pain relievers, sunscreen, cough syrup, diapering and first aid ointments or nose drops, shall be given to a child except under the following conditions:

(a) A signed, dated, written authorization from the parent(s) is on file;

(b) Prescription medication is in the original container and labeled with the child's name, the name of the drug, dosage, directions for administering, date and physician's name;

(c) Non-prescription medication is in the original container, labeled with the child's name, the dosage, and directions for administering;

(d) A written record of all medications administered, listing, as a minimum, the name of the child, type of medication, the signature of the caregiver administering the medication, date, time, and dosage given, shall be kept;

(e) All medications shall be secured in a tightly-covered container with a child-proof lock or latch and stored so that they are not accessible to children;

(f) Medications requiring refrigeration shall be kept in the refrigerator in a separate, tightly-covered container, with a child-proof lock or latch, clearly marked "medication"; and

(g) Parent(s) shall be informed daily of medication administered to their child.

(9) Parents of all children enrolled in the certified family child care home shall be informed of any outbreak of communicable disease within the facility.

Stat. Auth.: ORS 657A.260  
Stats. Implemented: ORS 657A.260, 657A.280 & 657A.290  
Hist.: CSD 12-1988, f. 6-29-88, cert. ef. 7-1-88; CSD 2-1989, f. & cert. ef. 1-25-89; CSD 10-1990, f. & cert. ef. 4-34-90; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-010-0750; CCD 1-1995, f. 10-30-95, cert. ef. 11-1-95; CCD 3-2002, f. 10-14-02, cert. ef. 10-15-02; CCD 2-2007, f. & cert. ef. 7-13-07; CCD 4-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10

## 414-350-0190 Animals in the Certified Family Child Care Home

(1) Any animal at the certified family child care home must be in good health and show no evidence of carrying a disease.

(a) Dogs and cats must be vaccinated according to a licensed veterinarian's recommendations. Proof of current compliance with immunizations shall be kept on file in the home.

(b) Animals shall be cared for as recommended by a veterinarian. The provider shall have and follow written procedures for the care and maintenance of the animals.

(2) Potentially aggressive animals must not be in the same physical space as the children.

(3) Reptiles (e.g., lizards, turtles, snakes, iguanas), frogs, monkeys, hook-beaked birds, baby chicks, and ferrets are prohibited, unless they are housed in and remain in a tank or other container which precludes any direct contact by children. Educational programs that include prohibited animals and are run by zoos, museums and other professional animal handlers are permitted.

(4) Any animals other than cats and dogs shall be kept in an approved cage for the type of animal. Cages shall have removable bottoms and shall be kept clean and sanitary.

(5) All animals shall be kept away from food preparation surfaces. If animals have access to food preparation surfaces, the surfaces shall be cleaned and sanitized prior to meal preparation.

(6) Litter boxes shall not be located in any part of the home used by children or for food storage, preparation, or eating.

(7) Caregivers must be physically present when children are interacting with animals.

(8) Handwashing, as specified in OAR 414-350-0160(2)(d) and (e), shall be practiced.

(9) Parents must be made aware of the presence of any animals in the child care home.

Stat. Auth.: ORS 657A.260  
Stats. Implemented: ORS 657A.260 & 657A.290  
Hist.: CSD 12-1988, f. 6-29-88, cert. ef. 7-1-88; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-010-0752; CCD 1-1995, f. 10-30-95, cert. ef. 11-1-95; CCD 3-2002, f. 10-14-02, cert. ef. 10-15-02; CCD 2-2008(Temp), f. & cert. ef. 8-6-08 thru 2-2-09; CCD 4-2008, f. & cert. ef. 10-2-08; CCD 4-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10

## 414-350-0200 Food Selection, Storage, and Preparation

(1) All food and drink served by the provider shall be selected, stored, prepared, and served in a sanitary manner.

(2) All staff who prepare or serve food must have and maintain a current food handler certification pursuant to ORS 624.570.

(3) All food products served by the provider shall be obtained from commercial food suppliers, except that:

(a) Fresh fruits and vegetables may be served;

(b) Frozen fruits, frozen vegetables, and canned and frozen jams and jellies processed in the certified family child care home may be served; and

(c) Home-canned or home-processed food, other than those described in OAR 414-350-0200(3)(b), may be served to an individual child only when supplied by that child's parent(s).

(4) Only pasteurized and fortified milk shall be served to children.

(a) Powdered milk may be used only in cooking; and

(b) The serving of unpasteurized milk is prohibited.

(5) Only pasteurized 100% fruit or vegetable juice shall be served.

(6) A certified family child care home shall have at least one refrigerator, in good operating condition, that is adequate to store all potentially hazardous foods.

(7) All potentially hazardous food shall, except when being prepared, be kept at 45° Fahrenheit or below, or 140° F or above.

(a) A temperature-measuring device (TMD) in working condition shall be affixed to the door or the front edge of the top shelf of all refrigerators.

(b) Foods requiring refrigeration after preparation shall be covered and rapidly cooled to a temperature of 45° F or below.

(c) Extra care shall be taken to ensure that, after pouring milk, any unused portion left in the container is returned to the refrigerator immediately.

(d) Refrigerated storage space at 45° F or less shall be used to store lunches that contain potentially hazardous food that children bring from home.

# ADMINISTRATIVE RULES

(e) Leftover food prepared but not served by the provider shall be covered, dated, labeled, and either refrigerated promptly and used within 36 hours or frozen immediately for later use.

(f) Foods that have been cooked and then refrigerated shall be reheated rapidly according to food handler certification standards.

(8) Children shall not be in the kitchen or food preparation areas when foods are being prepared unless they are protected from such hazards as hot foods, sharp utensils, etc.

Stat. Auth.: ORS 657A.260

Stats. Implemented: ORS 657A.260, 657A.280 & 657A.290

Hist.: CSD 12-1988, f. 6-29-88, cert. ef. 7-1-88; CSD 2-1989, f. & cert. ef. 1-25-89; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-010-0760; CCD 1-1995, f. 10-30-95, cert. ef. 11-1-95; CCD 3-2002, f. 10-14-02, cert. ef. 10-15-02; CCD 4-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10

## 414-350-0210

### Meals and Snacks

(1) The provider shall provide or ensure the availability of adequate and nutritious meals and snacks appropriate for the ages and needs of the children served. USDA guidelines will be used to determine if meals and snacks are adequate and nutritious. Foods of minimal nutritional value (e.g., Jell-O, popcorn, desserts, potato chips) shall only be served occasionally and not replace nutritious foods.

(a) Every meal shall meet USDA guidelines and shall include at least one serving from each of the following food groups: fluid milk; breads and grains; meat, fish, poultry or meat alternatives (e.g., dried beans, peanut butter, yogurt or cheese). Each meal shall include two servings of fruits or vegetables. No liquids other than milk and 100% fruit juice shall be counted as part of the daily nutrition.

(b) Snacks shall meet USDA guidelines and shall consist of food or beverage from at least two of the following food groups: fluid milk, breads and grains; meat, fish, poultry or meat alternatives (e.g., dried beans, peanut butter, yogurt or cheese); vegetables and fruits. No liquids other than milk and 100% fruit juice shall be counted as part of the daily nutrition. A snack shall not consist of only two beverages.

(c) Nutrient concentrates and supplements (protein powders, liquid proteins, vitamins, minerals, and other nonfood substances) shall not be served to a child without a written statement of parental consent and written instructions from a medical practitioner. Special diets, not including vegetarian diets, shall not be served to a child without written instructions from a registered dietician or medical practitioner and written parental consent.

(2) Meals and snacks provided to children shall meet the following requirements:

(a) In certified family child care homes open morning through afternoon, lunch and morning and afternoon snacks shall be served to the children in care. If breakfast is served to all children, a midmorning snack is not required;

(b) School-age children arriving after school shall be served a snack;

(c) When the planned attendance is prior to 7 a.m. or after 6:30 p.m., a child shall be offered a complete meal if it is not provided by the parent(s); and

(d) There shall be no more than 3-1/2 hours between meals and snacks.

(3) Meals and snacks for children shall be:

(a) Prepared by the provider;

(b) Prepared by the parent of the child; or

(c) Prepared from a source approved by the Department of Human Services.

(4) When the parent of a child provides food for the child's meal:

(a) The provider shall be responsible for at least one serving of milk or a milk product to each child at meals;

(b) Each child's food shall be monitored daily by a caregiver to ensure that the food meets nutritional requirements as defined in section (1) of this rule; and

(c) The provider shall have sufficient food available to supplement any meal that does not meet nutritional requirements as defined in section (1) of this rule.

(5) Meals shall be served in a manner that supports safe and sanitary eating and allows socialization to occur.

(6) Nutrient concentrates and supplements shall not be served to a child without a written statement of consent from the parent and a medical practitioner. Special diets, not including vegetarian diets, shall not be served to a child without a written statement of consent from the parent and a registered dietician or medical practitioner.

(7) To serve family style meals, where food is brought to the table in larger quantities and served to the plates from the table, a certified home must have a written plan, approved by the environmental health specialist and CCD, which includes at least the following elements:

(a) Provision for handwashing immediately prior to eating;

(b) Separate serving portions for each table, if more than one table is used;

(c) Serving utensils distinct from eating utensils;

(d) Provision for serving mildly ill children so as to prevent the spread of the illness;

(e) The discarding of any food brought to the table and not eaten; and

(f) Food brought to the table must be covered until a caregiver is seated with the children.

(8) A certified family child care home serving children under 12 months of age shall comply with the following requirements for those children:

(a) Each child shall be fed on his/her own feeding schedule.

(b) When formula is furnished by the provider, it shall be either the commercially prepared, iron-enriched, ready-to-feed type or shall be prepared from powder or concentrate and diluted according to manufacturers' instructions. When formula is prepared on site, the provider must have a written plan for mixing formula and sanitizing bottles and nipples. The plan must be approved in writing by the environmental health specialist.

(c) Formula, breast milk, and food provided by the parent shall be clearly marked with the child's name and refrigerated if required.

(d) No liquids, other than milk, formula, water, and 100 percent fruit juice, shall be served.

(e) Whole milk, skim milk, 1%, and 2% milk shall not be served unless requested in writing by the child's parent(s) and with a medical provider's written permission.

(f) Solid foods fed to infants shall be selected from the USDA Infant Food Chart.

(A) Solid foods shall not be fed to infants less than four months of age without parental consent.

(B) Solid food shall not be served directly from the container unless the child consumes the entire contents of the container or any remaining food in the container is discarded.

(C) If a portion of solid food from a container is placed in a clean, sanitized dish and served from the dish, any food remaining in the dish shall be discarded.

(D) Open containers of food, from which a portion has been removed, must immediately be refrigerated at 45 degrees F or less.

(E) Solid foods, with the exception of finger foods, shall be fed with a spoon.

(g) Honey or foods containing honey shall not be served; and

(h) Children who cannot feed themselves shall be held or, if able to sit alone, fed in an upright position.

(A) Infants up to six months of age shall be held while bottle fed.

(B) Bottles shall never be propped. The child or a caregiver shall hold the bottle.

(C) Infants no longer being held for feeding shall be fed in a manner that provides safety and comfort.

Stat. Auth.: ORS 657A.260

Stats. Implemented: ORS 657A.260, 657A.280 & 657A.290

Hist.: CSD 12-1988, f. 6-29-88, cert. ef. 7-1-88; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-010-0762; CCD 1-1995, f. 10-30-95, cert. ef. 11-1-95; CCD 3-2002, f. 10-14-02, cert. ef. 10-15-02; CCD 8-2003, f. 12-23-03, cert. ef. 12-28-03; CCD 4-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10

## 414-350-0220

### General Requirements

(1) There shall be activities for children according to their ages, interests, and abilities. If the provider is certified to care for more than 12 children the provider shall have a written program of activities for each age group.

(2) A description of the general routine, covering all hours of operation, shall be in writing and shall provide:

(a) Regularity of such activities as eating, napping, and toileting with flexibility to respond to the needs of individual children;

(b) A balance of active and quiet activities;

(c) Individual and group activities;

(d) Daily indoor and outdoor activities in which children use both large and small muscles;

(e) Periods of outdoor play each day when weather permits; and

(f) Opportunities for a free choice of activities by children.

(3) The provider and other caregivers shall use the written description of the general routine as a guide, allowing flexibility to respond to the needs of individual children and/or groups of children and to appropriate variations in daily activities.

(4) No child may view television or videos or play computer or electronic games for more than two hours per day.

(5) Infant and toddler program of activities. The following apply to infant and toddlers in care at the certified home.

(a) Infants shall be allowed to form and follow their own patterns of sleeping and waking periods.

(b) Children shall be given opportunities during each day to move freely by creeping and crawling in a safe, clean, warm, and uncluttered area.

(c) Throughout the day, each child shall receive physical contact and individual attention (e.g., being held, rocked, talked to, sung to, and taken on walks inside and outside the home).

(d) Routines relating to activities such as bedtime, feeding, diapering, and toileting shall be used as opportunities for language development, building the child's self-esteem, and other learning experiences.

(e) Children shall be encouraged to play with a variety of safe toys and objects.

(f) Children shall be given appropriate opportunities to use the five senses through sensory play.

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(g) Infants shall be put to sleep on their backs.  
 (h) Immediate attention shall be given to the emotional and physical needs of the children. No child shall be routinely left in a crib except for sleep or rest.

(i) Caregivers shall encourage the development of self-help skills (dressing, toileting, washing, eating) as children are ready.

(j) In addition, toddlers shall be given opportunities to participate in:

(A) A variety of activities encouraging creative expression through the arts; and

(B) Running, climbing, and other vigorous physical activities.

(6) Preschool-age program of activities. In addition to the daily routine specified in OAR 414-350-0220(2), preschool-age children shall have opportunities, on a daily basis, to choose from a variety of activities and experiences, which shall include:

(a) Creative expression through the arts;

(b) Dramatic play;

(c) Gross (large) motor development;

(d) Fine (small) motor development;

(e) Music and movement;

(f) Opportunities to listen and speak;

(g) Concept development;

(h) Appropriate sensory play; and

(i) A supervised nap or rest period. Children who do not sleep after 20-45 minutes of quiet time must be provided with an alternative quiet activity. The activity may be in the same room where children are sleeping if it is not distracting to sleeping children.

(7) School-age program of activities. In addition to the daily routine specified in OAR 414-350-0220(2), school age children shall have opportunities to choose from a variety of activities, including:

(a) Individual or group projects and activities, including homework; and

(b) Rest or relaxation.

(8) A home providing swimming or other water activities to children shall meet all of the requirements set forth in OAR 414-350-0380.

(9) Spa pools on the grounds of the certified family child care home shall be enclosed by a barrier at least 48 inches high, with a lockable gate or door, and have a lockable pool cover. The enclosure and cover shall be locked whenever the child care business is being conducted.

Stat. Auth.: ORS 657A.260

Stats. Implemented: ORS 657A.260, 657A.280 & 657A.290

Hist.: CSD 12-1988, f. 6-29-88, cert. ef. 7-1-88; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-010-0770; CCD 1-1995, f. 10-30-95, cert. ef. 11-1-95; CCD 3-2002, f. 10-14-02, cert. ef. 10-15-02; CCD 6-2005(Temp), f. 12-29-05, cert. ef. 1-1-06 thru 6-29-06; CCD 3-2006, f. & cert. ef. 6-13-06; CCD 4-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10

## 414-350-0230

### Equipment, Furniture, and Supplies

(1) The certified family child care home shall have indoor and outdoor play equipment, materials, and furniture that are:

(a) Appropriate to the developmental needs and interests of children;

(b) Safe, clean, durable, well constructed, in good repair, and made from lead-free, non-toxic materials;

(c) Child-sized or appropriately adapted for infants, toddlers, and preschool age children's use; and

(d) Easily accessible to the children.

(2) The quantity of play materials (i.e., toys, books and games) shall be sufficient to:

(a) Avoid excessive competition;

(b) Provide a variety of choices to each child;

(c) Provide a balance of active/quiet and individual/group activities; and

(d) Provide the variety of activities required in OAR 414-350-0220(2),

(3), and (4).

(3) An individual bed, mat or cot, appropriate to the cultural background of the child, with individual bedding appropriate to the season shall be provided for each toddler and preschool age child in the home at nap time and for each school-age child who wants to rest.

(a) Family beds may be used.

(b) If the parent(s) so request, siblings may share the same bed.

(c) The upper level of bunk beds shall not be used for children under 10 years of age.

(d) The upper level of bunk beds may be used for children 10 years or older if a bed rail and safety ladder are provided.

Stat. Auth.: ORS 657A.260

Stats. Implemented: ORS 657A.260, 657A.280 & 657A.290

Hist.: CSD 12-1988, f. 6-29-88, cert. ef. 7-1-88; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-010-0772; CCD 1-1995, f. 10-30-95, cert. ef. 11-1-95; CCD 3-2002, f. 10-14-02, cert. ef. 10-15-02; CCD 4-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10

## 414-350-0235

### Infant and Toddler Furniture and Equipment

(1) Each infant shall have a crib, portable crib, or playpen with a clean, non-absorbent mattress that meets the following requirements:

(a) Each crib shall be of sturdy construction with vertical slats no more than 2 3/8" apart;

(b) Locks and latches on the dropside of the crib shall be safe and secure from accidental release or release by the infant inside the crib;

(c) Each mattress shall fit snugly; and

(d) Sleeping arrangements shall be appropriate to the cultural background of the infant, with individual bedding appropriate to the season.

(2) If infants and toddlers are in care there shall be:

(a) A bathtub, bathinette, plastic basin, or similar size shallow sink available for bathing children; and

(b) A diaper-changing area. The area shall be located so that hand-washing can occur immediately after diapering without contact with other surfaces or other children.

(c) If the provider is certified to care for more than 12 children and more than 8 infants and toddlers are regularly in care, there must be a second diaper-changing area available.

(3) The diaper-changing table or area shall comply with the requirements specified in OAR 414-350-0160(3)(a)(G).

(4) If high chairs are used, they shall have:

(a) A broad base to prevent tipping;

(b) A latch to keep a child from raising the tray; and

(c) Straps to prevent a child from sliding out.

(5) Cribs, portable cribs, playpens, and high chairs must meet US Consumer Product Safety Commission or equivalent standards.

(6) Car seats are to be used for transportation purposes only. Children who arrive at the home asleep in a car seat may remain in the car seat until they awake.

(7) The use of baby equipment shall not substitute for providing a variety of stimulating experiences.

(8) The use of infant walkers is prohibited.

(9) The use of potty chairs must be approved by the environmental health specialist and/or by CCD.

Stat. Auth.: ORS 657A

Stats. Implemented: ORS 657A.260 & 657A.280

Hist.: CCD 3-2002, f. 10-14-02, cert. ef. 10-15-02; CCD 8-2003, f. 12-23-03, cert. ef. 12-28-03; CCD 6-2005(Temp), f. 12-29-05, cert. ef. 1-1-06 thru 6-29-06; CCD 3-2006, f. & cert. ef. 6-13-06; CCD 4-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10

## 414-350-0240

### Guidance and Discipline

(1) A provider shall have a written policy on guidance and discipline of children.

(2) The provider shall make these policies known to all caregivers and parents.

(3) The guidance and discipline policy shall:

(a) Provide for positive guidance, redirection, and the setting of clear boundaries; and

(b) Be designed to help the child develop self-control, self-esteem, and respect for others.

(4) Only a caregiver shall provide guidance or discipline to a child.

(5) Guidance and discipline shall be fair, consistently applied, timely, and appropriate to the behavior and age of the child. Positive statements or redirection of behaviors shall be used.

(6) Prohibited punishment includes, but is not limited to:

(a) Hitting, slapping, shaking, striking with hand or instrument, pinching, tying or binding, or inflicting any other form of corporal punishment;

(b) Mental or emotional punishment including, but not limited to, name calling, ridicule, yelling, or threats;

(c) Non-prescription chemical restraints used for discipline or to control behavior;

(d) Confining a child in an enclosed area, (e.g., a locked or closed room, closet, box);

(e) Forcing or withholding meals, snacks, rest, or necessary toilet use;

or

(f) Belittling a child for or forcing a child to clean up after toileting accidents.

(7) The provider shall not accept parental permission to use any form of punishment listed in subsection (6) of this rule.

Stat. Auth.: ORS 657A.260

Stats. Implemented: ORS 657A.260

Hist.: CSD 12-1988, f. 6-29-88, cert. ef. 7-1-88; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-010-0774; CCD 3-2002, f. 10-14-02, cert. ef. 10-15-02; CCD 4-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10

## 414-350-0250

### Transportation

When transportation is provided by or arranged for by the certified family child care home, the following requirements must be met.

(1) Drivers shall be at least 18 years of age and hold a current driver's license.

(2) The vehicle shall be:

(a) In compliance with all applicable state and local motor vehicle laws, and

(b) Maintained in a safe operating condition.

(3) If transportation is provided between the certified family child care home and the child's school or other destination, the provider shall have in writing an acknowledgment from the parent(s) that they are aware of the time

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of day their child is to be picked up and/or delivered by the provider. If the pick-up schedule results in children being unsupervised at school or other location, the provider shall notify parents of this fact.

(4) When transporting children:

(a) The emergency information for each child who is being transported shall be in the vehicle.

(b) Children shall be transported only in sections of vehicles designed for and equipped to carry passengers.

(c) A seat that fully supports the passenger shall be provided for each child.

(d) The number of children transported shall not exceed the number of seat belts or child safety systems available in the vehicle.

(e) All children shall be transported in accordance with ORS 811.210. The child safety system and safety belts shall comply with ORS 815.055 and the standards adopted by the Oregon Department of Transportation. A child under four years of age and weighing 40 pounds or less shall be in an approved child safety system. A child between the ages of 4 and 6 years AND children who weigh between 40 and 60 pounds, regardless of age, must use a booster seat.

(f) Staff/child ratios, as specified in OAR 414-350-0120, shall be maintained in vehicles, as well as in the certified family child care home, when one caregiver is transporting children.

(g) Infants, toddlers, and preschool age children shall leave the vehicle on the same side of the street as the building they will enter.

(h) Drivers delivering children to their homes shall not depart until the child has been received by an authorized person.

(i) No child shall be left unattended inside or outside a vehicle.

(j) If firearms and ammunition are stored in a vehicle, they must be stored as specified in OAR 414-350-0170(10)(d).

Stat. Auth.: ORS 657A.260

Stats. Implemented: ORS 657A.260, 657A.280 & 657A.290

Hist.: CSD 12-1988, f. 6-29-88, cert. ef. 7-1-88; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-010-0776; CSD 11-1994, f. & cert. ef. 5-23-94; CCD 1-1995, f. 10-30-95, cert. ef. 11-1-95; CCD 3-2002, f. 10-14-02, cert. ef. 10-15-02; CCD 6-2005(Temp), f. 12-29-05, cert. ef. 1-1-06 thru 6-29-06; CCD 3-2006, f. & cert. ef. 6-13-06; CCD 4-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10

## 414-350-0375

### Night Care

(1) When a certified family home provides night care to child care children, the provider shall meet all of the requirements for certified family child care homes contained in OAR 414-350-0000 through 414-350-0400, except for 414-350-0150 and 414-350-0220. In addition, the home shall comply with the following requirements, and the certification shall reflect that regulated night care is offered.

(a) Staffing:

(A) During the hours of night care, the required staff/child ratios, as specified in OAR 414-350-0120 shall be maintained.

(B) A caregiver must be present on the same floor level as the child care children who are sleeping.

(C) A caregiver must be awake for the arrival and departure of each child in night care. A caregiver must be awake during night care hours if more than six(6) children are in care.

(D) All persons 18 years of age and older, inclusive of guests sleeping in the home during night care hours, shall comply with OAR 414-350-0090(4)(a) - (f).

(b) Activities:

(A) There shall be quiet activities, such as story-time, games, arts and crafts, and reading, for each child arriving before bedtime. These activities shall be appropriate to the child's age, interests and abilities.

(B) The use of television, videos, and computer or electronic games shall comply with OAR 414-305-0220(4).

(C) The provider shall have a written plan for night care which includes:

(i) Regular routines;

(ii) Supervision of children;

(iii) Evacuation procedures for awake and sleeping children;

(iv) Sleeping arrangements; and

(v) Arrival and departure procedures.

(D) If 24-hour care is provided, the provider shall have a written plan for self care, i.e., how her/his own needs will be met.

(c) Sleeping Arrangements:

(A) Space shall be available so that children may go to sleep at various times, based on their age and need for rest.

(B) All sleeping rooms used by children shall have two useable exits. A sliding door or window can be considered a useable exit if it meets the definition, as specified in OAR 414-350-0010(32).

(C) Beds and bedding shall comply with OAR 414-350-0230(3) and 414-350-0235(1).

(d) Personal Hygiene:

(A) When bathing is provided, there shall be:

(i) Individual washcloths and towels for each child;

(ii) Individual bathing opportunities for each child, unless a parent(s) has given permission for siblings to bath together;

(iii) Safety glass in glass shower doors or glass tub enclosures;

(iv) Appropriate cleaning and sanitizing procedures implemented after each child has used the shower or tub; and

(v) Appropriate equipment in bathtubs and showers to prevent slipping.

(B) Children spending the night shall have the opportunity to brush their teeth with an individual toothbrush and toothpaste labeled with his/her name.

(C) When bathing, showering or brushing teeth, children shall be supervised by a caregiver. For school-age children, privacy shall be maintained.

Stat. Auth.: ORS 657A

Stats. Implemented: ORS 657A.260 & 657A.280

Hist.: CCD 3-2002, f. 10-14-02, cert. ef. 10-15-02; CCD 4-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10

## 414-350-0380

### Swimming Activities

The following requirements apply to swimming/water activities provided on the premises of a certified family child care home, or off premises by another organization, public or private, when part of the facility's program.

(1) Definitions:

(a) "Beginning swimmer" means a child who has mastered the skills required to:

(A) Hold his breath with his head submerged;

(B) Perform a front and back float;

(C) Perform the flutter kick on his front and back;

(D) Be able to level off from a vertical entry into a float position; and

(E) Do a combined stroke (front or back) for at least 20 feet without stopping.

(b) "Non-swimmer" means a child who does not meet the definition of beginning swimmer.

(c) "Lifeguard" means a person holding current certification and meeting the requirements of OAR 333-060-0015(13).

(d) "Swimming pool" means a swimming or wading pool licensed by the Oregon Department of Human Services or one of its delegated agents under the requirements of OAR 333-060-0005 through 333-060-0225.

(e) "Wading" means water activities in which the water's depth is no higher than the child's knee.

(2) General Health and Safety:

(a) Children with diarrhea or who have had diarrhea within the last two weeks shall not use the pool.

(b) Children who are not toilet trained shall wear swim diapers.

(c) Children shall use the toilet and shower before entering the pool.

(d) Proper supervision shall be maintained, as specified in OAR 414-350-0380(3)(e), (f) and (g) and 414-350-0380(d) and (e).

(e) The pool operator shall maintain water quality as required in OAR 333-060-0200 or pool use shall cease until the water quality is restored.

(f) Children using the pool shall participate in basic water safety instruction based on their ages and developmental levels.

(A) All adults counted in the staff/child ratios in Table 4 shall be able to swim if the water is more than 48 inches deep and, regardless of the water depth, shall be dressed for swimming.

(B) For children 6 weeks to 36 months, one of the required staff must be in the water. Other staff may be on deck.

(g) Recreational swimming is not allowed for non-swimmers ages 6 weeks to 36 months in swimming pools with water depth 24 inches and over.

(h) Portable-style wading pools are not permitted.

(3) On-Premises Pool Facilities:

(a) On-premises pool facilities shall be licensed by the Oregon Department of Human Services or its delegated agent and shall comply with the requirements in OAR 333-060-0005 through 333-060-0225.

(b) On-premises pool facilities shall have toilets and showers for use by the swimmers.

(c) All new pools or pools at certified family child care homes certified after September 15, 2002, shall have dressing areas for each sex, with storage for the children's clothes.

(d) All activities occurring in a pool shall be under the direction and direct supervision of lifeguards.

(e) Center staff/child ratios shall be maintained at all times children are in the pool area, as specified in Table 4 of this rule.

(f) Lifeguard/child ratios shall be maintained at all times children are in the pool area:

(A) For children not yet attending kindergarten, there shall be one lifeguard for every 20 children;

(B) For children attending kindergarten and older, there shall be one lifeguard for every 40 children; and

(C) For mixed age groups of children, the age of the youngest child shall determine the lifeguard/child ratio.

(g) During all periods of pool operation, the appropriate number of lifeguards shall be on duty in the pool area. During periods of recreational swimming, at least one of the required number of lifeguards shall be stationed on the pool deck.

(h) Water activities that involve a sprayer or spray feature using potable water that is not re-circulated or collected may be conducted by the center. [Table not included. See ED. NOTE.]

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(i) A written plan for pool emergencies shall be available to all staff. The plan shall cover procedures for medical emergencies, chemical emergencies and severe weather.

(A) Staff shall be familiar with emergency procedures, the use of safety equipment and emergency contacts.

(B) The certified home shall provide in-service training and/or drills of the emergency procedures for the pool at least every six months. The provider shall keep a written record of the type, date, time and duration of the training/drills.

(C) Emergency telephone numbers shall be posted near the telephone in the pool area and near a centrally-located and accessible telephone in the certified home.

(j) Safety equipment shall be provided and comply with OAR 333-060-0005 through 333-060-0225. In addition:

(A) All pools shall have an emergency telephone located in the pool area. The telephone shall be able to dial directly for emergency assistance, unless otherwise approved by the Oregon Department of Human Services.

(B) A bodily-fluid spill clean-up kit shall be provided in the pool area. The kit shall consist, at a minimum, of protective gloves, disinfectant, clean-up materials (e.g., bucket, sponge, paper towels), and a biohazard waste bag, be stored in a complete condition, and be replaced or restocked immediately after use.

(C) A rescue tube, of the type required by the lifeguard certifying agency, shall be provided for each lifeguard on duty.

(4) Off-Premises Pool Facilities:

(a) Off-premises pool facilities used by the center shall be licensed by the Oregon Department of Human Services as public swimming pools.

(b) The off-premises pool management shall be made aware of the certified family child care home rules regarding swimming activities.

(c) Certified family child care home staff and children shall comply with the rules and regulations of the public swimming pool.

(d) Certified family child care home staff shall comply with the staff/child ratios in Table 4 of this rule. Lifeguard/child ratios shall be determined by the public swimming pool.

(e) Children shall be within sight and sound of certified family child care home staff at all times.

(f) First aid supplies and a copy of each child's medical release form shall be taken to off-premises pool facilities.

(5) Natural Bathing Areas:

(a) The certified family child care home shall not conduct swimming activities in areas with flowing water.

(b) Wading is the only water activity permitted in shallow surf, lakes, rivers and streams.

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

Stat. Auth.: ORS 657A.260

Stats. Implemented:

Hist.: CCD 3-2002, f. 10-14-02, cert. ef. 10-15-02; CCD 4-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10

## 414-350-0390

### Denial and Revocation of Certification

(1) Certification may be denied or revoked if a certified family child care home fails to meet requirements, provide CCD with information requested, allow an inspection, correct deficiencies, or is operated or maintained in a manner which is harmful to the health, safety or well-being of children in care.

(2) Revocation of a certification shall occur only after the provider receives notification of deficiencies, has adequate time to make corrections, and fails to do so.

(3) The provider has the right to appeal any decision to deny or revoke the certification, subject to the provisions of Chapter 183, Oregon Revised Statutes.

(4) A provider whose certification has been revoked shall not be eligible to reapply for three years after the closure of the certified family child care home.

(5) If necessary to protect children, CCD may give public notice of denial or revocation action taken. The type of notice will depend on individual circumstances.

Stat. Auth.: ORS 657A.260

Stats. Implemented:

Hist.: CCD 3-2002, f. 10-14-02, cert. ef. 10-15-02; CCD 4-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10

## 414-350-0400

### Suspension of Certification

(1) The Child Care Division (CCD) may immediately, and without prior notice, suspend the child care certification when, in the opinion of CCD, such action is necessary to protect the children from physical or mental abuse or a substantial threat to health, safety or well-being. Such action may be taken before an investigation is completed.

(a) A provider whose certification has been suspended must immediately notify, verbally or in writing, all parents of the suspension.

(b) A provider whose certification has been suspended must post the suspension in the home where it can be viewed by parents and others.

(2) The provider has the right to appeal any decision to suspend the certification, subject to the provisions of Chapter 183, Oregon Revised Statutes.

(3) If the provider does not request a hearing and the conditions which resulted in suspension have not been corrected, the certification shall be revoked.

Stat. Auth.: ORS 657A.260

Stats. Implemented:

Hist.: CCD 3-2002, f. 10-14-02, cert. ef. 10-15-02; CCD 4-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10

## 414-350-0405

### Civil Penalty

(1) A provider who violates these rules or the terms and conditions of certification under these rules may be subject to a civil penalty.

(2) For a serious violation, as defined in OAR-414-350-0010 (30), a provider may be subject to a civil penalty of \$100 for the first violation after a written warning with time to correct is issued; and \$200 for each subsequent violation, not to exceed \$1,000 in a quarter for all rule violations.

(3) For a non-serious violation, a provider may be subject to a civil penalty of \$50 for the first violation after a written warning with time to correct is issued; \$100 for a second violation, and \$200 for a third and subsequent violations, not to exceed \$1,000 in a quarter for all rule violations.

(4) The provider has the right to appeal any decision to impose a civil penalty, subject to the provisions of Chapter 183, Oregon Revised Statutes.

Stat. Auth.: ORS 657A.260

Stats. Implemented:

Hist.: CCD 4-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10

## Land Use Board of Appeals Chapter 661

**Rule Caption:** Amends Land Use Board of Appeals' administrative rules to implement fee increases in HB 3199 (2009).

**Adm. Order No.:** LUBA 2-2009

**Filed with Sec. of State:** 12-30-2009

**Certified to be Effective:** 1-1-10

**Notice Publication Date:** 11-1-2009

**Rules Amended:** 661-010-0015, 661-010-0038, 661-010-0050

**Subject:** OAR 661-010-0015 is being amended to conform to HB 3199 (2009) which increases the filing fee for a notice of intent to appeal to \$200 from \$175.

OAR 661-010-0038 is being amended to conform to HB 3199 (2009) which imposes a \$100 filing fee for state agency briefs.

OAR 661-010-0050 is being amended to conform to HB 3199 (2009) which imposes a \$100 filing fee for motions to intervene.

**Rules Coordinator:** William F. Wilson — (503) 378-2986

## 661-010-0015

### Notice of Intent to Appeal

(1) Filing of Notice:

(a) The Notice, together with two copies, and the filing fee and deposit for costs required by section (4) of this rule, shall be filed with the Board on or before the 21st day after the date the decision sought to be reviewed becomes final or within the time provided by ORS 197.830(3) through (5). A notice of intent to appeal plan and land use regulation amendments processed pursuant to ORS 197.610 to 197.625 shall be filed with the Board on or before the 21st day after the date the decision sought to be reviewed is mailed to parties entitled to notice under ORS 197.615. A Notice filed thereafter shall not be deemed timely filed, and the appeal shall be dismissed.

(b) The date of filing a notice of intent to appeal is the date the Notice is received by the Board, or the date the Notice is mailed, provided it is mailed by registered or certified mail, and the party filing the Notice has proof from the post office of such mailing date. If the date of mailing is relied upon as the date of filing, acceptable proof from the post office shall consist of a receipt stamped by the United States Postal Service showing the date mailed and the certified or registered number. If a Notice is received without payment of the fee and deposit required by section (4) of this rule, the petitioner will be given an opportunity to submit the required fee and deposit. If the filing fee and deposit for costs are not paid within the time set by the Board, the Board will dismiss the appeal.

(c) If the Board determines that a Notice identifies more than one final decision as the subject of appeal, the Board shall notify the petitioner. The Board shall dismiss the Notice if the petitioner fails to submit within the date specified by the Board either a written election to appeal only one decision, or a separate Notice and separate filing fee and deposit, as required by section (4) of this rule, for each additional decision.

(2) Service of Notice: The Notice shall be served on the governing body, the governing body's legal counsel, and all persons identified in the Notice as required by subsection (3)(f) of this rule on or before the date the notice of intent to appeal is required to be filed. Service of the Notice as



# ADMINISTRATIVE RULES

required by this section may be in person or by first class mail. The date of serving such notice shall be the date of mailing.

(3) Contents of Notice: The Notice shall be substantially in the form set forth in Exhibit 1 and shall contain:

(a) A caption which sets forth the name(s) of the person(s) filing the Notice, identifying the person(s) as petitioner(s), and the name of the governing body, identifying the governing body as respondent;

(b) Below the caption the heading "Notice of Intent to Appeal";

(c) The full title of the decision to be reviewed as it appears on the final decision;

(d) The date the decision to be reviewed became final;

(e) A concise description of the decision to be reviewed, or a copy of either the notice of decision or the decision to be reviewed;

(f) The name, address and telephone number of each of the following:

(A) The Petitioner. If the petitioner is not represented by an attorney, the petitioner's name, address and telephone number shall be included. If an attorney represents the petitioner, the attorney's name, address and telephone number shall be substituted for that of the petitioner. If two or more petitioners are unrepresented by an attorney, one petitioner shall be designated as the lead petitioner, but the Notice shall include the names, addresses, and telephone numbers of all such unrepresented petitioners. See OAR 661-010-0075(7)(a);

(B) The governing body and the governing body's legal counsel;

(C) The applicant, if any (and if other than the petitioner). If an applicant was represented by an attorney before the governing body, then the name, address and telephone number of the applicant's attorney shall also be included;

(D) Any other person to whom written notice of the land use decision or limited land use decision was mailed as shown on the governing body's records. The telephone number may be omitted for any such person.

(g) A statement advising all persons, other than the governing body, that in order to participate in the review proceeding a person must file a motion to intervene pursuant to OAR 661-010-0050.

(h) On the last page, a signature by each petitioner, or the attorney representing that petitioner, on whose behalf the Notice is filed.

(i) Proof of service upon all persons required to be named in the Notice. See Exhibit 1.

(4) Filing Fee and Deposit for Costs: The Notice shall be accompanied by a filing fee of \$200 and a deposit for costs in the amount of \$150 payable to the Land Use Board of Appeals. One check, State of Oregon purchase order or money order for \$350 may be submitted. If a check providing the filing fee or deposit for costs or both is returned for insufficient funds and the filing fee and deposit for costs are not paid within the time set by the Board, the Board shall dismiss the appeal. Cash shall not be accepted.

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

Stat. Auth.: ORS 183.545 & 197.820(4)

Stats. Implemented: ORS 197.620, 197.830(1) & (9)

Hist.: LUBA 1-1979(Temp), f. & ef. 11-1-79; LUBA 2-1980, f. & ef. 4-29-80; LUBA 1-1983, f. & ef. 10-3-83; LUBA 1-1987, f. & ef. 12-30-87; LUBA 1-1992, f. & cert. ef. 1-21-92; LUBA 2-1992, f. & cert. ef. 3-19-92; LUBA 1-1994, f. & cert. ef. 6-22-94; LUBA 1-1998, f. 2-12-98, cert. ef. 3-1-98; LUBA 1-2001, f. 10-15-01, cert. ef. 1-1-02; LUBA 1-2009(Temp), f. & cert. ef. 8-5-09 thru 12-31-09; LUBA 2-2009, f. 12-30-09, cert. ef. 1-1-10

## 661-010-0038

### State Agency Briefs

A state agency that wishes to file a brief under ORS 197.830(8) shall file the brief together with four copies within the time required for respondent's brief. A state agency brief shall have yellow front and back covers. A state agency brief shall be accompanied by a filing fee of \$100.

Stat. Auth.: ORS 183.545 & 197.820(4)

Stats. Implemented: ORS 197.830(8)

Hist.: LUBA 1-1983, f. & ef. 10-3-83; LUBA 1-1987, f. & ef. 12-30-87; LUBA 1-1994, f. & cert. ef. 6-22-94; LUBA 1-1998, f. 2-12-98, cert. ef. 3-1-98; LUBA 1-2001, f. 10-15-01, cert. ef. 1-1-02; LUBA 1-2009(Temp), f. & cert. ef. 8-5-09 thru 12-31-09; LUBA 2-2009, f. 12-30-09, cert. ef. 1-1-10

## 661-010-0050

### Intervention

(1) Standing to Intervene: The applicant and any person who appeared before the local government, special district or state agency may intervene in a review proceeding before the Board. Status as an intervenor is recognized when a motion to intervene is filed, but the Board may deny that status at any time.

(2) Motion to Intervene: A motion to intervene shall be filed within 21 days of the date the notice of intent to appeal is filed pursuant to OAR 661-010-0015, or the amended notice of intent to appeal is filed or original notice of intent to appeal is refiled pursuant to OAR 661-010-0021. When two or more intervenors join in a motion to intervene and are unrepresented by an attorney, a lead intervenor shall be designated as the contact person for the purpose of receiving documents from the Board and other parties. The motion to intervene (see Exhibit 3) shall:

(a) List the names, addresses, and telephone numbers of all persons moving to intervene. If an attorney represents the intervenor(s), the attorney's name, address and telephone number shall be substituted for that of the intervenor(s);

(b) State whether the party is intervening on the side of the petitioner or the respondent;

(c) State the facts which show the party is entitled to intervene, supporting the statement with affidavits or other proof;

(d) On the last page, be signed by each intervenor, or the attorney representing that intervenor, on whose behalf the motion to intervene is filed;

(e) Be served upon the Board and all parties.

(3) Intervenor's Brief:

(a) If intervention is sought as a petitioner, the brief shall be filed within the time limit for filing the petition for review, and shall satisfy the requirements for a petition for review in OAR 661-010-0030.

(b) If intervention is sought as a respondent, the brief shall be filed within the time for filing a respondent's brief and shall satisfy the requirements for a respondent's brief in OAR 661-010-0035.

(4) Filing Fee: A motion to intervene shall be accompanied by a filing fee of \$100 payable to the Land Use Board of Appeals. If a motion to intervene is received without payment of the filing fee or a check providing the filing fee is returned for insufficient funds, the intervenor will be given an opportunity to submit the required fee. If the filing fee is not paid within the time set by the Board, the Board shall deny the motion to intervene. Cash shall not be accepted.

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

Stat. Auth.: ORS 183.545 & 197.820(4)

Stats. Implemented: ORS 197.830(2) & (7)

Hist.: LUBA 1-1979(Temp), f. & ef. 11-1-79; LUBA 2-1980, f. & ef. 4-29-80; LUBA 1-1980, f. & ef. 9-8-80; LUBA 1-1983, f. & ef. 10-3-83; LUBA 1-1987, f. & ef. 12-30-87; LUBA 1-1992, f. & cert. ef. 1-21-92; LUBA 2-1992, f. & cert. ef. 3-19-92; LUBA 1-1994, f. & cert. ef. 6-22-94; LUBA 1-1998, f. 2-12-98, cert. ef. 3-1-98; LUBA 1-2001, f. 10-15-01, cert. ef. 1-1-02; LUBA 1-2009(Temp), f. & cert. ef. 8-5-09 thru 12-31-09; LUBA 2-2009, f. 12-30-09, cert. ef. 1-1-10

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## Landscape Contractors Board Chapter 808

**Rule Caption:** Clarifies definitions and notifications and continuing education reporting requirements; removes planting of annuals, perennials and bulbs from definition of maintenance; house-keeping.

**Adm. Order No.:** LCB 12-2009

**Filed with Sec. of State:** 12-23-2009

**Certified to be Effective:** 1-1-10

**Notice Publication Date:** 11-1-2009

**Rules Amended:** 808-002-0200, 808-002-0220, 808-002-0500, 808-002-0620, 808-003-0020, 808-003-0055, 808-003-0060, 808-003-0075, 808-003-0080, 808-003-0085, 808-003-0100, 808-003-0125, 808-003-0210

**Rules Repealed:** 808-003-0105

**Subject:** 808-002-0200 — Removing the adjustment of sprinkler head nozzles and programming of irrigation controllers from the definition of Casual, Minor, or Inconsequential work. It is being moved to the definition of maintenance; a license will not be required to perform these functions. It also clarifies the repair or maintenance of drainage or irrigation systems is not included in the definition; a license as a landscape contracting business or plumber is required to perform these functions.

808-002-0220 — Clarifying to show that a claim must be for work performed subject to ORS 671.510 to 671.760 and within the boundaries of Oregon.

808-002-0500 — Eliminates "when performed by a licensed landscape contracting business" when installing fences, decks, arbors, patios, landscape edging, driveways, walkways and retaining walls; it is still landscaping work, even if performed by an unlicensed person.

808-002-0620 — Updating to remove decorative vegetation and placing it with trees; remove the replacement of lawns, etc under \$500 because this is listed in ORS 671.530(3) as an exemption to the statute; an exemption does not make this maintenance work. It is part of the Casual, Minor and Inconsequential definition.

808-003-0020 — Updating to include other business entities that must be registered with the Secretary of State and what the consequences are for non registration.

808-003-0055 — Updating rule due to a portion of the exam now being open book and the exam being proctored by PSI.

808-003-0060 — Updates rule for change of exam section name from Laws & Rules to Laws, Rules and Business Practice

# ADMINISTRATIVE RULES

808-003-0075 — Deletes requirement that the agency will notify the applicant by mail of exam scores. The exam is now proctored by a third party who distributes the scores immediately upon taking the exam.

808-003-0080 — Changes scheduling a review of exam with the board office to the designated proctors.

808-003-0085 — Deletes requirement that upon caught cheating the applicant must take all future exams in the board office. The board no longer gives the examination in the board office. It further states the designated proctor will not grade that exam.

808-003-0100 —

Adds entity: Limited Partnership or joint venture and trust to the list of names a license may be issued under. It also adopts the language from 808-003-0105 for clarification.

808-003-0105 — This rule is being repealed and the language is being placed in 808-003-0100.

808-003-0125 — Updates notification of address change rule to require a notification from both the individual landscape construction professional and the landscape contracting business if a sole proprietor. Also requires notification of a change of managing owner or managing employee and a change in percent of ownership.

808-003-0210 — Removes language that is duplicated incorrectly from the statute.

**Rules Coordinator:** Kim Gladwill-Rowley — (503) 378-5909

## 808-002-0200

### Casual, Minor, or Inconsequential

(1) “Casual, Minor, or Inconsequential” work, as used in ORS 671.540(3)(c), includes:

- The replacement of shrubs, vines, trees and nursery stock with varieties that are similar in habit and culture;
- The replacement of existing lawns;
- The planting of annuals, perennials and bulbs in existing beds;
- The replacement of non-concrete landscape edging;
- In an irrigation system, the replacement of three or fewer malfunctioning sprinkler heads with heads of the same or of a similar type and hydraulic equivalency;

(2) “Casual, minor or inconsequential” work does not include:

- The construction of new planting areas;
- The construction or repair of arbors, decks, driveways, fences, retaining walls, walkways, patios, concrete landscape edging, or ornamental water features, drainage systems or irrigation systems; or

(c) The maintenance of irrigation systems with the use of compressed air.

Stat. Auth.: ORS 183.325 - 183.410, 670.310 & 671.670

Stats. Implemented: ORS 671.520 & 671.540

Hist.: LC 3, f. & ef. 2-7-77; LC 1-1981, f. & ef. 10-8-81; LC 1-1984, f. & ef. 7-17-84; LC 2-1984, f. & ef. 10-2-84; LC 1-1985, f. & ef. 7-1-85; LC 1-1986, f. & ef. 1-3-86; LC 1-1988, f. 1-26-88, cert. ef. 2-1-88; Renumbered from 808-010-0010; LC 1-1991, f. & cert. ef. 7-22-91; LC 3-1991(Temp), f. & cert. ef. 12-3-91; LC 1-1992, f. 1-27-92, cert. ef. 2-1-92; LC 2-1992, f. 7-14-92, cert. ef. 7-15-92; LC 3-1992(Temp), f. & cert. ef. 7-16-92; LC 1-1993, f. & cert. ef. 1-19-93; LC 4-1993, f. & cert. ef. 11-1-93; LSCB 2-1997, f. & cert. ef. 11-3-97; LC 1-1998, f. & cert. ef. 2-6-98; LC 3-1998(Temp), f. & cert. ef. 11-16-98 thru 5-15-99; LC 1-1999, f. & cert. ef. 2-11-99; LC 3-1999, f. & cert. ef. 11-17-99, Renumbered from 808-002-0010; LC 1-2001, f. 12-4-01, cert. ef. 1-1-02; LC 3-2004, f. 1-27-04, cert. ef. 2-1-04; LC 6-2005, f. 12-30-05, cert. ef. 1-1-06; LC 9-2008, f. 9-29-08, cert. ef. 10-1-08; LC 12-2009, f. 12-23-09, cert. ef. 1-1-10

## 808-002-0220

### Claims

“Claims” as used in ORS 671.690 to 671.710 and in division 4 of this chapter are:

(1) “Breach of contract claim” means a claim for amounts due from a landscape contracting business as a result of a breach of contract in performing work subject to ORS 671.510 to 671.760.

(2) “Material or equipment claim,” means a claim filed by:

(a) a material supplier who has not been paid for materials sold to a licensed landscape contracting business installed on a given job site located within the boundaries of the State of Oregon when the work performed is subject to ORS 671.510 to 671.760; or

(b) an equipment rental business who has not been paid for the rental of equipment to a licensed landscape contracting business to be used in the performance of work of a licensed landscape contracting business in connection with a given job site located within the boundaries of the State of Oregon when the work performed is subject to 671.510 to 671.760.

(3) “Employee claim” means a claim for unpaid wages or benefits filed by an employee of a landscape contracting business or by the State of Oregon Bureau of Labor and Industries to collect unpaid wages from a landscape contracting business for work performed subject to ORS 671.510 to 671.760.

(4) “Negligent or improper work claim” means a claim for amounts due from a landscape contracting business as a result of negligent or improper work subject to ORS 671.510 to 671.760.

(5) “State tax and contribution claim” means a claim filed by the State of Oregon for amounts due from a licensed landscape contracting business for taxes and contributions due to the State of Oregon.

(6) “Subcontractor claim” is a claim filed by a subcontractor arising out of a contract between the subcontractor and a licensed landscape contracting business for unpaid labor or materials furnished under the contract on a given job site located within the boundaries of the State of Oregon when the work performed is subject to ORS 671.510 to 671.760.

(7) “Lien Claim” means a claim filed by a property owner against a licensed landscape contracting business to discharge or to recoup funds expended in discharging a construction lien on a given job site located within the boundaries of the State of Oregon when the work performed is subject to ORS 671.510 to 671.760.

Stat. Auth.: ORS 183.325 - 183.410, 670.310 & 671.670

Stats. Implemented: ORS 671.510 - 671.720 & 2007 OL Ch. 541

Hist.: LCB 1-2000, f. & cert. ef. 2-1-00; LCB 4-2002, f. & cert. ef. 12-4-02; LC 1-2004, f. 1-27-04, cert. ef. 2-1-04; LC 4-2007, f. 12-19-07, cert. ef. 1-1-08; LC 6-2007, f. 12-24-07, cert. ef. 1-1-08; LC 3-2008, f. & cert. ef. 4-11-08; LC 12-2009, f. 12-23-09, cert. ef. 1-1-10

## 808-002-0500

### Landscaping Work

“Landscaping Work,” as used in ORS 671.540, 671.570 671.660(5) and 671.690, means:

(1) The planning or installing of lawns, shrubs, vines, trees, and nursery stock including the preparation of property on which the vegetation is to be installed. For the purposes of this rule, “preparation of property” includes, but is not limited to, the adding and incorporating of soil amendments, importation of topsoil, removal of soil and final grading to the specified aesthetic and drainage needs of a site on which landscaping work is to be performed;

(2) The construction or repair of ornamental water feature or drainage systems;

(3) The construction or repair of irrigation systems for lawns, shrubs, vines, trees and nursery stock;

(4) The maintenance of irrigation systems with the use of compressed air;

(5) The planning and installing of fences, decks, arbors, patios, landscape edging, driveways, walkway and retaining walls.

Stat. Auth.: ORS 183.325 - 183.410, 670.310 & 671.670

Stats. Implemented: ORS 671.520, 671.530, 671.540 & 671.660

Hist.: LC 3, f. & ef. 2-7-77; LC 1-1981, f. & ef. 10-8-81; LC 1-1984, f. & ef. 7-17-84; LC 2-1984, f. & ef. 10-2-84; LC 1-1985, f. & ef. 7-1-85; LC 1-1986, f. & ef. 1-3-86; LC 1-1988, f. 1-26-88, cert. ef. 2-1-88; Renumbered from 808-010-0010; LC 1-1991, f. & cert. ef. 7-22-91; LC 3-1991(Temp), f. & cert. ef. 12-3-91; LC 1-1992, f. 1-27-92, cert. ef. 2-1-92; LC 2-1992, f. 7-14-92, cert. ef. 7-15-92; LC 3-1992(Temp), f. & cert. ef. 7-16-92; LC 1-1993, f. & cert. ef. 1-19-93; LC 4-1993, f. & cert. ef. 11-1-93; LSCB 2-1997, f. & cert. ef. 11-3-97; LC 1-1998, f. & cert. ef. 2-6-98; LC 3-1998(Temp), f. & cert. ef. 11-16-98 thru 5-15-99; LC 1-1999, f. & cert. ef. 2-11-99; LC 3-1999, f. & cert. ef. 11-17-99, Renumbered from 808-002-0010; LC 1-2001, f. 12-4-01, cert. ef. 1-1-02; LC 3-2004, f. 1-27-04, cert. ef. 2-1-04; LC 6-2005, f. 12-30-05, cert. ef. 1-1-06; LC 3-2006, f. & cert. ef. 8-2-06; LC 4-2007, f. 12-19-07, cert. ef. 1-1-08; LC 12-2009, f. 12-23-09, cert. ef. 1-1-10

## 808-002-0620

### Maintenance

“Maintenance” means the regular and practical care of existing landscapes and would include, but is not limited to:

(1) The mowing, trimming and edging of lawns;

(2) Pruning of trees to a height of no more than 15 feet above ground level, removal of trees up to 15 feet in height where the diameter of the tree is 4 inches or less when measured at 6” to 12” above soil line. Limbs may be removed when the diameter of the limb is 3 inches or less at its origin;

(3) The placement of mulching materials including, but not limited to, bark dust, chips, husks, shells or compost; or

(4) The application of fertilizer to lawns, trees and shrubs using fertilizer as defined in ORS 633.311.

(5) In an irrigation system,;

(a) The adjustment of sprinkler head nozzles; or

(b) The programming of irrigation controllers.

Stat. Auth.: ORS 183.325 - 183.410, 670.310 & 671.670

Stats. Implemented: ORS 671.540

Hist.: LC 3, f. & ef. 2-7-77; LC 1-1981, f. & ef. 10-8-81; LC 1-1984, f. & ef. 7-17-84; LC 2-1984, f. & ef. 10-2-84; LC 1-1985, f. & ef. 7-1-85; LC 1-1986, f. & ef. 1-3-86; LC 1-1988, f. 1-26-88, cert. ef. 2-1-88; Renumbered from 808-010-0010; LC 1-1991, f. & cert. ef. 7-22-91; LC 3-1991(Temp), f. & cert. ef. 12-3-91; LC 1-1992, f. 1-27-92, cert. ef. 2-1-92; LC 2-1992, f. 7-14-92, cert. ef. 7-15-92; LC 3-1992(Temp), f. & cert. ef. 7-16-92; LC 1-1993, f. & cert. ef. 1-19-93; LC 4-1993, f. & cert. ef. 11-1-93; LSCB 2-1997, f. & cert. ef. 11-3-97; LC 1-1998, f. & cert. ef. 2-6-98; LC 3-1998(Temp), f. & cert. ef. 11-16-98 thru 5-15-99; LC 1-1999, f. & cert. ef. 2-11-99; LC 3-1999, f. & cert. ef. 11-17-99, Renumbered from 808-002-0010; LC 4-2003, f. 5-27-03, cert. ef. 6-1-03; LC 1-2004, f. 1-27-04, cert. ef. 2-1-04; LC 12-2009, f. 12-23-09, cert. ef. 1-1-10

## 808-003-0020

### Business Names

(1) A partnership, corporation, limited liability company, limited liability partnership, joint venture, professional corporation, assumed business

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name or other business entity shall be registered to do business in Oregon with the Corporation Division of the State of Oregon.

(2) Every licensed landscape contracting business entity that changes its name or registers for an assumed business name with the Corporation Division of the State of Oregon and every sole proprietor that changes his or her surname, must notify the agency within 30 days of assuming, filing or registering the new name.

(3) An actively licensed landscape contracting business that does not register or maintain registration as required by the Corporation Division of the State of Oregon shall have the license suspended or not renewed until properly registered with the Corporation Division of the State of Oregon.

(4) An applicant for a landscape contracting business license that does not register as required by the Corporation Division of the State of Oregon shall not be issued a landscape contracting business license.

Stat. Auth.: ORS 183 & 671  
Stats. Implemented: ORS 671.570  
Hist.: LC 1-1984, f. & ef. 7-17-84; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; Renumbered from 808-010-0033; LCB 1-2003, f. 1-31-03, cert. ef. 2-1-03; LCB 4-2007, f. 12-19-07, cert. ef. 1-1-08; LCB 12-2009, f. 12-23-09, cert. ef. 1-1-10

## 808-003-0055

### Examination Requirements

(1) Applicants may schedule an appointment with designated proctors throughout the state to take an examination after receipt of a letter of authorization from the agency and payment of the required fee(s).

(2) Applicant must show picture identification and the letter of authorization before taking an exam.

(3) Applicants may use only a hand-held calculator, scale ruler, and pencil or pen in addition to examination materials provided by the designated proctors.

(4) "Hand-held calculator" as used in this rule means a hand held electronic device that performs only basic mathematical calculations.

Stat. Auth.: ORS 183 & 671  
Stats. Implemented: ORS 671.570  
Hist.: LC 1-1984, f. & ef. 7-17-84; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; Renumbered from 808-010-0024; LCB 4-2002, f. & cert. ef. 12-4-02; LCB 1-2004, f. 1-27-04, cert. ef. 2-1-04; LCB 12-2009, f. 12-23-09, cert. ef. 1-1-10

## 808-003-0060

### Examinations

(1) The exam will consist of the following sections:

(a) Laws, Rules and Business Practice which includes Contract Law, General Business, and Agency Involvement;

(b) General which includes the following sections:

- (A) Plants and turf;
- (B) General construction;
- (C) Grading and drainage; and
- (D) General safety, estimating, soil science, chemicals and landscape design.

(c) Irrigation, which includes, but is not limited to pipes and fittings, electrical, head and nozzles, Hydraulics, installation/practical application, plan questions, winterizing, repair/troubleshooting, valves, plant culture, drip irrigation, design, and pumps.

(d) Backflow Prevention, which includes, but is not limited to the installation of irrigation and ornamental water feature backflow assemblies, cross connections, piping, valves, and related plumbing code provisions.

(2) All applicants must successfully pass the Laws, Rules and Business Practice section.

(3) If an applicant desires to be able to perform all areas of landscaping work including irrigation and the installation of the backflow assemblies, the applicant must successfully pass the Laws, Rules and Business Practice, General, Irrigation and Backflow Prevention sections.

(4) If an applicant desires to be able to perform all areas of landscaping work except irrigation and the installation of the backflow assemblies, the applicant must successfully pass the Laws, Rules and Business Practice and General sections.

(5) If an applicant desires to be able to perform only irrigation and the installation of the backflow assemblies, the applicant must successfully pass the Laws, Rules and Business Practice, Irrigation and Backflow Prevention sections.

(6) If an applicant desires to obtain the probationary All Phase Plus Backflow license, the applicant must successfully pass the Laws, Rules and Business Practice, General, Irrigation and Backflow Prevention sections within 12 months after the first sitting of any section of the examination.

Stat. Auth.: ORS 183.325 - 183.500, 670.310 & 671.670  
Stats. Implemented: ORS 671.570  
Hist.: LC 3, f. & ef. 2-7-77; LC 1-1981, f. & ef. 10-8-81; LC 1-1984, f. & ef. 7-17-84; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; Renumbered from 808-010-0025; LCB 4-1993, f. & cert. ef. 11-1-93; LSCB 2-1994, f. 11-8-94, cert. ef. 11-15-94; LCB 1-1998, f. & cert. ef. 2-6-98; LCB 3-1998(Temp), f. & cert. ef. 11-16-98 thru 5-15-99; LCB 1-1999, f. & cert. ef. 2-11-99; LCB 1-2001, f. 12-4-01, cert. ef. 1-1-02; LCB 1-2003, f. 1-31-03, cert. ef. 2-1-03; LCB 1-2004, f. 1-27-04, cert. ef. 2-1-04; LCB 6-2005, f. 12-30-05, cert. ef. 1-1-06; LCB 9-2007, f. 12-24-07, cert. ef. 1-1-08; LCB 12-2009, f. 12-23-09, cert. ef. 1-1-10

## 808-003-0075

### Notice of Score

The applicant will receive scores in person immediately after taking the exam.

Stat. Auth.: ORS 183 & 671  
Stats. Implemented: ORS 671.570  
Hist.: LC 1-1984, f. & ef. 7-17-84; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; Renumbered from 808-010-0028; LCB 4-2002, f. & cert. ef. 12-4-02; LCB 12-2009, f. 12-23-09, cert. ef. 1-1-10

## 808-003-0080

### Review of Examinations

(1) Applicants failing to pass any section(s) of the exam may schedule an appointment, if necessary, with designated proctors throughout the state to review those sections.

(2) Requests to review failed sections of the exam must be scheduled within 30 days from notification of results.

(3) Applicants must show picture identification before reviewing any failed sections of the exam.

(4) Applicants reviewing failed sections of the exam may not:

(a) Be accompanied by another person during the review unless accompanied by an interpreter approved by the designated proctor;

(b) Retain notes taken during the review; or

(c) Challenge their examination results.

(5) Applicants will be allowed to review the failed sections of the exam once after each failure.

Stat. Auth.: ORS 183 & 671  
Stats. Implemented: ORS 671.570  
Hist.: LC 1-1984, f. & ef. 7-17-84; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; Renumbered from 808-010-0029; LSCB 2-1997, f. & cert. ef. 11-3-97; LCB 2-2002, f. & cert. ef. 5-24-02; LCB 1-2004, f. 1-27-04, cert. ef. 2-1-04; LCB 12-2009, f. 12-23-09, cert. ef. 1-1-10

## 808-003-0085

### Cheating on the Exam

(1) An applicant who is caught cheating during the examination:

(a) Will not receive a result for any sections of the exam for the current sitting;

(b) Will forfeit the exam fee;

(c) May not retake any sections of the exam for 30 days; and

(d) Must submit a new exam fee.

(2) The designated proctors will not grade examinations of applicants who are caught cheating.

(3) Actions that may be considered cheating include, but are not limited to:

(a) Copying answers from another applicant during the examination;

(b) Helping another applicant during the examination;

(c) Unauthorized communication with another individual, in or out of the examination room, during the examination;

(d) Using unauthorized written materials, notes or equipment during the examination; or

(e) Removing examination materials, such as a question booklet page, in whole or in part, from the exam.

Stat. Auth.: ORS 183 & 671  
Stats. Implemented: ORS 671.570  
Hist.: LCB 4-2002, f. & cert. ef. 12-4-02; LCB 1-2004, f. 1-27-04, cert. ef. 2-1-04; LCB 12-2009, f. 12-23-09, cert. ef. 1-1-10

## 808-003-0100

### Licenses; License Cards

(1) A landscape construction professional license and its identifying license number will be issued to one individual only. Other individuals shall not be included in that license, but each shall be separately licensed and shall separately meet the licensing requirements. No individual may perform work subject to ORS Chapter 671 through the use of another individual's or entity's license.

(2) Landscape construction professional licenses shall be issued in the name of the individual.

(3) A landscape contracting business license and its identifying license number will be issued to one business entity only. Other business entities shall not be included in that license, but each shall be separately licensed and shall separately meet the licensing requirements. No business entity may perform work subject to ORS Chapter 671 through the use of another individual's or business entity's license.

(4) If an entity licensed as a sole proprietorship, partnership, corporation, limited liability company, limited liability partnership, or joint venture seeks to change to another type of entity and a new Employer Identification Number is required, the former landscape contracting business license will be terminated. The new entity must license anew.

(5) Landscape contracting business licenses shall be issued as follows:

(a) A sole proprietorship shall be issued in the name of the sole proprietor;

(b) A sole proprietorship using an assumed business name shall be issued in both the name of the sole proprietor and assumed business name

(c) A partnership, limited partnership or joint venture shall be issued in the names of the partners and the assumed business name;

# ADMINISTRATIVE RULES

(d) A partnership or limited partnership using an assumed business name shall be issued in the names of the partners and the assumed business name;

(e) A corporation or trust shall be issued in the corporate or trust name;

(f) A limited liability company shall be issued in the limited liability company name.

(6) A license card issued to a landscape contracting business and landscape construction professional is valid for the term for which it is issued only if the licensing requirements or ORS 671.510 to 671.760 and OAR chapter 808 are met throughout the license period:

(7) If a license is no longer valid, the agency may require the return of the license card and pocket card(s).

Stat. Auth.: ORS 670.310 & 671.670

Stats. Implemented: ORS 671.560 & 671.565

Hist.: LC 3, f. & ef. 2-7-77; LC 1-1981, f. & ef. 10-8-81; LC 1-1984, f. & ef. 7-17-84; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; Renumbered from 808-010-0030; LSCB 2-1995, f. 8-8-95, cert. ef. 8-15-95; LCB 2-2002, f. & cert. ef. 5-24-02; LCB 4-2002, f. & cert. ef. 12-4-02; LCB 5-2003, f. & cert. ef. 8-1-03; LCB 4-2007, f. 12-19-07, cert. ef. 1-1-08; LCB 4-2009, f. 6-1-09, cert. ef. 7-1-09; LCB 12-2009, f. 12-23-09, cert. ef. 1-1-10

## 808-003-0125

### Notification of Change of Address, Partners or Owners or Ownership Interest

(1) Within ten (10) calendar days following a change of address, the landscape construction professional shall submit written notification to the agency as provided in ORS 671.603.

(2) Within ten (10) calendar days following a change of address, the landscape contracting business shall submit written notification of the agency as provided in ORS 671.603.

(3) A landscape contracting business subject to ORS 671.595 must:

(a) Within ten (10) calendar days of the date a managing owner or managing employee ceases to act in the roles as defined in OAR 808-002-0625 or 808-002-0734(2) notify the agency in writing and provide:

(A) The effective date of the change; and

(B) The name of the managing owner or managing employee ceasing to act in this role.

(b) Within thirty (30) calendar days of a change of managing owner or managing employee, designate a new managing owner or managing employee and must have notified the agency in writing and provide:

(A) The effective date of the change; and

(B) The name of the new managing owner or managing employee performing this role.

(4) Within ten (10) calendar days following a change in partners or owners or a change in percentage of an ownership interest, the landscape contracting business shall submit written notification of the change to the agency as required by ORS 671.605.

Stat. Auth.: ORS 183 & 671

Stats. Implemented: ORS 671.595, 671.600, 671.603 & 671.605

Hist.: LC 1-1984, f. & ef. 7-17-84; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; Renumbered from 808-010-0034; LCB 1-2001, f. 12-4-01, cert. ef. 1-1-02; LCB 1-2004, f. 1-27-04, cert. ef. 2-1-04; LCB 4-2007, f. 12-19-07, cert. ef. 1-1-08; LCB 2-2008, f. & cert. ef. 6-2-08; LCB 12-2009, f. 12-23-09, cert. ef. 1-1-10

## 808-003-0210

### Value of Landscaping work Performed by a Residential General Contractor

A general contractor licensed under ORS 701 who meets the exemption listed in 671.540(8) may perform landscaping work if the total value of the landscaping work is:

(1) \$3,000 if the landscaping work was completed after September 1, 2003 and before September 1, 2008; or

(2) \$3,400 if the landscaping work was completed after September 1, 2008.

Stat. Auth.: ORS 670.310 & 671.670

Stats. Implemented: ORS 671.540

Hist.: LCB 5-2003, f. & cert. ef. 8-1-03; LCB 10-2008, f. & cert. ef. 11-6-08; LCB 12-2009, f. 12-23-09, cert. ef. 1-1-10

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**Rule Caption:** Definitions and update of licensed services regarding new legislation, chapter 483, 2009 Oregon Law.

**Adm. Order No.:** LCB 13-2009

**Filed with Sec. of State:** 12-23-2009

**Certified to be Effective:** 1-1-10

**Notice Publication Date:** 11-1-2009

**Rules Adopted:** 808-002-0775, 808-002-0808, 808-002-0882, 808-002-0884, 808-002-0895

**Rules Amended:** 808-003-0040

**Subject:** 808-002-0775 — Defines piping.

808-002-0808 — Defines repair or maintenance work on piping for an irrigation system.

808-002-0882 — Defines under contract for the construction of a new dwelling.

808-002-0884 — Defines use of compressed air.

808-002-0895 — Defines with the intent of offering for sale.

808-003-0040 — Updates services of license types to include maintenance of irrigation systems with the use of compressed air.

**Rules Coordinator:** Kim Gladwill-Rowley—(503) 378-5909

## 808-002-0775

### Piping

“Piping” as used in Ors 671.540(1)(m), (n) & (o) and OAR 808-002-0480 means water distribution pipe, of any type or composition, including connecting fittings, used in an irrigation system. Piping does not include valves, control wires, sprinkler heads, emitters, nozzles, controllers or other elements used in an irrigation system.

Stat. Auth.: ORS 183.310, 671.670 & 2009 OL Ch. 483

Stats. Implemented: ORS 671.520 & 671.540

Hist.: LCB 13-2009, f. 12-23-09, cert. ef. 1-1-10

## 808-002-0808

### Repair or Maintenance Work on Piping for an Irrigation System

Repair or maintenance work on piping for an irrigation system as used in ORS 671.540(1)(m), (n) & (o) is the following:

(1) Excavation of the immediate area around the water distribution pipe of the irrigation system where the repair or maintenance is to occur;

(2) Replacement of the water distribution pipe and any fittings required to fix the problem in the water distribution pipe using solvent welding, compression fittings or other acceptable forms of replacement and repair determined by the type of pipe being repaired;

(3) Maintaining the pipe of irrigation systems by winterizing the system using compressed air; and

(4) Backfilling the area where the repair or maintenance occurred.

Stat. Auth.: ORS 183.310, 671.670 & 2009 OL Ch. 483

Stats. Implemented: ORS 671.520 & 671.540

Hist.: LCB 13-2009, f. 12-23-09, cert. ef. 1-1-10

## 808-002-0882

### Under Contract for the Construction of a New Dwelling

“Under contract for the construction of a new dwelling” as used in ORS 671.540(1)(h) means a residential general contractor has agreed, pursuant to a written contract, to construct a new residential dwelling for the owner in a location on the property where a structure did not previously exist or the existing structure is completely demolished, including the foundation, and removed prior to the new construction. For the purposes of this rule, remodeling or modifying an existing structure is not considered construction of a new dwelling.

Stat. Auth.: ORS 183.310, 671.670 & 2009 OL Ch. 483

Stats. Implemented: ORS 671.520 & 671.540

Hist.: LCB 13-2009, f. 12-23-09, cert. ef. 1-1-10

## 808-002-0884

### Use of Compressed Air

Use of compressed air as used in ORS 671.520(1)(d) means the use of an air compressor or air storage tank to introduce air into an irrigation system to remove water within the system for the purpose of preventing the freezing of the components of the system during the winter.

Stat. Auth.: ORS 183.310, 671.670 & 2009 OL Ch. 483

Stats. Implemented: ORS 671.520 & 671.540

Hist.: LCB 13-2009, f. 12-23-09, cert. ef. 1-1-10

## 808-002-0895

### With the Intent of Offering for Sale

Evidence “with the intent of offering for sale” as used in ORS 671.540(1)(f) & (g) includes, but is not limited to, the following:

(1) The owner has posted or otherwise made known through the use of a sign, advertisement, device, or any other method that indicates to the public that the property is for sale. If the owner of the property removes the signage, advertisement, device or other method of indicating the property is for sale, that action alone does not remove the fact that there was an intent to sell property;

(2) The property is listed as “for sale” with a real estate firm or if the property is “for sale by owner” there is an intent to sell;

(3) The property is being offered as a “lease with option to purchase” or other similar wording; or

(4) The owner who performed landscaping work on the property or arranged to have the landscaping work performed on the property:

(a) Does not occupy, rent or lease the property for a period of 6 months or more after the completion of the landscaping work; and

(b) Sells such property within two years of completion of the landscaping work.

Stat. Auth.: ORS 183.310, 671.670 & 2009 OL Ch. 483

Stats. Implemented: ORS 671.520 & 671.540

Hist.: LCB 13-2009, f. 12-23-09, cert. ef. 1-1-10

# ADMINISTRATIVE RULES

## 808-003-0040

### Limitation of Service by License

(1) A licensed landscape contracting business shall offer to perform and perform only those phases of landscaping work for which its owners or employees who are landscape construction professionals are licensed.

(2) The landscaping work a licensed landscape contracting business offers to perform and performs shall be limited to the following:

(a) For an all phase license holder, all areas of landscaping work, plus the installation of backflow prevention assemblies unless, in lieu of Backflow Prevention, the landscape construction professional contractor has signed an agreement with the Board prior to April 30, 1996 stating that the landscape construction professional will not perform Backflow Prevention work;

(b) For an irrigation; no backflow limited license holder, irrigation functions, including the maintenance of irrigation systems with the use of compressed air;

(c) For a sod and seed limited license holder, grass seed planting or sod laying;

(d) For a tree limited license holder, install new or transplant trees;

(e) For a standard limited license holder, all areas of landscaping work except irrigation functions and the installation of backflow assemblies;

(f) For an irrigation plus backflow license holder, irrigation functions, including the maintenance of irrigation systems with the use of compressed air and the installation of backflow assemblies.

(g) For a probationary All Phase Plus Backflow license holder, all areas of landscaping work, provided all landscaping work on any given landscape job as defined in OAR 808-002-0495 must not exceed a total contract amount of \$15,000.

(h) If a landscape contracting business holds a probationary license and two or more claims are filed against the landscaping business within a 12 month period the owner or employee who holds the probationary license and is providing supervision as described in ORS 671.540(15) and (16) or 671.565(1)(b) may be required to take specific continued education hours (CEH) as required by the board that are related to the claim issues. Failure to complete the required CEH within the specified time frame may result, in addition to any civil penalties, revocation, refusal to renew or suspension of the probationary license of the landscape construction professional.

(3)(a) Tapping into the potable water supply and installation of irrigation or ornamental water feature backflow assemblies shall be done by plumbers licensed by the State Plumbers Board or by licensed landscape construction professionals who have been qualified by examination to install backflow assemblies and who are either employees or owners of landscaping contracting businesses. If the backflow assembly is installed by a landscape construction professional, the landscape construction professional or landscape contracting business shall obtain all required permits prior to the installation of the backflow assembly and shall install the backflow assemblies in conformance with the applicable code requirements.

(b) If a landscape construction professional or landscape contracting business fails to obtain permits to tap into the potable water system for the installation of backflow assemblies for irrigation or ornamental water feature or fails to comply with applicable code requirements, the Board in addition to any other remedy, may suspend, condition or revoke the landscape construction professional or landscape contracting business license.

Stat. Auth.: ORS 670.310 & 671.670

Stats. Implemented: ORS 447.060, 671.520, 671.540 & 671.560

Hist.: LC 1-1984, f. & ef. 7-17-84; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; Renumbered from 808-010-0021; LCB 2-1990, f. 7-27-90, cert. ef. 8-1-90; LCB 2-1992, f. 7-14-92, cert. ef. 7-15-92; LCB 2-1993, f. & cert. ef. 2-1-93; LSCB 2-1994, f. 11-8-94, cert. ef. 11-15-94; LSCB 2-1997, f. & cert. ef. 11-3-97; LCB 1-2001, f. 12-4-01, cert. ef. 1-1-02; LCB 1-2003, f. 1-31-03, cert. ef. 2-1-03; LCB 7-2003(Temp), f. 11-28-03, cert. ef. 12-1-03 thru 5-29-04; LCB 1-2004, f. 1-27-04, cert. ef. 2-1-04; 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 9-2007, 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 13-2009, f. 12-23-09, cert. ef. 1-1-10

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## Occupational Therapy Licensing Board Chapter 339

**Rule Caption:** Reduce renewal fees for licensees by \$20 per two year renewal (\$10 per year).

**Adm. Order No.:** OTLB 1-2010

**Filed with Sec. of State:** 1-5-2010

**Certified to be Effective:** 3-1-10

**Notice Publication Date:** 9-1-2009

**Rules Amended:** 339-005-0000

**Subject:** Because of a large ending balance, increased number of licensees, stable budget, and efficiencies keeping costs down, the Board is reducing the renewal fees by \$10 per year. The two-year renewal fee for Occupational Therapists is reduced from \$170 to \$150 and for Occupational Therapy Assistants from \$120 to \$100

**Rules Coordinator:** Felicia Holgate—(971) 673-0198

## 339-005-0000

### Fees

Two year licenses shall be issued to all licensees in even-numbered years at the fee schedule listed below. On a case-by-case basis the Board may approve the issuance of a one-year license.

(1) The fee for an initial Oregon or out of state occupational therapy license by endorsement is \$100.

(2) The two-year renewal fee issued for the occupational therapy license is \$ 150.

(3) The fee for an initial Oregon or out of state occupational therapy assistant license is \$70.

(4) The two-year renewal fee for the occupational therapy assistant license is \$ 100.

(5) The fee for a limited permit is \$25 and may not be renewed.

(6) The fee for delinquent payment is \$50 and is due on renewal applications not renewed before May 1.

Stat. Auth.: ORS 675.320(6)

Stats. Implemented:

Hist.: OTLB 1-1989(Temp), f. 9-14-89, cert. ef. 10-3-89; OTLB 1-1990, f. & cert. ef. 3-20-90; OTLB 1-1995, f. 2-15-95, cert. ef. 4-1-95; OTLB 1-2004, f. & cert. ef. 6-3-04; OTLB 1-2007, f. & cert. ef. 8-1-07; OTLB 1-2010, f. 1-5-10, cert. ef. 3-1-10

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## Office for Oregon Health Policy and Research Chapter 409

**Rule Caption:** Oregon Healthcare Workforce Database.

**Adm. Order No.:** OHP 4-2009

**Filed with Sec. of State:** 12-23-2009

**Certified to be Effective:** 1-1-10

**Notice Publication Date:** 12-1-2009

**Rules Adopted:** 409-026-0100, 409-026-0110, 409-026-0120, 409-026-0130, 409-026-0140

**Subject:** The Department of Human Services, Office for Oregon Health Policy and Research, is proposing to adopt administrative rules to govern the healthcare workforce data mandates of HB 2009, passed during the 2009 legislative session. The Office for Oregon Health Policy and Research will administer the Oregon Healthcare Workforce Database.

**Rules Coordinator:** Zarie Haverkate—(503) 373-1574

### 409-026-0100

#### Definitions

The following definitions apply to OAR 409-026-0100 to 409-026-0140:

(1) "Administrator" means the Administrator of the Office for Oregon Health Policy and Research.

(2) "Electronic media" means an electronic data storage medium.

(3) "Healthcare workforce information" means data collected using the license renewal process for selected Oregon healthcare professionals.

(4) "Healthcare workforce regulatory board" means the Occupational Therapy Licensing Board, Oregon Medical Board, Oregon State Board of Nursing, Oregon Board of Dentistry, Physical Therapist Licensing Board, State Board of Pharmacy, and the Board of Examiners of Licensed Dietitians.

(5) "Office" means the Office for Oregon Health Policy and Research.

Stat. Auth.: 2009 OL Ch. 595 (HB 2009, Sec. 1175)

Stat. Implemented: 2009 OL Ch. 595 (HB 2009, Sec. 1174-1178)

Hist.: OHP 4-2009, f. 12-23-09, cert. ef. 1-1-10

### 409-026-0110

#### Data Elements

(1) Pursuant to 2009 Or. Laws Chapter 595 (HB 2009, Section 1175), a healthcare workforce regulatory board shall collect healthcare workforce information specified by the office. The information shall include but is not limited to the following:

(a) Gender;

(b) Race;

(c) Ethnicity

(d) Date of birth;

(e) Educational background;

(f) Specialty training or certification;

(g) Practice status;

(h) Practice type and setting;

(i) Geographic location of practice; and

(j) Future practice plans.

(2) The healthcare workforce information required by the office may not include any information relating to licensees' disciplinary actions or criminal background.

(3) The office shall determine healthcare workforce information data elements and specifications annually and communicate the information to the healthcare workforce regulatory boards no later than July 1 each year.

Stat. Auth.: 2009 OL Ch. 595 (HB 2009, Sec. 1175)

Stat. Implemented: 2009 OL Ch. 595 (HB 2009, Sec. 1174-1178)

Hist.: OHP 4-2009, f. 12-23-09, cert. ef. 1-1-10

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## 409-026-0120

### Reporting Schedule and Format

(1) Collection of the healthcare workforce information required by this rule shall begin on the following dates:

(a) For healthcare professionals licensed by the Oregon Medical Board; October 1, 2009;

(b) For healthcare professionals licensed by the Oregon State Board of Nursing; May 1, 2009;

(c) For healthcare professionals licensed by the Oregon Occupational Therapy Licensing Board, the Oregon Board of Dentistry, the Physical Therapy Licensing Board, the State Board of Pharmacy, or the Board of Examiners of Licensed Dietitians; for license renewal periods on or after January 1, 2010.

(2) Healthcare workforce regulatory boards shall submit the healthcare workforce information required by this rule to the office according to the following schedule:

(a) For healthcare workforce regulatory boards with a fixed licensing period or periods, the information shall be submitted within 90 days of the close of each period;

(b) For healthcare workforce regulatory boards with rolling licensing periods, the information shall be submitted annually, no later than January 31 of the year following the license renewal year.

(3) The healthcare workforce information shall be submitted in one file that includes unique records for each individual license renewed during the reporting period.

(4) The records must be assembled in the format proscribed by the office and must be submitted electronically or on electronic media.

Stat. Auth.: 2009 OL Ch. 595 (HB 2009, Sec. 1176 & 1178)  
Stat. Implemented: 2009 OL Ch. 595 (HB 2009, Sec. 1174-1178)  
Hist.: OHP 4-2009, f. 12-23-09, cert. ef. 1-1-10

## 409-026-0130

### Fees

(1) The administrator shall establish a per-license fee to cover the cost of collecting and reporting healthcare workforce information. The fee shall be calculated by adding the costs necessary to compile, maintain, and analyze the healthcare workforce information and dividing that cost by the approximate number of individuals licensed in Oregon.

(2) Each healthcare licensing board shall submit, in a format agreed to by the Office and each Board, the total number licensed in accordance with the schedule outlined in OAR 409-026-0120 (1) through (2) for use in determination of fee calculation for the next license period.

(3) The fee shall not exceed \$5.00 per individual licensed for individuals licensed or renewed on or after January 1, 2010. If the per-license fee calculation results in a figure above \$5.00, the office shall review the process for calculating the fee with a stakeholder group with representation from each healthcare workforce regulatory board.

(4) The healthcare workforce information fees collected by healthcare workforce regulatory boards shall be paid to the office on a schedule agreed to by the office and each healthcare workforce regulatory board.

(5) Late payments are subject to recovery in accordance with the laws of the State of Oregon.

Stat. Auth.: 2009 OL Ch. 595 (HB 2009, Sec. 1175)  
Stat. Implemented: 2009 OL Ch. 595 (HB 2009, Sec. 1174-1178)  
Hist.: OHP 4-2009, f. 12-23-09, cert. ef. 1-1-10

## 409-026-0140

### Data Access

(1) For purposes of planning or analysis, the office may share de-identified, individual-level healthcare workforce data with other state agencies, including but not limited to:

- (a) Agencies, offices, or contractors of the Oregon Health Authority.
- (b) The Oregon Employment Department.

(2) The office may not provide individual-level public data sets to a non-governmental agency without written consent from the relevant healthcare workforce regulatory board.

Stat. Auth.: 2009 OL Ch. 595 (HB 2009, Sec. 1175)  
Stat. Implemented: 2009 OL Ch. 595 (HB 2009, Sec. 1174-1178)  
Hist.: OHP 4-2009, f. 12-23-09, cert. ef. 1-1-10

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**Rule Caption:** Community-based Health Care Improvement Program.

**Adm. Order No.:** OHP 5-2009

**Filed with Sec. of State:** 12-23-2009

**Certified to be Effective:** 1-1-10

**Notice Publication Date:** 12-1-2009

**Rules Adopted:** 409-040-0100, 409-040-0105, 409-040-0110, 409-040-0115

**Subject:** The Department of Human Services, Office for Oregon Health Policy and Research, is proposing to adopt administrative rules to govern the operation of the Community-based Health Care Improvement Program pursuant to Senate Bill 862, passed during the

2009 legislative session. The Office for Oregon Health Policy and Research will administer the Community-based Health Care Improvement Program.

**Rules Coordinator:** Zarie Haverkate—(503) 373-1574

## 409-040-0100

### Scope

These rules (OAR 409-040-0100 to 409-040-0115) establish criteria for approval of a community-based health care initiative to implement a community-based health care improvement program.

Stat. Auth.: ORS 409.050 & 2009 OL Ch. 470 (SB 862)  
Stats. Implemented: 2009 OL Ch. 470 (SB 862)  
Hist.: OHP 5-2009, f. 12-23-09, cert. ef. 1-1-10

## 409-040-0105

### Definitions

The following definitions apply to OAR 409-040-0100 to 409-040-0115:

(1) "Administrator" means the Administrator of the Office for Oregon Health Policy and Research (OHPR).

(2) "Approved initiatives" means a community based health care initiative that has completed and submitted an OHPR approved Community-based Health Care Initiative Certification Application (CBI-1) or Community-based Health Care Improvement Certification Renewal Form (CBI-2).

(3) "Community-based health care initiative" means a locally governed non-profit corporation that is located in the community it serves and is approved by OHPR.

(4) "Community-based Health Care Improvement Program" (program) means a program where the initiative contracts with community health care professionals for a set of health care services determined by the initiative and reimbursed through a combination of employer, employee, and community contributions.

(5) "Qualified employer" means an employer that offers community-based health care services through a community-based health care improvement program.

(6) "Qualified employee" means an individual who is employed by a qualified employer.

Stat. Auth.: ORS 409.050 & 2009 OL Ch. 470 (SB 862)  
Stats. Implemented: 2009 OL Ch. 470 (SB 862)  
Hist.: OHP 5-2009, f. 12-23-09, cert. ef. 1-1-10

## 409-040-0110

### Community-based Health Care Improvement Requirements and Certification Process

(1) An initiative must meet the following requirements for approval:

(a) The board of directors must be comprised of representatives including but not limited to payers, health care professionals, and qualified employers from the community.

(b) An initiative must have multi-organizational stakeholder representation and may not be comprised of a single health care organization or health insurance organization.

(c) An initiative must represent a geographical or municipal boundary such as a city, county, or multi-county area.

(2) An initiative must submit an application for certification using approved Community-based Health Care Initiative Certification Application (CBI-1) to OHPR. Approved initiatives shall be certified for one year.

(3) An approved initiative must apply for annual recertification using the approved Community-based Health Care Improvement Certification Renewal Form (CBI-2). The form must be submitted to OHPR no later than 90 days prior to expiration of current certification. Approved initiatives shall be recertified for one year.

(4) OHPR may not approve community-based health care initiatives for more than three communities during the period beginning January 1, 2010 and ending June 30, 2013.

(5) There is no limit on the number of recertifications.

Stat. Auth.: ORS 409.050 & 2009 OL Ch. 470 (SB 862)  
Stats. Implemented: 2009 OL Ch. 470 (SB 862)  
Hist.: OHP 5-2009, f. 12-23-09, cert. ef. 1-1-10

## 409-040-0115

### Program Reporting Requirements

(1) No later than 30 days following the end of each calendar year quarter, an approved initiative must provide the Administrator information required by OHPR using a Community-based Health Care Improvement Program Report Form (CBI-3) including but not limited to:

(a) The financial status of the program including but not limited to the costs per enrollee per month, number of claims made, number of claims paid, number of claims denied, amount of dues collected, and administrative expenses.

(b) The average time for resolution of complaints, which must specify the number of complaints resolved in over 45 days and the number of complaints resolved in less than 45 days.

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(2) An approved initiative must report to the Legislative Assembly no later than October 1 of each year with the elements reported to OHP using a CBC-3 form. The elements include but are not limited to:

- (a) Description of the return on investments.
- (b) Program satisfaction of enrolled employees, enrolled employers, and participating health care providers.

Stat. Auth.: ORS 409.050 & 2009 OL Ch. 470 (SB 862)  
Stats. Implemented: 2009 OL Ch. 470 (SB 862)  
Hist.: OHP 5-2009, f. 12-23-09, cert. ef. 1-1-10

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**Office of Private Health Partnerships**  
**Chapter 442**

**Rule Caption:** To streamline eligibility to make insurance more affordable to more children, adults and families.

**Adm. Order No.:** OPHP 1-2010(Temp)

**Filed with Sec. of State:** 1-7-2010

**Certified to be Effective:** 1-7-10 thru 7-5-10

**Notice Publication Date:**

**Rules Amended:** 442-005-0010, 442-005-0050, 442-005-0060, 442-005-0100

**Subject:** FHIAP is amending:

442-005-0010 to delete the Investment and Savings definition to streamline eligibility to make insurance more affordable to more children, adults and families.

442-005-0050 to delete the Investment and savings eligibility requirements and expand program income levels from 185% to 200% to make insurance more affordable to children, adults and families.

442-005-0060 to changes the period of uninsurance (POU) from six months to two months.

442-005-0100 to change subsidy to 100% for children.

**Rules Coordinator:** Margaret Moran—(503) 378-5664

**442-005-0010**

**Definitions**

(1) "Alien Status Requirement." A qualified non-citizen meets the alien status requirement for FHIAP if the individual is one of the following:

(a) A person who was admitted as a qualified non-citizen on or before August 22, 1996;

(b) A person who entered the U.S. on or after August 22, 1996 and it has been five years since he or she became a qualified non-citizen;

(c) A person who has obtained their qualified non-citizen status less than five years ago, but entered the U.S. prior to August 22, 1996. The non-citizen must show that he or she has been living in the U.S. continuously for five years from a date prior to August 22, 1996 to the date the non-citizen obtained their qualified status and did not leave during that five year period. If the non-citizen cannot establish the five-year continuous residence before he or she obtained their qualified status, the person is not considered to have entered the U.S. prior to August 22, 1996;

(d) Regardless when they were admitted, a person with one of the following designated statuses:

(A) A person who is admitted as a refugee under section 207 of the INA;

(B) A person who is granted asylum under section 208 of the INA;

(C) A person whose deportation is being withheld under section 243(h) of the INA;

(D) A Cuban or Haitian entrant who is either a public interest or humanitarian parolee;

(E) A person who was granted immigration status according to the Foreign Operations Export Financing and Related Program Appropriation Act of 1988;

(F) A person who is a victim of a severe form of trafficking.

(e) Regardless of when they were admitted, a qualified non-citizen who is:

(A) A veteran of the U.S. Armed Forces, who was honorably discharged not on account of alien status and who fulfills the minimum active-duty service requirement; or

(B) On active duty in the U.S. Armed Forces (other than active duty for training);

(C) The spouse or unmarried dependent child of the veteran or person on active duty described in (e)(A) and (B).

(f) An American Indian born in Canada to whom the provisions of section 289 of the Immigration and Nationality Act (8 U.S.C. 1359) apply; or

(g) A member of an Indian tribe (as described in section 4(e) of the Indian Self-Determination and Education Act (25 U.S.C. 450b(e));

(h) Any legal non-citizen who was approved for a FHIAP subsidy prior to November 1, 2004.

(2) "Appeal" means the opportunity for an applicant to request and receive administrative review by Office staff of a decision made or action

taken by the Third Party Administrator (TPA) or state office regarding program eligibility, subsidy level, termination, re-enrollment, overpayments, misrepresentation, or any other decision adverse to the applicant (ref. 442-005-0320).

(3) "Applicant" means a person who has initially applied or a member who is applying for continuation of FHIAP subsidy payments, but who has not yet been determined to be eligible to receive such subsidy or continued subsidy. "Applicant" also includes dependents as defined in OAR 442-005-0010(7).

(4) "Benchmark" means an identified minimum level of health insurance benefits qualifying for subsidy eligibility. The benchmark is established by the Office in consultation with the Health Insurance Reform Advisory Committee and is submitted to and approved by the federal government.

(5) "Carrier" means an insurance company or health care service contractor holding a valid certificate of authority from the Director of the Department of Consumer and Business Services that authorizes the transaction of health insurance. Carrier also includes the Oregon Medical Insurance Pool established under ORS 735.610.

(6) "Certified carrier" means a carrier that has been certified by the Office to participate in FHIAP. Certified carrier also includes the Oregon Medical Insurance Pool established under ORS 735.610.

(7) "Citizen" for the purposes of FHIAP means a native or naturalized member of the United States who can show proof of identity and citizenship as required in the Deficit Reduction Act (DRA) of 2005 (Pub. L. No. 109-171).

(8) "Dependent" for the purposes of FHIAP may include:

(a) An applicant's spouse, but not when deemed separated pursuant to OAR 442-005-0050(4) or 442-005-0070(5)(c);

(b) All of the applicant's and applicant's spouse's unmarried children, step children, legally adopted children or children placed under the legal guardianship of the applicant or applicant's spouse who are under the age of 23 and reside with the applicant, and all dependent children of a dependent child;

(c) An unborn child of any applicant or applicant's dependent as verified by written correspondence from a licensed medical practitioner;

(d) An elderly relative or an adult disabled child, regardless of age, who lives in the home of the applicant, may be included as a dependent:

(A) For the purpose of FHIAP administration as it relates to ORS 735.720(3)(b), dependent elderly relative means any person 55 and older.

(B) For the purpose of FHIAP administration as it relates to ORS 735.720(3)(b) adult disabled child means:

(i) A child of the applicant or applicant's spouse who is unmarried, a step child, a legally adopted child, or a child placed under the legal guardianship of the applicant or applicant's spouse who is over the age of 18 and resides with the applicant; and

(ii) A child who is disabled with a physical or mental impairment that:  
(I) Is likely to continue without substantial improvement for no less than 12 months or to result in death; and

(II) Prevents performance of substantially all the ordinary duties of occupations in which a person not having the physical or mental impairment is capable of engaging, having due regard to the training, experience and circumstances of the individual with the physical or mental impairment.

(9) "Federal poverty level" means the poverty income guidelines as defined by the United States Department of Health and Human Services. These guidelines will be adopted by FHIAP no later than May 1 each year.

(10) "FHIAP" means the Family Health Insurance Assistance Program established by ORS 735.720 to 735.740.

(11) "Group" means insurance offered through an employer or an association.

(12) "Health insurance producer" means a person who holds a current, valid license pursuant to ORS 774.052 to 774.089 as an insurance producer, where such producer is authorized to transact health insurance.

(13) "Incarcerated" means a person living in a correctional facility, such as:

(a) Individuals who are legally confined to a correctional facility such as jail, prison, penitentiary, or juvenile detention center; or

(b) Individuals temporarily released from a correctional facility to perform court-imposed community service work; or

(c) Individuals on leave of less than 30 days from a correctional facility; or

(d) Individuals released from a correctional facility for the sole purpose of obtaining medical care.

(14) "Income" includes, but is not limited to, earned and unearned gross income received by adults and unearned income received by children. Income includes bartering, or working in exchange for goods and services, discounts on goods and services, working in exchange for rent, and payments made for personal living expenses from business funds:

(a) For purposes of determining average monthly income, an applicant may deduct child or spousal support payments made by the applicant for a child or spouse that FHIAP does not consider a dependent. No deduction is allowed for support that is owed but not paid and collected through an offset against the applicant's state income tax refund;

(b) Income does not include educational grants or scholarships.

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(16) "Medicaid," see OHP.

(17) "Medicare" means coverage under either parts A or B of Title XVIII of the Social Security Act, 42 U.S.C. 1395 et. seq., as amended.

(18) "Member" means a person approved for FHIAP and enrolled in a health insurance plan using the subsidy, or a Homecare Union Benefits Board (HUBB) applicant enrolled in a health benefit plan and approved for, but not yet enrolled in FHIAP.

(19) "Misrepresentation" means making an inaccurate or deliberately false statement of material fact, by word, action, or omission.

(20) "OHP" means the Oregon Health Plan Medicaid program and all programs that include medical assistance provided under 42 U.S.C. section 396a (section 1902 of the Social Security Act).

(21) "Overpayment" means any subsidy payment made that exceeds the amount a member is eligible for, and has been received by, or on behalf of, that member, as well as any civil penalty assessed by the Office.

(22) "Qualified non-citizen" for the purposes of FHIAP. A person is a "qualified non-citizen" if he or she is any of the following:

(a) A non-citizen who is lawfully admitted for permanent residence under the Immigration and Nationality Act (INA) (8 U.S.C. 1101 et seq);

(b) A refugee who is admitted to the United States as a refugee under section 207 of the INA (8 U.S.C. 1157);

(c) A non-citizen who is granted asylum under section 208 of the INA (8 U.S.C. 1158);

(d) A non-citizen whose deportation is being withheld under section 243(h) of the INA (8 U.S.C. 1523(h)) (as in effect immediately before April 1, 1997) or section 241(b)(3) of the INA (8 U.S.C. 251(b)(3) (as amended by section 305(a) of division C of the Omnibus Consolidated Appropriations Act of 1997, Pub. L. No. 104-208, 110 Stat. 3009-597 (1996));

(e) A non-citizen who is paroled into the United States under section 212(d)(5) of the INA (8 U.S.C. 1182(d)(5)) for a period of at least one year;

(f) A non-citizen who is granted conditional entry pursuant to section 203(a)(7) of the INA (8 U.S.C. 1153(a)(7)) as in effect prior to April 1, 1980;

(g) A non-citizen who is a "Cuban and Haitian entrant" (as defined in section 501(3) of the Refugee Education Assistance Act of 1980);

(h) A battered spouse or dependent child who meets the requirements of 8 U.S.C. 1641(c) and is in the United States on a conditional resident status, as determined by the United States Immigration and Naturalization Service;

(i) American Indians born in Canada to whom the provision of section 289 of the INA (8 U.S.C. 1359) apply;

(j) Members of an Indian tribe, as defined in section 4(e) of the Indian Self-Determination and Education Act (25 U.S.C. 450b(e));

(k) A veteran of the U.S. Armed Forces who was honorably discharged for reasons other than alien status and who fulfilled the minimum active-duty requirements described in 38 U.S.C. § 5303A(d);

(l) A member of the U.S. Armed Forces on active duty (other than active duty for training);

(m) The spouse or dependent child of a person described in either (k) or (l) above;

(n) A legal non-citizen approved for FHIAP subsidy prior to November 1, 2004.

(23) "Reapplication" means the periodic review and determination of a member's continued eligibility or subsidy level.

(24) "Reservation list" means a list of potential applicants for FHIAP, entered onto a register maintained by the TPA or state office as authorized by ORS 735.724.

(25) "Resident" means a citizen or qualified non-citizen who resides in Oregon or a full-time college student who is a citizen or qualified non-citizen with a parent who resides in Oregon.

(26) "Self-employment" means gross receipts received from a business owned, in whole or in part, by a FHIAP applicant or dependent if the gross receipts are reported on an Internal Revenue Service (IRS) Schedule C or 1099. Self employed income also includes income received for providing adult foster care if the recipient of the care lives in the applicant's home. Self-employment does not include income received from a partnership, S-corporation, C-corporation, or adult foster care if the care is not provided in the caregiver's home. Self-employment does not include income received from a Limited Liability Company except in the following situations:

(a) If an applicant or their dependent have income from a Limited Liability Company and file an IRS schedule C for said income, that income will be treated as self-employment and subject to business deductions;

(b) If an applicant or their dependent have income from a Limited Liability Company and file an IRS schedule F or J for said income, that income will be treated as Farming, Fishing or Ranching and subject to business deductions.

(27) "Support" means any court-ordered monetary payment for a child or former spouse or domestic partner whom FHIAP does not count in the applicant's family.

(28) "Voluntary payroll deduction" means an amount the employee has authorized the employer to deduct from the employee's income to pay expenses not required by law.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 735.724, 735.734 & 735.720 - 735.740

Stats. Implemented: ORS 735.720 - 735.740

Hist.: IPGB 2-2006, f. & cert. ef. 6-1-06; OPHP 2-2007, f. 6-18-07, cert. ef. 7-9-07; OPHP 1-2010(Temp), f. & cert. ef. 1-7-10 thru 7-5-10

## 442-005-0050

### Eligibility

In order for an applicant to qualify for a FHIAP subsidy, applicants must:

(1) Be a resident of Oregon or a full-time college student with a parent who is a resident of Oregon.

(2) Be a United States citizen or a qualified non-citizen who meets the alien status requirement.

(3) Not be eligible for or receiving Medicare benefits.

(4) Have income of zero through 200% of the Federal Poverty Level in effect at the time of determination. Income determination is outlined in OAR 442-005-0070.

(5) Meet one of the statutory definitions of family in ORS 735.720(2) at the time of eligibility determination. To be included in the family size for FHIAP eligibility determination, the applicant's family members must meet the definition of dependent under OAR 442-005-0010(8):

(a) A dependent may be counted in two separate households for the purposes of determining eligibility for FHIAP and any other state assistance program;

(b) A dependent may be counted in two separate households for the purpose of determining eligibility for both families in FHIAP;

(c) A dependent may not be enrolled in FHIAP and OHP (or any other state medical assistance program) at the same time;

(d) A dependent may be enrolled in FHIAP and any other state assistance program (except medical) at the same time;

(e) If a dependent is counted in two separate households for the purpose of determining eligibility in two different assistance programs, enrollment will be determined by criteria established in procedure.

(6) Meet either a period of uninsurance requirement or exceptions listed in OAR 442-005-0060.

(7) Not be incarcerated for more than 30 days or be a ward of the State.

(8) Provide necessary materials in order to allow for eligibility determination. If information submitted is inconsistent, and applicant may be denied.

(9) If applying for subsidy in the group market, must be able to enroll in a group insurance plan that meets the benchmark standard established by the Office within twelve months of eligibility determination. If an applicant to the group market does not have access to a group plan, the group plan they have access to does not meet the benchmark standard, or they cannot enroll into their group plan within twelve months of eligibility determination, the applicant will be denied and placed on the reservation list for an individual subsidy using the same date they were placed on the group reservation list.

Stat. Auth.: ORS 735.734 & 735.720 - 735.740

Stats. Implemented: ORS 735.720 - 735.740

Hist.: IPGB 2-2006, f. & cert. ef. 6-1-06; IPGB 3-2006(Temp), f. & cert. ef. 11-27-06 thru 5-25-07; Administrative Correction, 6-16-07; OPHP 1-2007, f. & cert. ef. 6-18-07; OPHP 1-2010(Temp), f. & cert. ef. 1-7-10 thru 7-5-10

## 442-005-0060

### Period of Uninsurance Requirement

In order for an applicant to be eligible for a FHIAP subsidy, an applicant must have been without any health insurance coverage for two months immediately prior to either the signature date on the application, the date of eligibility determination, or any reservation entry date. This requirement does not apply if any applicant:

(1) Is currently enrolled in the OHP.

(2) Was enrolled in the OHP within the last 120 days.

(3) Is a former FHIAP member.

(4) Has enrolled in an insurance plan while on the reservation list as long as they have met the six-month period of uninsurance immediately prior to enrolling in the insurance plan.

(5) Has coverage through the Kaiser Child Health Program or any benefit plan authorized by ORS 735.700 - 735.714.

(6) Has a military insurance plan.

(7) Has enrolled in group coverage within the 120 days prior to getting on the FHIAP reservation list, as long as the applicant had been without any insurance coverage for six consecutive months immediately prior to becoming insured under the group plan.

Stat. Auth.: ORS 735.734 & 735.720 - 735.740

Stats. Implemented: ORS 735.720 - 735.740

Hist.: IPGB 2-2006, f. & cert. ef. 6-1-06; OPHP 1-2010(Temp), f. & cert. ef. 1-7-10 thru 7-5-10

## 442-005-0100

### Subsidy Levels

(1) All FHIAP children are subsidized at 100% of the child's monthly premium.

(2) When a family has average gross monthly income up to 125 percent of federal poverty level in effect at the time of determination, adults will receive a subsidy of:



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- (a) 95 percent of the member's monthly premium amount in the individual health benefit plan market; or
- (b) 95 percent of the member's share of the monthly premium amount in the group health benefit plan market.
- (3) When a family has average gross monthly income from 125 up to 150 percent of federal poverty level in effect at the time of determination, adults will receive a subsidy of:
- (a) 90 percent of the member's monthly premium amount in the individual health benefit plan market; or
- (b) 90 percent of the member's share of the monthly premium amount in the group health benefit plan market.
- (4) When a family has average gross monthly income from 150 up to 170 percent of federal poverty level in effect at the time of determination, adults will receive a subsidy of:
- (a) 70 percent of the member's monthly premium amount in the individual health benefit plan market; or
- (b) 70 percent of the member's share of the monthly premium amount in the group health benefit plan market.
- (5) When a family has average gross monthly income from 170 through 200 percent of federal poverty level in effect at the time of determination, adults will receive a subsidy of:
- (a) 50 percent of the member's monthly premium amount in the individual health benefit plan market; or
- (b) 50 percent of the member's share of the monthly premium amount in the group health benefit plan market.
- (6) The subsidy amounts will never exceed 50 percent, 70 percent, 90 percent, or 95 percent of the total premium based on percentage of federal poverty level in effect at the time of eligibility determination.
- (7) With the exception of administrative error or audit, subsidy percentage levels will only be re-evaluated at reapplication. Subsidy dollar amounts may change, however, if the actual premium being subsidized changes.
- Stat. Auth.: ORS 735.734 & 735.720 - 735.740  
Stats. Implemented: ORS 735.720 - 735.740  
Hist.: IPGB 2-2006, f. & cert. ef. 6-1-06; OPHF 1-2010(Temp), f. & cert. ef. 1-7-10 thru 7-5-10

\*\*\*\*\*  
**Oregon Business Development Department**  
**Chapter 123**

**Rule Caption:** These rules have been revised for compliance with statute and reviewed for clarity.

**Adm. Order No.:** EDD 27-2009

**Filed with Sec. of State:** 12-31-2009

**Certified to be Effective:** 1-1-10

**Notice Publication Date:** 12-1-2009

**Rules Amended:** 123-080-0000, 123-080-0010, 123-080-0030, 123-080-0040

**Subject:** The 2009 Legislative session through House Bill 2152 has re-named the Oregon Economic and Community Development Department to the Oregon Business Development Department and created the Infrastructure Finance Authority, a separate entity within the Department. In addition these rules have been modified for clarity.

**Rules Coordinator:** Mindee Sublette—(503) 986-0036

## 123-080-0000

### Purpose

The Oregon Business Development Department (Department) through its Infrastructure Finance Authority (Authority) shall administer the state's participation in the federal Community Development Block Grant funding program authorized by 42 United States Code 5301 et seq.

(2) Oregon Community Development Block Grants (OCDBG) are funded by annual allocations to the state from the U.S. Department of Housing and Urban Development (HUD) and program income generated by the grants. The primary objective of the federal community development block grant program is "...the development of viable urban communities, by providing decent housing and a suitable living environment and expanding economic opportunities, principally for persons of low and moderate income..." (Title I, Sec. 101(c), Housing and Community Development Act of 1974, as amended (42 United States Code 5301 et seq.)). The primary objective of Oregon's Community Development Block Grant program is to enhance the quality of life in Oregon communities.

Stat. Auth.: ORS 285A.075  
Stats. Implemented: ORS 285A.075  
Hist.: IRD 2-1986(Temp), f. & ef. 1-14-86; IRD 8-1986, f. 6-30-86, ef. 7-1-86; Renumbered from 120-021-0000; EDD 5-1991, f. & cert. ef. 5-24-91; EDD 2-1994, f. & cert. ef. 2-3-94; EDD 12-1999, f. & cert. ef. 10-11-99; EDD 3-2001, f. & cert. ef. 4-10-01; EDD 27-2009, f. 12-31-09, cert. ef. 1-1-10

## 123-080-0010

### Definitions

For the purposes of these rules additional definitions may be found in Procedural Rules, OAR 123-001. As used in this division of administrative rules, unless the context requires otherwise the following definitions apply:

- (1) "Act": The Housing and Community Development Act of 1974, as amended.
- (2) "Applicant": A city or county which is applying for a grant from the OCDBG program.
- (3) "Entitlement jurisdictions": Metropolitan cities and urban counties, as defined in 42 United States Code 5302.
- (4) "Non-entitlement Area": All Oregon cities and counties, not including Indian Tribes, except those designated as entitlement jurisdictions by HUD.
- (5) "Recipient": A city or county which has been awarded a Community Development Block Grant.
- (6) "Slums and Blight": As defined in ORS 457.010 and 24 Code of Federal Regulations (CFR) 24 CFR 570.483(c).
- Stat. Auth.: ORS 285A.075  
Stats. Implemented: ORS 285A.075  
Hist.: IRD 2-1986(Temp), f. & ef. 1-14-86; IRD 8-1986, f. 6-30-86, ef. 7-1-86; Renumbered from 120-021-0002; EDD 5-1991, f. & cert. ef. 5-24-91; EDD 3-1993, f. & cert. ef. 3-30-93; EDD 2-1994, f. & cert. ef. 2-3-94; ED 1-1995, f. 1-31-95, cert. ef. 2-1-95; EDD 12-1999, f. & cert. ef. 10-11-99; EDD 27-2009, f. 12-31-09, cert. ef. 1-1-10

## 123-080-0030

### Program Information

(1) The Authority shall prepare an Application Package each year. The Application Package shall contain the method of distribution, application forms, and other supplementary information that may help eligible applicants prepare grant applications.

(2) The method of distribution shall include a description of all criteria used to select applications from local governments for funding, including the relative importance of the criteria (if developed), a description of how all Community Development Block Grant resources will be allocated among all funding categories and the threshold factors and grant size limits that will be applied. The method of distribution shall be adopted each year after public review and comment of the Annual Update to the State of Oregon Consolidated Plan for Housing and Community Development.

(3) The adopted method of distribution section of the Annual Update to the State of Oregon Consolidated Plan for Housing and Community Development on file with the Department is incorporated as part of these rules by reference.

(4) The Authority shall prepare and provide to Community Development Block Grant recipients a Grant Management Handbook which specifies requirements for local grant management, reporting, and record keeping, and the Authority's monitoring and grant closeout procedures.

(5) The Authority shall administer Community Development Block Grants in compliance with the requirements of the Act, as amended, applicable rules, the method of distribution, and the Grant Management Handbook.

(6) Land Use Coordination: Any project activity paid for with Community Development Block Grant funds that affects land use shall comply with the applicable requirements of OAR chapter 123, division 8.

(7) Procurement by Recipients: When procuring property or services to be paid for in whole or in part with Community Development Block Grant funds, the recipient shall comply with Chapters 244 and 279 of the Oregon Revised Statutes, as applicable.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 285A.075  
Stats. Implemented: ORS 285A.075  
Hist.: IRD 2-1986(Temp), f. & ef. 1-14-86; IRD 8-1986, f. 6-30-86, ef. 7-1-86; Renumbered from 120-021-0010; EDD 5-1991, f. & cert. ef. 5-24-91; EDD 8-1992, f. & cert. ef. 4-24-92; EDD 3-1993, f. & cert. ef. 3-30-93; EDD 8-1993, f. & cert. ef. 9-21-93; EDD 2-1994, f. & cert. ef. 2-3-94; EDD 12-1994, f. & cert. ef. 9-8-94; EDD 1-1995, f. 1-31-95, cert. ef. 2-1-95; EDD 4-1996, f. & cert. ef. 5-28-96; EDD 3-1997, f. & cert. ef. 3-17-97; EDD 13-1998, f. & cert. ef. 8-14-98; EDD 12-1999, f. & cert. ef. 10-11-99; EDD 3-2001, f. & cert. ef. 4-10-01; EDD 3-2002, f. & cert. ef. 2-22-02; EDD 7-2006, f. 10-30-06, cert. ef. 10-31-06; EDD 27-2009, f. 12-31-09, cert. ef. 1-1-10

## 123-080-0040

### Program Remedies

The recipient shall be responsible for taking all action necessary to enforce the terms of the grant contract against any private or public participant who fails to comply with applicable provisions of the grant contract, and to recover on behalf of the state any financial liabilities that may arise as the result of the breach of the grant contract by any participant. Nothing in this paragraph shall restrict the state's rights to enforce independently the terms of any grant contract or to recover any sums that may become due as the result of a breach of such a contract.

Stat. Auth.: ORS 184.125(3) & 190  
Stats. Implemented: ORS 285A.300 - 285A.312  
Hist.: IRD 2-1986(Temp), f. & ef. 1-14-86; IRD 8-1986, f. 6-30-86, ef. 7-1-86; Renumbered from 120-021-0015; EDD 5-1991, f. & cert. ef. 5-24-91; EDD 27-2009, f. 12-31-09, cert. ef. 1-1-10

# ADMINISTRATIVE RULES

**Rule Caption:** These rules have been revised with statute and reviewed for clarity.

**Adm. Order No.:** EDD 28-2009

**Filed with Sec. of State:** 12-31-2009

**Certified to be Effective:** 1-1-10

**Notice Publication Date:** 12-1-2009

**Rules Amended:** 123-087-0010, 123-087-0030

**Rules Repealed:** 123-087-0040

**Subject:** These rules have been revised for clarity. Some definitions have been removed and names of agencies have been updated. The section on reporting private sector support has been repealed.

**Rules Coordinator:** Mindee Sublette—(503) 986-0036

## 123-087-0010

### Definitions

(1) For the purposes of these rules additional definitions may be found in Procedural Rules, OAR 123-001. As used in this division of administrative rules, unless the context requires otherwise the following definitions apply:

(2) **Private Sector Support** means financial contributions and/or in-kind goods and services, such as those listed in OAR 123-087-0020(1), that are received by the Department. Such donations may be received from individuals, partnerships, or corporations, or any other private entity, including but not limited to nonprofit organizations.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285A.200

Hist.: EDD 35-1988, f. 11-30-88, cert. ef. 12-1-88; EDD 4-2003, f. & cert. ef. 3-26-03; EDD 28-2009, f. 12-31-09, cert. ef. 1-1-10

## 123-087-0030

### Avoiding Conflicts of Interest

(1) The Department shall solicit and receive Private Sector Support only for the purpose of assisting the Department to undertake or implement the programs, functions or laws that it is charged with administering.

(2) Private Sector Support may not be received or used in any way that:

(a) Provides for the personal benefit of any state employee;

(b) Directly benefits any entity responsible for the support; or

(c) Pertains significantly to Department actions, decisions or resources with the potential to have a pecuniary advantage or detriment to such an entity.

(3) If, in the judgment of the Director, an entity is offering or providing support in order to potentially receive special consideration, services or information from the state, or the support is otherwise improper, the Director shall refuse or return the support offered. The Director may consult with the Governor's Office, Department of Administrative Services, Secretary of State, Attorney General, the Oregon Government Ethics Commissioner or other state agencies in order to determine whether receipt of such support is appropriate.

(4) The Department shall, as needed, develop special operational guidelines for purposes of this division of administrative rules (including but not limited to the treatment of confidential or privileged information), signed statements acknowledging such guidelines, and so forth.

(5) The elements and intent of this rule may be applied in situations that might arise with respect to contributions, in-kind goods or services or other forms of support offered to or received by the Department from local governments or municipal corporations that are eligible to receive funding from the Department.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285A.200

Hist.: EDD 35-1988, f. 11-30-88, cert. ef. 12-1-88; EDD 4-2003, f. & cert. ef. 3-26-03; EDD 28-2009, f. 12-31-09, cert. ef. 1-1-10

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**Rule Caption:** These rules cover the Strategic Reserve Fund and have been revised for clarity.

**Adm. Order No.:** EDD 29-2009

**Filed with Sec. of State:** 12-31-2009

**Certified to be Effective:** 1-1-10

**Notice Publication Date:** 12-1-2009

**Rules Amended:** 123-090-0000, 123-090-0010, 123-090-0030, 123-090-0040, 123-090-0060

**Subject:** These rules have been reviewed for clarity and content has been revised.

**Rules Coordinator:** Mindee Sublette—(503) 986-0036

## 123-090-0000

### Purpose

The Strategic Reserve Fund was established by the Oregon Legislative Assembly to support economic and community development in Oregon. Particular emphasis shall be placed on investments that assist communities, businesses or industries with cost effective projects that assist the creation,

expansion, and preservation of traded sector industries of Oregon, and that encourage diversification and preservation of regional economies.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285B.266

Hist.: EDD 26-1988(Temp), f. & cert. ef. 7-13-88; EDD 29-1988, f. & cert. ef. 8-30-88; EDD 7-2000, f. & cert. ef. 4-11-00; EDD 29-2009, f. 12-31-09, cert. ef. 1-1-10

## 123-090-0010

### Definitions

For the purposes of these rules additional definitions may be found in Procedural Rules, OAR 123-001. For purposes of this division of administrative rules, unless the context demands otherwise:

(1) "Administrative Expenses" mean any agency expenditures included under the classifications of expenditures, except categories of debt service and special payments, which are prepared and prescribed for purposes of agency budget-making and accounting.

(2) "Community" means an area or a locality in which the body of inhabitants has common economic or employment interests. The term is not limited to a city, county or other political subdivision and need not, but may be, limited by political boundaries.

(3) "Fund" means the Strategic Reserve Fund established by ORS 285B.266.

(4) "Debt Retirement" means payment in full of the balance owed on the principal of a loan.

(5) "Debt Service" means the interest and charges currently payable on a debt, including principal payments.

(6) "Rural Area" means an area located entirely outside of the acknowledged Portland Metropolitan Area Regional Urban Growth Boundary and the acknowledged urban growth boundaries of the cities of 30,000 or more in population, including Albany, Bend, Corvallis, Eugene, Springfield, Salem, Keizer or Medford.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285B.266

Hist.: EDD 26-1988(Temp), f. & cert. ef. 7-13-88; EDD 29-1988, f. & cert. ef. 8-30-88; EDD 6-1990(Temp), f. & cert. ef. 3-15-90; EDD 20-1990(Temp), f. & cert. ef. 6-28-90; EDD 23-1990, f. & cert. ef. 8-17-90; EDD 7-2000, f. & cert. ef. 4-11-00; EDD 29-2009, f. 12-31-09, cert. ef. 1-1-10

## 123-090-0030

### Ineligible Expenditures

Strategic Reserve Funds will not be used to assist:

(1) Relocation of a business from one part of the state to another, except for businesses that would otherwise relocate outside Oregon. This restriction may be waived if the Director finds there is good and sufficient reason.

(2) The retirement or service of debt for any public or private entity; or

(3) The Department with any administrative expenses without legislative authorization.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285B.266

Hist.: EDD 26-1988(Temp), f. & cert. ef. 7-13-88; EDD 29-1988, f. & cert. ef. 8-30-88; EDD 6-1990(Temp), f. & cert. ef. 3-15-90; EDD 20-1990(Temp), f. & cert. ef. 6-28-90; EDD 23-1990, f. & cert. ef. 8-17-90; EDD 7-2000, f. & cert. ef. 4-11-00; EDD 29-2009, f. 12-31-09, cert. ef. 1-1-10

## 123-090-0040

### Director's Review

(1) Projects shall not be funded by the Fund unless the Director finds that:

(a) The Project is or will be supported by the maximum feasible amount of local and private financial participation;

(b) The Project will produce significant long-term, regional or statewide economic impacts;

(c) The Project will not require continuing state subsidies;

(d) The Project does not supplant private investment or duplicate or undermine similar efforts; and,

(e) The Project meets, or can be reasonably expected to meet, at least one of the following criteria:

(A) The Project uses existing human and natural resources to harness Oregon's economic comparative advantage;

(B) The Project promotes economic and community recovery in Rural or Distressed areas, or among populations suffering economic hardship;

(C) The Project creates, or leads to the creation or retention of jobs of higher income for Oregonians;

(D) The Project promotes the development of new national and international markets for goods and services produced in Oregon; or,

(2) If the Project affects land use, it must satisfy the applicable requirements of OAR chapter 123, division 8 of this Department.

(3) Funding decisions shall be made by either the Governor or the Director.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285B.266

Hist.: EDD 26-1988(Temp), f. & cert. ef. 7-13-88; EDD 29-1988, f. & cert. ef. 8-30-88; EDD 20-1990(Temp), f. & cert. ef. 6-28-90; EDD 23-1990, f. & cert. ef. 8-17-90; EDD 7-2000, f. & cert. ef. 4-11-00; EDD 29-2009, f. 12-31-09, cert. ef. 1-1-10

# ADMINISTRATIVE RULES

## 123-090-0060

### Waivers

The Director may waive non-statutory requirements of this division of administrative rules if the project demonstrates a contribution to state job strategies consistent with the purpose of the Strategic Reserve Fund. Projects that improve the economic condition of a Rural or Distressed Area, or further global competitiveness of Oregon firms may receive special consideration by the Director.

Stat. Auth.: ORS 285A.075(5) & 285A.110  
Stats. Implemented: ORS 285B.266

Hist.: EDD 7-2000, f. & cert. ef. 4-11-00; EDD 29-2009, f. 12-31-09, cert. ef. 1-1-10

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**Rule Caption:** Revises the Enterprise Zone rules to include the Reservation Partnership Zone.

**Adm. Order No.:** OBDD 1-2010(Temp)

**Filed with Sec. of State:** 1-5-2010

**Certified to be Effective:** 1-5-10 thru 7-4-10

**Notice Publication Date:**

**Rules Amended:** 123-065-0010

**Subject:** These rules are being revised due to the 2009 Legislative Session through SB 726 to include the Reservation Partnership Zone.

**Rules Coordinator:** Mindee Sublette—(503) 986-0036

## 123-065-0010

### Local Government Enterprise Zone Sponsorship or Consent

An enterprise zone shall be sponsored by, and only by, the governing body of each city or county jurisdiction or port district in which it is located, with the following exceptions:

(1) A port need not cosponsor a zone, if:

(a) The zone is located inside the territory of a sponsoring city, county or two or more such jurisdictions; and

(b) The port granted consent for the zone to exist in its territory through a resolution adopted by the port's governing body.

(2) A county need not cosponsor a zone, if:

(a) The zone is located completely in the incorporated territory of a city/cities that/each of which sponsors the zone;

(b) The county has consented to the zone in its territory for sponsorship by a port through a resolution adopted by the governing body of the county; or

(c) The county granted consent for the zone in its unincorporated territory through a resolution adopted by the governing body of the county and the only such unincorporated territory inside the zone lies within the urban growth area between the corporate limits and the urban growth boundary of a city that sponsors the zone.

(3) A city need not cosponsor a zone, if:

(a) The zone is located inside the territory of a sponsoring county or of a sponsoring port with county consent;

(b) The city granted consent for the zone to exist in its territory through a resolution adopted by the city's governing body; and

(c) Less than the zone's entire area lies within less than the entire incorporated territory of the city.

(4) As otherwise consistent with sections (1) to (3) of this rule, city/county/port sponsorship or consent is permissible:

(a) In combinations not specifically described by this rule; or

(b) For an enterprise zone designation under ORS 285C.080 or 285C.250 containing tribal lands in addition to non-tribal lands inside sponsor territory.

(5) Except as provided under ORS 285C.115(3), a city, port or county does not need to sponsor a reservation enterprise zone designated under ORS 285C.306. The same is also true for an amendment to such a zone that adds land:

(a) Held in trust by the U.S. for the benefit of the Indian Tribe, for which the tribal government is the zone sponsor; and

(b) Over which the non-sponsoring city, port or county government does not effectively have jurisdictional control.

(6) As provided under ORS 285C.306, the government of an eligible Indian tribe may cosponsor a reservation partnership zone with a city, county or port pursuant to an agreement formed under ORS 190.110 to perform the duties of a zone sponsor under ORS 285C.050 to 285C.250.

Stat. Auth.: ORS 285A.075, 285C.060(1) & 285C.066

Stats. Implemented: ORS 285C.050, 285C.065, 285C.115, 285C.250, 285C.306 & 285C.320  
Hist.: EDD 4-1994, f. & cert. ef. 2-24-94; EDD 10-1995, f. & cert. ef. 12-19-95; EDD 1-1997, f. & cert. ef. 1-7-97; EDD 5-1998, f. 3-12-98, cert. ef. 3-15-98; EDD 1-2005, f. & cert. ef. 2-25-05; EDD 1-2007(Temp), f. & cert. ef. 1-8-07 thru 7-6-07; EDD 2-2007, f. 6-15-07, cert. ef. 7-1-07; OBDD 1-2010(Temp), f. & cert. ef. 1-5-10 thru 7-4-10

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**Rule Caption:** The Water/Wastewater rules have been changed to comply with 2009 Legislation.

**Adm. Order No.:** OBDD 2-2010(Temp)

**Filed with Sec. of State:** 1-14-2010

**Certified to be Effective:** 1-14-10 thru 7-13-10

**Notice Publication Date:**

**Rules Adopted:** 123-043-0041

**Rules Amended:** 123-043-0010, 123-043-0015, 123-043-0025, 123-043-0035, 123-043-0055, 123-043-0085, 123-043-0095, 123-043-0115

**Subject:** The Water/Wastewater rules have been revised to include the Infrastructure Finance Authority brought by HB 2152 in the 2009 Legislative session. The rules include new definitions as well as amend language regarding criteria for funding for non-technical projects. Language has been amended for grant eligibility, criteria and maximum award.

**Rules Coordinator:** Mindee Sublette—(503) 986-0036

## 123-043-0010

### Definitions

For the purposes of these rules additional definitions may be found in Procedural Rules, OAR 123-001. As used in this division of administrative rules, the following terms shall have the following meaning, unless the context clearly indicates otherwise:

(1) "DEQ" means the State of Oregon Department of Environmental Quality.

(2) "Facilities" means something that is built or installed to perform some particular function.

(3) "Fund" means the water fund created by ORS 285B.563.

(4) "Grant" means an award to a municipality of monies that can be used to reimburse eligible project costs. Grant funds are not required to be repaid when contract conditions are met.

(5) "Non-compliance" means the municipality has received a notice of non-compliance with:

(a) Drinking water quality standards administered by the Oregon Department of Human Services Public Health Services Drinking Water Program; or

(b) Water quality statutes, rules, orders, or permits administered by DEQ or the Environmental Quality Commission.

(6) "Project" means only a project for constructing or improving a drinking water system, or a project for constructing or improving a system for waste water collection or treatment, including storm drainage systems as defined in ORS 285B.560(4) and (5).

(7) "System" means the interconnected facilities that are required or useful for performing the required function.

(8) "Technical Assistance" means preliminary engineering or planning; legal, financial, and economic investigations, reports and studies to determine the feasibility of a project. Technical Assistance also means required Water Master Plans or Wastewater Facility Studies needed to allow communities to properly plan for the future.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 285B.563 & 285A.075

Stats. Implemented: ORS 285B.560 - 285B.599

Hist.: EDD 10-1993(Temp), f. & cert. ef. 10-4-93; EDD 7-1994, f. & cert. ef. 4-7-94; EDD 7-2002, f. & cert. ef. 4-26-02; EDD 11-2006, f. & cert. ef. 11-3-06; EDD 14-2008(Temp), f. & cert. ef. 4-9-08 thru 10-5-08; EDD 32-2008, f. 10-2-08, cert. ef. 10-3-08; EDD 25-2009, f. 11-30-09, cert. ef. 12-1-09; OBDD 2-2010(Temp), f. & cert. ef. 1-14-10 thru 7-13-10

## 123-043-0015

### Eligible Project Costs and Activities

(1) Eligible costs include the reasonable costs for eligible program activities and include:

(a) Project development costs;

(b) Construction contingencies for a project as approved by the Authority;

(c) Financing costs associated with the department's financing including capitalized interest, issuance and debt service reserve costs, when such costs are incurred in funding a project;

(d) Costs incurred by the municipality prior to the award if such costs are allowable under the Authority's adopted policy for reimbursement of pre-award costs; and

(e) At the discretion of the Authority, reasonable, new project management costs but not expenses for current staff that are already included in the municipality's adopted budget.

(2) Eligible project and program activities include the construction, improvement or expansion of the following facilities owned and operated by a municipality:

(a) Domestic drinking water systems including all facilities necessary for source, supply, filtration, treatment, storage, transmission, and metering;

(b) Wastewater systems including all facilities necessary for collecting; conveying, pumping, treating and disposing of sanitary sewage, including correction of infiltration and inflow through replacement of lines, sliplining, or other corrective processes approved by the Authority;

(c) Storm water systems including all facilities necessary for controlling, collecting, conveying, treating and discharging of storm water; and

(d) The acquisition of real property directly related to or necessary for the proposed project.

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(e) Project development and the associated engineering, architectural and planning work involved in developing the facilities listed in (1) above, including technical assistance and support activities necessary to the construction of a project as determined by the Authority.

Stat. Auth.: ORS 285B.563  
Stats. Implemented: ORS 285B.560 - 285B.599  
Hist.: EDD 7-2002, f. & cert. ef. 4-26-02; EDD 11-2006, f. & cert. ef. 11-3-06; EDD 25-2009, f. 11-30-09, cert. ef. 12-1-09; OBDD 2-2010(Temp), f. & cert. ef. 1-14-10 thru 7-13-10

## 123-043-0025

### Ineligible Project Activities

Expenses and costs expressly allowed by OAR 123-043-0015 are eligible for reimbursement from the fund. All other costs, including but not limited to those listed below, are ineligible for reimbursement:

- (1) Costs incurred for facilities that are or will be privately owned.
- (2) Costs of purchase of equipment, such as motor vehicles, not directly related to the project
- (3) Cost of purchase of off-site property for uses not directly related to the project.

(4) Project operating or maintenance expenses.

Stat. Auth.: ORS 285B.563 & 285A.075  
Stats. Implemented: ORS 285B.560 - 285B.599  
Hist.: EDD 7-2002, f. & cert. ef. 4-26-02; EDD 11-2006, f. & cert. ef. 11-3-06; EDD 25-2009, f. 11-30-09, cert. ef. 12-1-09; OBDD 2-2010(Temp), f. & cert. ef. 1-14-10 thru 7-13-10

## 123-043-0035

### Criteria and Limitations for Funding — Non-Technical Assistance Projects

(1) The intent of the Legislature was to provide funding to municipalities to assist in complying with the **Safe Drinking Water Act** and the **Clean Water Act**. Therefore, priority will be given to projects necessary to ensure that municipal water and wastewater systems comply with the requirements of:

(a) Drinking water quality standards administered by the Oregon Department of Human Services Public Health Services Drinking Water Program; or

(b) Water quality statutes, rules, orders, or permits administered by DEQ or the Environmental Quality Commission.

(2) If a municipal water or wastewater system has not been issued a notice of non-compliance by the governing regulatory authority, the Authority may determine that a proposed project is eligible for assistance upon a finding that one of the following has been met:

(a) A recent letter has been issued by the appropriate regulatory authority, typically the Department of Human Services Drinking Water Program, DEQ, or its contracted agent, which indicates a high probability that the system owner will soon be notified of non-compliance with either the Safe Drinking Water Act or the Clean Water Act; or

(b) The Authority deems it reasonable and prudent that an award from the fund will assist in bringing the drinking water, storm water or wastewater system into compliance with the requirements of the **Safe Drinking Water Act**, the **Clean Water Act**, those requirements proposed to take effect within the next two years, or the requirements of other regulatory agencies recognized by the Authority as having responsibility for the protection of water quality and the supply of clean drinking water.

(3) The Authority generally will not fund projects without approval of the appropriate regulatory agency(s).

(4) The project must be consistent with the acknowledged local comprehensive plan.

(5) The Authority encourages regionalization whenever feasible.

(6) The Authority encourages asset management planning where possible.

(7) The Authority will apply approved prioritization when reviewing project information contained in project notification intake form.

Stat. Auth.: ORS 285B.563 & 285A.075  
Stats. Implemented: ORS 285B.560 - 285B.599  
Hist.: EDD 7-2002, f. & cert. ef. 4-26-02; EDD 1-2003(Temp) f. 2-20-03, cert. ef. 2-24-03 thru 6-30-03; EDD 8-2003(Temp), f. & cert. ef. 9-24-03 thru 3-22-04; EDD 9-2004, f. & cert. ef. 3-22-04; EDD 11-2006, f. & cert. ef. 11-3-06; EDD 14-2008(Temp), f. & cert. ef. 4-9-08 thru 10-5-08; EDD 32-2008, f. 10-2-08, cert. ef. 10-3-08; EDD 25-2009, f. 11-30-09, cert. ef. 12-1-09; OBDD 2-2010(Temp), f. & cert. ef. 1-14-10 thru 7-13-10

## 123-043-0041

### Criteria and Limitations for Funding — Technical Assistance Projects

(1) Awards are available to municipalities with populations of less than 15,000 people for technical assistance. If the project is for a facility plan or study required by a regulatory agency, the municipality is not required to document non-compliance. Other Technical Assistance projects may be considered after consulting with the regulatory agency.

(2) Technical assistance grants and loans are subject to the following limitations:

(a) A grant of up to \$20,000 may be awarded for a project.

(b) A loan of up to \$50,000 may be awarded for a project. Interest shall be at 75 percent of the annual interest rate for other loans made in accordance

with the requirements of this OAR chapter 123, division 43. The loan term shall not exceed seven years; and

(c) No more than \$600,000 shall be expended from the fund on technical assistance in any biennium. When awarding a grant under this section the Authority will not first consider a municipality's ability to repay a loan.

(d) The application must meet the requirements listed in OAR 123-043-0075(2).

(3) The loan shall be a full faith and credit obligation which is payable from any taxes which the municipality may levy within the limitations of Article XI of the Oregon Constitution and all legally available revenues and other funds of the municipality. A pledge of specific revenues of the municipality may be pledged in addition to the foregoing.

Stat. Auth.: ORS 285B.563 & 285A.075  
Stats. Implemented: ORS 285B.560 - 285B.599  
Hist.: OBDD 2-2010(Temp), f. & cert. ef. 1-14-10 thru 7-13-10

## 123-043-0055

### Loan and Grant Information

(1) The Authority may award financing in a manner that maximizes the use of available resources and maintains the desired credit standards of the fund. The Authority shall determine the amount, type, interest rate and terms of any financing awarded. It may offer an alternate mix or lower amount of assistance than requested. The amount of the award may be the minimum amount that the department determines is necessary to enable the project to proceed, and the Authority may investigate and recommend other sources of funds for all or part of a proposed project. Projects that the Authority determines are not financially feasible will not be funded.

(2) Loans for non-technical assistance projects:

(a) The term of a loan is limited to the usable life of the contracted project, or 25 years from the year of project completion, whichever is less.

(b) Except as provided elsewhere in OAR chapter 123, division 43, the interest rate on a loan is based on market conditions for similar debt and is set at the time of the award.

(c) The interest rate on a bond funded loan is equal to the coupon rates on the state revenue bonds funding the loan. Until the state revenue bonds funding the loan are sold, the municipality will pay interest at a rate established by the Authority on loan funds disbursed to the municipality.

(d) Maximum amount for a loan for a project may be determined by the Authority on the basis of the department's financial analysis of the municipality's capacity for repaying the debt, the availability of moneys in the fund and prudent fund management.

(e) The loan shall be a full faith and credit obligation which is payable from any taxes which the municipality may levy within the limitations of Article XI of the Oregon Constitution and all legally available revenues and other funds of the municipality. A pledge of specific revenues of the municipality may be required by the Authority to be pledged in addition to the foregoing.

(3) Grants for non-technical assistance projects: When making a determination to award a grant, the Authority will apply prudent fiscal management of the fund in order to manage limited funding resources. The Authority shall determine if the project meets the criteria of a grant and make a determination on the amount of the grant based on financial need or other special circumstances. In making its determination, the Authority shall apply the following criteria:

(a) The Authority's financial analysis determines that the municipality's financial resources, including its borrowing capacity, are insufficient to finance the project;

(b) The projected annual residential utility rate for the system is at least equivalent to a minimum rate as determined by the Authority's policy. The Authority's policy may include such factors as the most recent U.S. Census data on median household income and annual adjustments for inflation since the most recent census;

(c) Only a distressed community is eligible for a grant award; and

(d) Grants may be awarded up to \$750,000 based on the Authority's policy, but not more than 50 percent of the financial award.

Stat. Auth.: ORS 285B.563 & 285A.075  
Stats. Implemented: ORS 285B.560 - 285B.599  
Hist.: EDD 7-2002, f. & cert. ef. 4-26-02; EDD 1-2003(Temp) f. 2-20-03, cert. ef. 2-24-03 thru 6-30-03; EDD 8-2003(Temp), f. & cert. ef. 9-24-03 thru 3-22-04; EDD 9-2004, f. & cert. ef. 3-22-04; EDD 11-2006, f. & cert. ef. 11-3-06; EDD 14-2008(Temp), f. & cert. ef. 4-9-08 thru 10-5-08; EDD 32-2008, f. 10-2-08, cert. ef. 10-3-08; EDD 25-2009, f. 11-30-09, cert. ef. 12-1-09; OBDD 2-2010(Temp), f. & cert. ef. 1-14-10 thru 7-13-10

## 123-043-0085

### Contract Administration and Disbursement of Funds

(1) The Authority shall disburse monies from the fund only after entering into a binding contract with the municipality.

(2) The contract shall be in a form provided by the Authority, and shall include:

(a) A provision that disbursements from the fund will be according to the terms of the contract;

(b) A provision that the liability of the Authority under the contract is contingent upon the availability of moneys in the fund for use in the project;

(c) If any portion of the assistance is in the form of a loan or the purchase of a bond of a municipality, a provision granting the Authority a lien on

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or a security interest in the collateral as determined by the Authority to be necessary to secure repayment of the loan or bond;

(d) A provision that, for a period of up to six (6) years after project completion, the Authority may request that the municipality, at its own expense, submit data on the economic development benefits of the project, including but not limited to information on new or retained jobs resulting from the project, and other information necessary to evaluate the success and economic impact of the project;

(e) For a drinking water project, a provision requiring the municipality to install meters on all new active service connections from any distribution lines that may be included in the project;

(f) For a drinking water project with existing, active unmetered service connections, a provision requiring the municipality to install meters on such service connections; and

(g) Other provisions that the Authority considers necessary or appropriate to implement the assistance.

(3) Other funds that may be needed to complete the project must be available or the municipality must have a binding commitment for such funds at the time the contract is executed. If a portion of the other funds needed to complete the project is committed but not available at the time an award is made or the contract executed, the contract shall require that the project be fully funded prior to any disbursement from the fund.

(4) The contract for a loan or grant shall be authorized by an ordinance, order or resolution adopted by the governing body of the municipality in accordance with the municipality's requirements for public notice and authorization debt.

Stat. Auth.: ORS 285B.563 & 285A.075

Stats. Implemented: ORS 285B.560 - 285B.599

Hist.: EDD 7-2002, f. & cert. ef. 4-26-02; EDD 11-2006, f. & cert. ef. 11-3-06; EDD 25-2009, f. 11-30-09, cert. ef. 12-1-09; OBDD 2-2010(Temp), f. & cert. ef. 1-14-10 thru 7-13-10

## 123-043-0095

### Recipient Responsibilities

(1) The municipality must comply with all applicable state laws, regulations and requirements, such as Oregon prevailing wage rates, municipal audit law, and procurement regulations.

(2) The municipality shall maintain accounts and records for all activities associated with the contracted project and shall provide the Authority and its representative's reasonable access to such records. The municipality shall submit periodic reports on the project as requested by the Authority.

(3) The municipality shall certify that a registered professional engineer will be responsible for the design and construction of the project and it shall follow standard construction practices, such as bonding of engineers and contractors, requiring errors and omissions insurance, performing testing and inspections during construction, and obtaining as-built drawings.

(4) For a project funded with state lottery proceeds, the municipality shall comply with ORS 280.518 for public display of information on lottery funding of the project. At a minimum the municipality shall:

(a) Include the following statement, prominently placed, on all plans, reports, bid documents and advertisements relating to the Project: "This project was funded in part with a financial award from the Water Fund, funded by the Oregon State Lottery and administered by the State of Oregon, Business Development Department."; and

(b) For a construction project, post a sign, provided by the Authority, at the project site or, if more than one site is included in the project, at a site visible to the general public stating that the project is being funded by lottery proceeds.

(5) For a construction project the municipality shall have a plan for ongoing operation, maintenance and replacement that will preserve the project's benefits over its useful life.

Stat. Auth.: ORS 285B.563 & 285A.075

Stats. Implemented: ORS 285B.560 - 285B.599

Hist.: EDD 7-2002, f. & cert. ef. 4-26-02; EDD 11-2006, f. & cert. ef. 11-3-06; EDD 25-2009, f. 11-30-09, cert. ef. 12-1-09; OBDD 2-2010(Temp), f. & cert. ef. 1-14-10 thru 7-13-10

## 123-043-0115

### Appeals and Exceptions

(1) Appeals of decisions made by the municipality regarding a project must be made at the local level in accordance with the requirements and procedures of the municipality.

(2) The director or the director's designee will consider appeals of the Authority's funding decisions. Only the municipality may appeal. Appeals must be submitted in writing to the director within 30 days of the event or action that is being appealed. A project that would have been funded but for a technical error in the Authority's review of the application, as determined by the director, will be funded as soon as sufficient moneys become available in the fund, provided the project is still viable. The director's or the director's designee decision is final.

(3) The director or the director's designee may waive any non-statutory requirements of OAR chapter 123, division 43 if it is demonstrated such a waiver will further the goals and objectives of the program.

Stat. Auth.: ORS 285B.563 & 285A.075

Stats. Implemented: ORS 285B.560 - 285B.599

Hist.: EDD 7-2002, f. & cert. ef. 4-26-02; EDD 11-2006, f. & cert. ef. 11-3-06; EDD 25-2009, f. 11-30-09, cert. ef. 12-1-09; OBDD 2-2010(Temp), f. & cert. ef. 1-14-10 thru 7-13-10

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**Rule Caption:** These rules implement process and criteria for Oregon's Recovery Zone Bonds.

**Adm. Order No.:** OBDD 3-2010(Temp)

**Filed with Sec. of State:** 1-14-2010

**Certified to be Effective:** 1-14-10 thru 7-13-10

**Notice Publication Date:**

**Rules Adopted:** 123-165-0010, 123-165-0020, 123-165-0030, 123-165-0040, 123-165-0045, 123-165-0050

**Subject:** These rules implement HB 3199 from the 2009 Legislative Session. The rules describe the process and criteria for allocation and reallocation of funds from Oregon's Recovery Zone Economic Development Bonding Authority and Recovery Zone Facility Bonding Authority. They describe the use of original allocation and reallocation of the bonds as well as the bonds cap.

**Rules Coordinator:** Mindee Sublette—(503) 986-0036

## 123-165-0010

### Purpose and Objectives

The Oregon Business Development Department allocates, reallocates and otherwise manages Oregon's Recovery Zone Economic Development Bonding authority and Recovery Zone Facility Bonding authority. These rules are promulgated under authority granted by enacted 2009 Legislative Session HB 3199, Section 12 (4) and Section 12 (7)(a)(c).

Stat. Auth.: ORS 286A.630 & 285A.075

Stats. Implemented: ORS 286A.630(4) & 285A.075

Hist.: OBDD 3-2010(Temp), f. & cert. ef. 1-14-10 thru 7-13-10

## 123-165-0020

### Definitions

For the purposes of these rules additional definitions may be found in Procedural Rules, OAR 123-001. As used in this division of administrative rules, unless the context requires otherwise the following definitions apply:

(1) "Allocation" means an original allocation or reallocation of recovery zone bond volume cap.

(2) "ARRA" means the American Recovery and Reinvestment Act of 2009, H.R. 1, as amended.

(3) "Code" means the Internal Revenue Code of 1986, as amended.

(4) "Notice" means Notice 2009-50, published by the U.S. Treasury Department on June 12, 2009.

(5) "Notice of Intent" means a notice of intent to issue Recovery Zone Bonds on a form provided by the Department, which shall include the following:

(a) Name of Recipient receiving Allocation.

(b) Name of unit of local government that will issue the Recovery Zone Bonds.

(c) Type of Recovery Zone Bonds to be issued.

(d) Description of area designated as Recovery Zone.

(e) Description of project to be financed.

(f) Dollar amount of the bond issue and amount of Allocation to be used and amount of Allocation (if any) remaining after such issuance.

(g) Any Reallocation requested by the Recipient for the project.

(h) If applicable, that the Recipient does not intend to use some or all of its Allocation, and is waiving such Allocation (or if less than all, the portion of Allocation being waived). In connection with any such waiver, the Recipient may designate a project being undertaken by another unit of local government within the jurisdiction using Recovery Zone Bonds, and request that the waived Allocation be reallocated to such unit of local government in connection with such project.

(i) Such other information as may be prescribed by the Department.

(6) "Original allocation" means the initial authorization for units of local government to issue Recovery Zone Facility Bonds or Recovery Zone Economic Development Bonds pursuant to ARRA. Oregon received \$155,175,000 in Allocation for Recovery Zone Facility Bonds and \$103,450,000 in Allocation for Recovery Zone Economic Development Bonds for 2009 and 2010; the original allocations awarded to counties and municipalities in the State are found in the Notice.

(7) "Originally awarded locality" means a city or county that received an original allocation of recovery zone economic development bond or recovery zone facility bond authority.

(8) "Reallocation" or "Reallocate" means an action by the department to allocate waived Recovery Zone Facility or Recovery Zone Economic Development Bonds volume cap to an eligible unit of local government.

(9) "Recipient" means any unit of local government that received an original allocation or reallocation.

(10) "Recovery Zone" means any area within the jurisdiction of the Recipient, designated as a "recovery zone" in accordance with Code Section

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1400U-1(b) by the Internal Revenue Service or local determination in compliance with the Code.

(11) "Recovery Zone Bonds" means Recovery Zone Economic Development Bonds and Recovery Zone Facility Bond, authorized under Section 1401 of Title I of Subtitle B of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115 (2009), that may be issued by states, counties, certain municipalities and other qualified issuers within each state before January 1, 2011.

(12) "Recovery Zone Economic Development Bonds" means Recovery Zone Economic Development Bonds issued pursuant to Code Section 1400U-2, which in general are governmental bonds issued by a qualified issuer for economic development purposes (as defined in Code Section 1400U-2) that provide for a refundable tax credit paid to the issuer of the bonds in an amount equal to 45% of the taxable interest payable to investors in such bonds.

(13) "Recovery Zone Facility Bonds" means Recovery Zone Facility Bonds issued pursuant to Code Section 1400U-3, which in general are a type of private activity, exempt facility bond that permit financing of recovery zone property (as defined in Code Section 1400U-3) for use in any trade or business other than certain prohibited businesses enumerated in Section 1400U-3(c)(2).

(14) "Volume cap" or "Cap" means the recovery zone bond volume limitation allocated to each state and to counties and municipalities within each state in accordance with Code Section 1400U-1.

Stat. Auth.: ORS 286A.630 & 285A.075

Stats. Implemented: ORS 286A.630(4) & 285A.075

Hist.: OBDD 3-2010(Temp), f. & cert. ef. 1-14-10 thru 7-13-10

## 123-165-0030

### Use of Original Allocation and Reallocation

(1) For the purposes of recovery zone economic development bond and recovery zone facility bond allocations, a recipient of an original allocation may use its allocation or designate other issuing localities within the jurisdiction of the originally awarded locality to use all or a portion of its original allocation by any procedure mutually acceptable to both parties subject to federal requirements.

(2) An originally awarded locality that intends to use its original allocation or intends to designate another issuer within the jurisdiction of the originally awarded locality to use the original allocation must file a *Notice of Intent* form by March 1, 2010 with supporting documentation.

(3) An originally awarded locality that has used the *Notice of Intent* form to express its intent to use or designate another issuer within the jurisdiction to use its original allocation may amend the *Notice of Intent* at a later time if it is determined that the locality is unable to use its original allocation in the manner previously stated or has decided to waive all or part of the original allocation for reallocation by the state pursuant to subsection (6) below.

(4)(a) An originally awarded locality intending to use its original allocation and has filed a *Notice of Intent* pursuant to subsection (2) above must provide the department with project information and supporting documents by April 16, 2010 that shows substantial progress. Supporting documents include bond counsel and underwriter statement of intent documents and a certified copy of a resolution of the governing body of the recipient designating a recovery zone and stating its intent to use its original allocation.

(b) A recipient may request a time extension if filed by April 16, 2010.

(5) If an originally awarded locality is not able to or chooses not to use all or a portion of its original allocation or does not offer all or a portion of the original allocation to another issuer within the jurisdiction of the originally awarded locality, the original allocation may be waived. In cases where original allocation is not used, federal code provisions and U.S. Department of Treasury guidance in IRS Notice 2009-50 allow original allocations to be waived by the recipient and then used by the state or reallocated by the state to other issuing localities. The department, as authorized in statute, has accepted the reallocation role on behalf of the state. Waived recovery zone economic development bond or recovery zone facility bond authority may be used by the state or reallocated by the department to other issuing localities.

(6) Any recipient of original allocation or reallocation may affirmatively waive all or a portion of its allocation to the state pursuant to the following procedure:

(a) Submitting an appropriately completed *Notice of Intent* form; and

(b) The form must be signed by the official(s) of the recipient authorized to execute the form pursuant to a resolution waiving the allocation adopted by the recipient's governing body.

(7) If a recipient of original allocation or reallocation has not provided the department with the *Notice of Intent* pursuant to subsection (2) above or supporting documentation pursuant to subsection (4) above or subsection (12) below the department may issue a *Notice of Intent to Reallocate*, informing the recipient of the department's intent to deem the allocation to have been waived to the state and to make such allocation available to reallocate to another locality or use by the state.

(8) A recipient will have fifteen calendar days from receipt of a *Notice of Intent to Reallocate* to respond to the department with the required documentation or to ask the department to reconsider its waiver determination.

(9) The department will respond to the request to reconsider its waiver determination within ten business days with a decision by the department director or the director's designee to grant an extended time in which the issuing jurisdiction must demonstrate substantial progress toward a recovery zone economic development bond or recovery zone facility bond issuance, or a decision to go forward with the waiver of the allocation. The length of the time of the extension shall be determined at the discretion of the department.

(10) Any local government issuer may request a reallocation of recovery zone facility bonds and/or recovery zone economic development bonds authority by submitting a department supplied *Recovery Zone Bonds Request for Reallocation* form to the department. The department will acknowledge the request within five business days and provide a determination on the reallocation of cap within fifteen business days of the acknowledgement.

(11) The department will notify a recipient of its determination to award reallocation of volume cap in writing in a *Reallocation Award Letter*.

(12) A recipient of reallocated cap must provide the department with project information and supporting documents within 45 days of the date of the *Reallocation Award Letter*, or sooner if required by the department, that shows substantial progress. Supporting documents include bond counsel and underwriter statement of intent documents and a certified copy of a resolution of the governing body of the recipient designating a recovery zone and stating its intent to use its allocation.

(13) The department will carry out continual review of the use of recovery zone facility bonds and/or recovery zone economic development bonds authority to determine if original allocations as well as reallocations were used or are likely to be used before year end. To the extent recovery zone bond authority is identified to not be used, a final reallocation will occur late in 2010 for any bonding projects in the state meeting the code qualifications.

(14) Following the issuance of any recovery zone bond, the issuer of such bond shall promptly deliver a copy of the report required to be filed with the Internal Revenue Service (e.g. the Form 8038 for recovery zone facility bonds and the Form 8038G for recovery zone economic development bonds) to the department. The department will maintain a list of all recovery zone bonds issued and all allocations used, waived, and available for full or partial reallocation.

Stat. Auth.: ORS 286A.630 & 285A.075

Stats. Implemented: ORS 286A.630(4) & 285A.075

Hist.: OBDD 3-2010(Temp), f. & cert. ef. 1-14-10 thru 7-13-10

## 123-165-0040

### Criteria for Reallocation Award of Recovery Zone Economic Development Bonds Cap

In accordance with the intent of the code and state priorities, the following criteria will be used to prioritize reallocation requests by the department:

- (1) The relative level of economic distress in the local community.
- (2) The number of citizens benefiting from the project.
- (3) The estimated positive economic, health, or environmental impact of the project on the local community, region, and state.
- (4) The number of jobs created or retained by the project as can be best estimated.
- (5) Whether the availability of the reallocation is a crucial part of attracting a new company or keeping an existing company in place;
- (6) Whether the requested reallocation will benefit a project for which a recipient or other unit of local government is issuing recovery zone bonds;
- (7) Whether the requested reallocation will benefit a project that was designated by a recipient in connection with a previous waiver of its allocation.

(8) The readiness of the project to proceed including consideration for the likelihood that the issuer will use the allocation within the timelines.

(9) The amount of other public and private funding leveraged by the recovery zone economic development bond allocation.

(10) The amount of local community support for the project, other agency support, and the degree the project supports efficient use of resources.

Stat. Auth.: ORS 286A.630 & 285A.075

Stats. Implemented: ORS 286A.630(4) & 285A.075

Hist.: OBDD 3-2010(Temp), f. & cert. ef. 1-14-10 thru 7-13-10

## 123-165-0045

### Criteria for Reallocation Award of Recovery Zone Facility Bonds Cap

In accordance with the intent of the code and state priorities, the following criteria will be used to prioritize reallocation requests by the department:

- (1) The relative level of economic distress in the local community.
- (2) The number of citizens benefiting from the project.
- (3) The estimated positive economic impact of the project on the local community, region and state.
- (4) The number of jobs created or retained by the project as can be best estimated.
- (5) Whether the availability of the reallocation is a crucial part of attracting a new company or keeping an existing company in place;
- (6) Whether the requested reallocation will benefit a project for which a recipient or other unit of local government is issuing recovery zone bonds;

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(7) Whether the requested reallocation will benefit a project that was designated by a recipient in connection with a previous waiver of its allocation.

(8) The readiness of the project to proceed including consideration for the likelihood that the issuer will use the allocation within the timelines.

(9) The amount of other public and private funding leveraged by the recovery zone facility bond allocation.

(10) The amount of local community support for the project, other agency support, and the degree the project supports efficient use of resources

Stat. Auth.: ORS 286A.630 & 285A.075

Stats. Implemented: ORS 286A.6304 & 285A.075

Hist.: OBDD 3-2010(Temp), f. & cert. ef. 1-14-10 thru 7-13-10

## 123-165-0050

### Rule Waiver

The director may waive any non-statutory requirements of OAR chapter 123, division 165 if it is demonstrated such a waiver will further the goals and objectives of the program.

Stat. Auth.: ORS 286A.630 & 285A.075

Stats. Implemented: ORS 285A.075

Hist.: OBDD 3-2010(Temp), f. & cert. ef. 1-14-10 thru 7-13-10

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## Oregon Criminal Justice Commission

### Chapter 213

**Rule Caption:** Amends Oregon Sentencing Guidelines in light of 2009 legislative actions.

**Adm. Order No.:** CJC 7-2009

**Filed with Sec. of State:** 12-31-2009

**Certified to be Effective:** 1-1-10

**Notice Publication Date:** 12-1-2009

**Rules Adopted:** 213-018-0058

**Rules Amended:** 213-003-0001, 213-017-0004, 213-017-0005, 213-017-0006

**Rules Repealed:** 213-003-0001(T)

**Subject:** Under ORS 137.667(2), the Criminal Justice Commission (CJC) may adopt changes to the Sentencing Guidelines. However, the rule changes must be approved by the legislature before they go into effect. The first two rule changes below were adopted as temporary rules, and submitted for legislative approval. The effective date of the temporary rules was January 1, 2010, to correlate with the effective date of the possible legislative approval. In HB 2665 (2009), the legislature approved the two changes below, and the rules must now be amended to incorporate those changes.

The first rule change amends the definition of "person felony" in OAR 213-003-0001 to include both Felony Animal Abuse I (ORS 167.320(4)) and Aggravated Animal Abuse I (ORS 167.322). The rule change repeals the temporary rule submitted for legislative approval, and amends the current rule to implement the legislatively approved changes.

The second rule change adds a definition of "straight jail" to OAR 213-003-0001. The definition clarifies that when a sentencing court imposes a "straight jail" sentence, such a sentence is not followed by a term of supervision. The rule change repeals the temporary rule submitted for legislative approval, and amends the current rule to implement the legislatively approved changes.

Additionally, CJC is required under ORS 137.667 to review all legislation creating new crimes or modifying existing crimes, and to adopt by rule necessary changes to the crime seriousness scale. CJC also may classify offenses as person felonies or person misdemeanors for purposes of the rules it is required to adopt. The rule changes below are required to comply with that legislative directive. The rule changes accomplish the following:

Classify the offense of Harassment, when committed as a Class A Misdemeanor, as a person misdemeanor, in response to HB 3271 § 1 (2009).

Classify the offense of Aggravated Harassment as a Crime Category 6 on the Crime Seriousness Scale, and classify that offense as a person felony, in response to HB 3271 § 2 (2009).

Classify the offense of Aggravated Driving While Suspended or Revoked as a Crime Category 7 on the Crime Seriousness Scale as

required by HB 3271 § 5 (2009), and classify that offense as a person felony, in response to HB 3271 § 5 (2009).

Classify the offense of manufacturing or delivering a controlled substance in Schedule IV and thereby causing death to any person as a person felony, in response to SB 728 § 1 (2009).

Classify the offense of Sexual Abuse II as a Crime Category 8 on the Crime Seriousness Scale when the victim is incapable of consent due to being under 18 years of age, the offender is 21 years old or older, and the offender was the victim's coach at any time prior to the commission of the offense, as required by HB 2476 § 1. Also classify the offense of Sexual Abuse II as a person felony when victim is incapable of consent due to being under 18 years of age, the offender is 21 years old or older, and the offender was the victim's coach at any time prior to the commission of the offense, in response to HB 2476 § 1, 2 (2009).

**Rules Coordinator:** Craig Prins—(503) 378-4830

## 213-003-0001

### Definitions

As used in these rules:

(1) "Bench probation" means a probationary sentence, which directs the probationer to remain under the supervision and control of the sentencing judge.

(2) "Board" means the State Board of Parole and Post-Prison Supervision.

(3) "Correctional supervision status" means any form of incarcerative or non-incarcerative supervision which is served by an offender as part of a sentence for a criminal conviction.

(4) "Department" means the Department of Corrections.

(5) "Departure" means a sentence, except an optional probationary sentence, which is inconsistent with the presumptive sentence for an offender.

(6) "Dispositional departure" means a sentence which imposes probation when the presumptive sentence is prison or prison when the presumptive sentence is probation. An optional probationary sentence is not a dispositional departure.

(7) "Dispositional line" means the solid black line on the Sentencing Guidelines Grid (Appendix 1) which separates the grid blocks in which the presumptive sentence is a term of imprisonment and post-prison supervision from the grid blocks in which the presumptive sentence is probation which may include local custodial sanctions. [Appendix not included. See ED. NOTE.]

(8) "Durational departure" means a sentence which is inconsistent with the presumptive sentence as to term of incarceration, term of supervised probation or number of sanction units which may be imposed as a condition of probation.

(9) "Grid" means the Sentencing Guidelines Grid set forth as Appendix 1. [Appendix not included. See ED. NOTE.]

(10) "Grid block" means a box on the grid formed by the intersection of the crime seriousness ranking of a current crime of conviction and an offender's criminal history classification.

(11) "Juvenile adjudication" means a formal adjudication or finding by a court that the juvenile has committed an act, which, if committed by an adult, would be punishable as a felony.

(12) "Non-person felonies" are any felonies not defined as a person felony in section (14) of this rule.

(13) "Optional probationary sentence" means any probationary sentence imposed pursuant to OAR 213-005-0006.

(14) "Person felonies" are in numerical statutory order: ORS 162.165 Escape I; ORS 162.185 Supplying Contraband as defined in Crime Categories 6 and 7 (OAR 213-018-0070(1) and (2)); ORS 163.095 Aggravated Murder; ORS 163.115 Murder; ORS 163.115 Felony Murder; ORS 163.118 Manslaughter I; ORS 163.125 Manslaughter II; ORS 163.145 Negligent Homicide; ORS 163.160(3) Felony Domestic Assault; ORS 163.165 Assault III; ORS 163.175 Assault II; ORS 163.185 Assault I; ORS 163.205 Criminal Mistreatment I; ORS 163.207 Female Genital Mutilation; ORS 163.208 Assaulting a Public Safety Officer; ORS 163.213 Use of Stun Gun, Tear Gas, Mace I; ORS 163.225 Kidnapping II; ORS 163.235 Kidnapping I; ORS 163.275 Coercion as defined in Crime Category 7 (OAR 213-018-0035(1)); ORS 163.355 Rape III; ORS 163.365 Rape II; ORS 163.375 Rape I; ORS 163.385 Sodomy III; ORS 163.395 Sodomy II; ORS 163.405 Sodomy I; ORS 163.408 Sexual Penetration II; ORS 163.411 Sexual Penetration I; ORS 163.425 Sexual Abuse II; ORS 163.427 Sexual Abuse I; ORS 163.465 Felony Public Indecency; ORS 163.479 Unlawful Contact with a Child; ORS 163.452 Custodial Sexual Misconduct in the First Degree; ORS 163.525 Incest; ORS 163.535 Abandon Child; ORS 163.537 Buying/Selling Custody of a Minor; ORS 163.547 Child Neglect I; ORS 163.670 Using Child In Display of Sexual Conduct; ORS 163.684 Encouraging Child Sex Abuse I; ORS 163.686 Encouraging Child Sex Abuse II; ORS 163.688, Possession of Material Depicting Sexually Explicit Conduct of Child I; ORS

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163.689, Possession of Material Depicting Sexually Explicit Conduct of Child II; ORS 163.732 Stalking; ORS 163.750 Violation of Court's Stalking Order; ORS 164.075 Theft by Extortion as defined in Crime Category 7 (OAR 213-018-0075(1)); ORS 164.225 Burglary I as defined in Crime Categories 8 and 9 (OAR 213-018-0025(1) and (2)); ORS 164.325 Arson I; ORS 164.395 Robbery III; ORS 164.405 Robbery II; ORS 164.415 Robbery I; ORS 164.877(3) Tree Spiking (Injury); ORS 166.087 Abuse of Corpse I; ORS 166.165 Intimidation I; ORS 166.220 Unlawful Use of a Weapon; ORS 166.275 Inmate In Possession of Weapon; ORS 166.385(3), Felony Possession of a Hoax Destructive Device; ORS 166.643 Unlawful Possession of Soft Body Armor as defined in Crime Category 6 (OAR 213-018-0090(1)); ORS 167.012 Promoting Prostitution; ORS 167.017 Compelling Prostitution; ORS 167.320(4) Felony Animal Abuse I; ORS 167.322 Aggravated Animal Abuse I; ORS 468.951 Environmental Endangerment; ORS 475.984 Causing Another to Ingest a Controlled Substance as defined in Crime Categories 8 and 9 (OAR 213-019-0007 and 0008); ORS 475.986 Unlawful Administration of a Controlled Substance as defined in Crime Categories 5, 8, and 9 (OAR 213-019-0007, 0008, and 0011); ORS 609.990(3)(b) Maintaining Dangerous Dog; ORS 811.705 Hit and Run Vehicle (Injury); ORS 813.010, Felony Driving Under the Influence of Intoxicants (as provided in OAR 213-004-0009); ORS 830.475(2) Hit and Run Boat; 2007 Oregon Laws Ch 681 Purchase or Sale of a Body Part for Transplantation or Therapy, Alteration of a Document of Gift; 2007 Oregon Laws Ch 811 Subjecting Another Person to Involuntary Servitude I and II, Trafficking in Persons; 2007 Oregon Laws Ch 867 Aggravated Vehicular Homicide; 2007 Oregon Laws Ch 869 Luring a Minor; 2007 Oregon Laws Ch 876 Online Sexual Corruption of a Child I and II; 2009 Oregon Laws Ch 783 Aggravated Harassment; 2009 Oregon Laws Ch 783 Aggravated Driving While Suspended or Revoked; 2009 Oregon Laws Ch 898 Manufacturing or Delivering a Schedule IV Controlled Substance Thereby Causing Death to a Person; and attempts or solicitations to commit any Class A or Class B person felonies as defined herein.

(15) "Person Class A misdemeanors" are in numerical statutory order: ORS 162.315 Resisting Arrest; ORS 163.160 Assault IV; ORS 163.187 Strangulation; ORS 163.190 Menacing; ORS 163.195 Recklessly Endanger Another; ORS 163.200 Criminal Mistreatment II; ORS 163.212 Use of Stun Gun, Tear Gas, Mace II; ORS 163.415 Sexual Abuse III; ORS 163.454 Custodial Sexual Misconduct in the Second Degree; ORS 163.465, Public Indecency; ORS 163.467 Private Indecency; ORS 163.476 Unlawfully Being in a Location Where Children Regularly Congregate; ORS 163.545 Child Neglect II; ORS 163.575 Endanger Welfare of Minor; ORS 163.687 Encouraging Child Sex Abuse III; ORS 163.700 Invasion of Personal Privacy; ORS 163.709 Unlawfully Directing a Laser Pointer; ORS 163.732(1) Stalking; ORS 163.750(1) Violating Court's Stalking Order; ORS 165.572 Interfering with Making a Police Report; ORS 166.065(4) Harassment/Offensive Sexual Contact; ORS 166.155 Intimidation II; ORS 166.385(2) Misdemeanor Possession of a Hoax Destructive Device; ORS 475.986(1)(d) Unlawful Administration of a Controlled Substance; ORS 609.990(3)(a) Maintaining Dangerous Dog; ORS 813.010, Driving Under the Influence of Intoxicants (as provided in OAR 213-004-0009); 2007 Oregon Laws Ch 869 Furnishing Sexually Explicit Material to a Child; and attempts or solicitations to commit any Class C person felonies as defined in section (14) of this rule.

(16) "Presumptive sentence" means the sentence provided in a grid block for an offender classified in that grid block by the combined effect of the crime seriousness ranking of the current crime of conviction and the offender's criminal history or a sentence designated as a presumptive sentence by statute.

(17) "Primary offense" means the offense of conviction with the highest crime seriousness ranking. If more than one offense of conviction is classified in the same crime category, the sentencing judge shall designate which offense is the primary offense.

(18) "Supervisory agent" means the local community corrections agency responsible for supervising the offender.

(19) "Supervisory authority" means the state and local corrections agency or official designated in each county by that county's Board of County Commissioners or county court to operate corrections supervision services, custodial facilities or both.

(20) "Straight jail" means a sentence of jail imposed instead of a presumptive probationary sentence that is not followed by a term of post-prison supervision defined in OAR 213-005-0002.

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

Stat. Auth.: ORS 137.667, 475.986, 475.998 & 2003 OL Ch. 453

Stats. Implemented: ORS 137.667 - 137.669, 2001 OL Ch. 387, 510, 635, 828, 857, 884 & 2003 OL Ch. 453, 577 & 2007 OL Ch. 681, 811, 867, 869, 876 & 2009 OL Ch. 774, 783, 876, 898

Hist.: SSGB 2-1988, f. 12-30-88, cert. ef. 9-1-89; SSGB 1-1989, f. 5-25-89, cert. ef. 9-1-89; SSGB 2-1993, f. 10-28-93, cert. ef. 11-1-93; CJC 2-1995, f. & cert. ef. 11-2-95; CJC 1-1996, f. 3-6-96, cert. ef. 3-8-96, Renumbered from 253-003-0001; CJC 3-1997, f. 10-29-97, cert. ef. 11-1-97; CJC 1-1999, f. & cert. ef. 11-1-99; CJC 2-2001, f. 12-26-01, cert. ef. 1-1-02; CJC 2-2003, f. 12-31-03, cert. ef. 1-1-04; CJC 1-2006, f. & cert. ef. 4-12-06; CJC 3-2007, f. 12-31-07 & cert. ef. 1-1-08; CJC 1-2009(Temp), f. 3-24-09, cert. ef. 1-1-10 thru 6-29-10; CJC 2-2009(Temp), f. 3-24-09, cert. ef. 1-1-10 thru 6-29-10; CJC 7-2009, f. 12-31-09, cert. ef. 1-1-10

## 213-017-0004

### Crime Category 8

The following offenses are classified at crime category 8 on the Crime Seriousness Scale:

- (1) AGGRAVATED DRUG OFFENSES (See division 19).
- (2) ORS 163.125 — MANSLAUGHTER II — (B). (If not categorized at CC 9.)
- (3) ORS 163.145 — NEGLIGENT HOMICIDE — (B). (If not categorized at CC 9.)
- (4) ORS 163.165 — ASSAULT III — (B). (If offense resulted from operation of a motor vehicle and defendant was the driver of the motor vehicle and was driving while under the influence of intoxicants; otherwise CC 6).
- (5) ORS 163.207 — FEMALE GENITAL MUTILIATION — (B).
- (6) ORS 163.365 — RAPE II — (B).
- (7) ORS 163.395 — SODOMY II — (B).
- (8) ORS 163.408 — SEXUAL PENETRATION II — (B).
- (9) ORS 163.425(1)(a) — SEXUAL ABUSE II — (C). (If victim incapable of consent because under age 18, offender is age 21 or older, and offender was victim's coach prior to offense; otherwise CC 7.)
- (10) ORS 163.427 — SEXUAL ABUSE I — (B).
- (11) ORS 163.433 — ONLINE SEXUAL CORRUPTION OF A CHILD I — (B).
- (12) ORS 163.537 — BUYING/SELLING THE CUSTODY OF A MINOR — (B). (If the conduct is likely to endanger the health or welfare of the child, otherwise CC 5.)
- (13) ORS 163.670 — USING CHILD IN DISPLAY OF SEXUAL CONDUCT — (A).
- (14) ORS 163.684 — ENCOURAGING CHILD SEX ABUSE I — (B).
- (15) ORS 163.732 — STALKING — (C).
- (16) ORS 163.750 — VIOLATE COURT STALKING ORDER — (C).
- (17) ORS 164.225 — BURGLARY I — (A). (If offender did not cause, threaten or attempt physical injury and was not armed with a deadly weapon (CC 9) but the offense was committed while the dwelling was occupied; otherwise CC 7.)

(18) ORS 164.325 — ARSON I — (A). (If the offense did not represent a threat of serious physical injury (CC 10) and economic loss is \$25,000 or more but less than \$50,000; otherwise CC 9 or CC 7.)

(19) ORS 164.877(3) — TREE SPIKING-INJURY — (B).

(20) ORS 166.275 — INMATE POSSESSION OF WEAPON — (A). (if firearm, otherwise CC 7.)

(21) ORS 167.012 — PROMOTING PROSTITUTION — (C).

(22) ORS 167.017 — COMPELLING PROSTITUTION — (B).

(23) ORS 167.262 — USING A MINOR IN CONTROLLED SUBSTANCE OFFENSE — (A). (CC 4 if minor less than 3 yrs. younger than offender.)

(24) ORS 811.705 — HIT & RUN VEHICLE (DEATH/SERIOUS INJURY) — (B).

Stat. Auth.: ORS 137.667, 811.707, & 2003 OL Ch. 453, & 2009 OL Ch. 660

Stats. Implemented: ORS 137.667 - 137.669, 811.707 & 2003 OL Ch. 453, 815, & 2007 OL Ch. 876, & 2009 OL Ch. 660

Hist.: CJC 1-1999, f. & cert. ef. 11-1-99; CJC 2-2001, f. 12-26-01, cert. ef. 1-1-02; CJC 2-2003, f. 12-31-03, cert. ef. 1-1-04; CJC 3-2007, f. 12-31-07 & cert. ef. 1-1-08; CJC 2-2009(Temp), f. 3-24-09, cert. ef. 1-1-10 thru 6-29-10; CJC 3-2009(Temp), f. & cert. ef. 6-17-09 thru 12-13-09; CJC 4-2009(Temp), f. & cert. ef. 9-16-09 thru 3-14-10; CJC 5-2009, f. 12-11-09 cert. ef. 12-13-09; CJC 7-2009, f. 12-31-09, cert. ef. 1-1-10

## 213-017-0005

### Crime Category 7

The following offenses are classified at crime category 7 on the Crime Seriousness Scale:

- (1) ORS 162.165 — ESCAPE I — (B).
- (2) ORS 162.185 — SUPPLYING CONTRABAND — (C). (If the contraband includes one or more firearms; otherwise CC 4, 5 or 6.)
- (3) ORS 163.205 — CRIMINAL MISTREATMENT I — (C).
- (4) ORS 163.275 — COERCION — (C). (If threat of physical injury; otherwise CC 6.)
- (5) ORS 163.425 — SEXUAL ABUSE II — (C). (If not CC 8.)
- (6) ORS 163.452 — CUSTODIAL SEXUAL MISCONDUCT I — (C).
- (7) ORS 163.479 — UNLAWFUL CONTACT WITH A CHILD — (C).
- (8) ORS 163.535 — ABANDON CHILD — (C). (If child is placed in immediate physical danger; otherwise CC 3.)
- (9) ORS 164.075 — THEFT BY EXTORTION — (B). (If threat of physical injury; otherwise CC 2, 3, 4, 5 or 6.)
- (10) ORS 164.225 — BURGLARY I — (A). (If the offense cannot be ranked at CC 8 or 9.)
- (11) ORS 164.325 — ARSON I — (A). (If the offense cannot be ranked at CC 8, 9 or 10.)
- (12) ORS 166.275 — INMATE IN POSSESSION OF WEAPON — (A). (If firearm CC 8)
- (13) ORS 166.429 — FURNISHING FIREARM IN FURTHERANCE OF FELONY — (B).
- (14) 2003 Oregon Laws Ch 804 UNLAWFUL DISTRIB. CIGARETTES — (B) <120,000.



# ADMINISTRATIVE RULES

(15) 2003 Oregon Laws Ch 804 — UNLAWFUL DISTRIB. TOBACCO PRODUCTS — (B) <\$10,000.

(16) 2009 Oregon Laws Ch 783 — AGGRAVATED DRIVING WHILE SUSPENDED OR REVOKED — (C).

Stat. Auth.: ORS 137.667, 2003 OL Ch. 453 & 804, Sec. 30 & 58  
Stats. Implemented: ORS 137.667 - 137.669, 2003 OL Ch. 453 & 804, 2009 OL Ch. 783, 876  
Hist.: CJC 1-1999, f. & cert. ef. 11-1-99; CJC 2-2003, f. 12-31-03, cert. ef. 1-1-04; CJC 1-2006, f. & cert. ef. 4-12-06; CJC 7-2009, f. 12-31-09, cert. ef. 1-1-10

## 213-017-0006

### Crime Category 6

The following offenses are classified at crime category 6 on the Crime Seriousness Scale:

- (1) Chapter 59 — BLUE SKY LAWS & SECURITIES LAWS\* — (C).
- (2) MAJOR DRUG OFFENSES (See division 19.)
- (3) ORS 162.015 — BRIBERY — (B).
- (4) ORS 162.025 — BRIBE RECEIVING — (B).
- (5) ORS 162.065 — PERJURY — (C).
- (6) ORS 162.117 — PUBLIC INVESTMENT FRAUD — (B).
- (7) ORS 162.155 — ESCAPE II — (C).
- (8) ORS 162.185 — SUPPLYING CONTRABAND — (C). (The contraband involves a dangerous weapon not a firearm CC 7; Otherwise CC 4 or 5.)

- (9) ORS 162.265 — BRIBING A WITNESS — (C).
- (10) ORS 162.275 — BRIBE RECEIVING BY WITNESS — (C).
- (11) ORS 162.285 — TAMPERING W/ WITNESS — (C).
- (12) ORS 162.325 — HINDERING PROSECUTION — (C).
- (13) ORS 163.160(3) — FELONY DOMESTIC ASSAULT — (C).
- (14) ORS 163.165 — ASSAULT III — (C). (If the offense cannot be ranked at CC 8).

(15) ORS 163.208 — ASSAULT OF A PUBLIC SAFETY OFFICER — (C).

(16) ORS 163.213 — USE OF A STUN GUN, TEAR GAS, MACE I — (C).

(17) ORS 163.257 — CUSTODIAL INTERFERENCE I — (C).

(18) ORS 163.264 — SUBJECTING ANOTHER PERSON TO INVOLUNTARY SERVITUDE I — (B). (If offender physically restrained or threatened to physically restrain a person; otherwise CC 9.)

(19) ORS 163.275 — COERCION — (C). (No threat of physical injury; otherwise CC 7.)

(20) ORS 163.355 — RAPE III — (C).

(21) ORS 163.385 — SODOMY III — (C).

(22) ORS 163.432 — ONLINE SEXUAL CORRUPTION OF A CHILD II — (C).

(23) ORS 163.465 — FELONY PUBLIC INDECENCY — (C).

(24) ORS 163.525 — INCEST — (C). (If one of the participants is under the age of 18; otherwise CC 1.)

(25) ORS 163.547 — CHILD NEGLECT IN THE FIRST DEGREE — (B).

(26) ORS 163.688 — POSSESSION OF MATERIAL DEPICTING SEX. EXPLICIT CONDUCT OF A CHILD I — (B).

(27) ORS 164.055 — THEFT I\* — (C).

(28) ORS 164.057 — AGGRAVATED THEFT — (B). (Economic loss was greater than \$50,000; otherwise CC 5.)

(29) ORS 164.065 — THEFT OF LOST/MISLAID PROPERTY \* — (C).

(30) ORS 164.075 — THEFT BY EXTORTION\* — (B).

(31) ORS 164.085 — THEFT BY DECEPTION\* — (C).

(32) ORS 164.125 — THEFT OF SERVICES\* — (C).

(33) ORS 164.135 — UNAUTHORIZED USE OF VEHICLE\* — (C).

(34) ORS 164.138 — CRIMINAL POSSESSION OF A RENTED OR LEASED MOTOR VEHICLE\* — (C).

(35) ORS 164.140(4) — POSSESSION OF RENTED PROPERTY\* — (C).

(36) ORS 164.162 — MAIL THEFT OR RECEIPT OF STOLEN MAIL — (C). (For sentences imposed prior to February 15, 2010, and for sentences imposed for crimes committed on or after January 1, 2010; otherwise a Class A misdemeanor.)

(37) ORS 164.215 — BURGLARY II\* — (C).

(38) ORS 164.315 — ARSON II\* — (C).

(39) ORS 164.365 — CRIMINAL MISCHIEF I\* — (C).

(40) ORS 164.377 — COMPUTER FRAUD (LOTTERY)\* — (C).

(41) ORS 164.377(3) — COMPUTER CRIME\* — (C).

(42) ORS 164.868 — UNLAWFUL LABEL SOUND RECORDING\* — (C).

(43) ORS 164.869 — UNLAWFUL RECORD LIVE PERFORMANCE\* — (C).

(44) ORS 164.872 — UNLAWFUL LABEL VIDEOTAPE\* — (C).

(45) ORS 164.877(1) — TREE-SPIKING — (C).

(46) ORS 164.889 — INTERFERE W/ AGRICULTURAL RESEARCH\* — (C).

(47) ORS 165.013 — FORGERY I\* — (C).

(48) ORS 165.022 — CRIMINAL POSSESSION OF FORGED INSTRUMENT I\* — (C).

(49) ORS 165.055(3)(A) — CREDIT CARD FRAUD\* — (C).

(50) ORS 165.065 — NEGOTIATING BAD CHECKS\* — (C).

(51) ORS 165.074 — UNLAWFUL FACTORING PAYMENT CARD\* v (C).

(52) ORS 165.692 — FILING A FALSE CLAIM FOR HEALTH CARE PAYMENT — (C).

(53) ORS 165.800 — IDENTITY THEFT\* — (C).

(54) ORS 166.015 — RIOT — (C).

(55) ORS 166.165 — INTIMIDATION I — (C).

(56) ORS 166.220 — UNLAWFUL USE OF WEAPON — (C).

(57) ORS 166.270 — EX-CON IN POSSESSION OF FIREARM — (C).

(58) ORS 166.272 — UNLAWFUL POSSESSION OF FIREARM — (B).

(59) ORS 166.370(1) — INTENT POSS. FIREARM OR DANG. WEAP. IN and (5)(a) — PUBLIC BUILDING; DISCHARGE FIREARM IN SCHOOL — (C).

(60) ORS 166.382 — POSSESSION OF DESTRUCTIVE DEVICE — (C).

(61) ORS 166.384 — UNLAWFUL MANUFACTURE OF DESTRUCTIVE DEVICE — (C).

(62) ORS 166.410 — ILLEGAL MANUFACTURE, IMPORTATION OR TRANSFER OF FIREARMS — (B).

(63) ORS 166.643 — UNLAWFUL POSSESS SOFT BODY ARMOR — (B). (If offender committed or was attempting to commit a person felony or misdemeanor involving violence, otherwise CC 4.)

(64) ORS 167.057 — LURING A MINOR — (C).

(65) ORS 167.339 — ASSAULT OF A LAW ENFORCEMENT ANIMAL — (C).

(66) ORS 167.388 — INTERFERE LIVESTOCK PRODUCTION\* — (C).

(67) ORS 647.145 — TRADEMARK COUNTERFEITING II\* — (C).

(68) ORS 647.150 — TRADEMARK COUNTERFEITING I\* — (B).

(69) ORS 811.182 — DRIVING WHILE SUSPENDED/REVOKED — (C).

(70) ORS 811.705 — HIT & RUN VEHICLE (INJURY) — (C).

(71) ORS 813.010 — FELONY DRIVING UNDER THE INFLUENCE — (C).

(72) ORS 819.300 — POSSESSION OF STOLEN VEHICLE\* — (C).

(73) ORS 819.310 — TRAFFICKING IN STOLEN VEHICLES — (C). (If part of an organized operation or if value of property taken from one or more victims was greater than \$50,000; otherwise CC 5.)

(74) ORS 830.475 — HIT AND RUN BOAT — (C).

(75) 2009 Oregon Laws Ch 783 — AGGRAVATED HARRASSMENT — (C).

\* Property offenses marked with an asterisk shall be ranked at Crime Category 6 if the value of the property stolen or destroyed was \$50,000 or more, excluding the theft of a motor vehicle used primarily for personal rather than commercial transportation.  
Stat. Auth.: ORS 137.667, 2003 OL Ch. 453, & 2009 OL Ch. 660  
Stats. Implemented: ORS 137.667 - 137.669, 2001 OL Ch. 147, 635, 828 2003 2001 OL Ch. 383, 453, 543, 2005 OL Ch. 708, 2007 OL Ch. 684, 811, 869, 876, SB 1087 (2008), Ballot Measure 57 (2008), & 2009 OL Ch. 660 & HB 3508 (2009) & 2009 OL Ch. 783  
Hist.: CJC 1-1999, f. & cert. ef. 11-1-99; CJC 2-2001, f. 12-26-01, cert. ef. 1-1-02; CJC 2-2003, f. 12-31-03, cert. ef. 1-1-04; CJC 1-2005(Temp), f. & cert. ef. 10-14-05 thru 4-12-06; CJC 1-2006, f. & cert. ef. 4-12-06; CJC 3-2007, f. 12-31-07 & cert. ef. 1-1-08; CJC 2-2008(Temp), f. 12-31-08, cert. ef. 1-1-09 thru 6-29-09; CJC 2-2009(Temp), f. 3-24-09, cert. ef. 1-1-10 thru 6-29-10; CJC 3-2009(Temp), f. & cert. ef. 6-17-09 thru 12-13-09; CJC 4-2009(Temp), f. & cert. ef. 9-16-09 thru 3-14-10; CJC 5-2009, f. 12-11-09 cert. ef. 12-13-09; CJC 7-2009, f. 12-31-09, cert. ef. 1-1-10

## 213-018-0058

### Sexual Abuse II (ORS 163.425)

(1) CRIME CATEGORY 8: Sexual Abuse II under ORS 163.425(1)(a) shall be ranked at Crime Category 8 if the victim is incapable of consent due to being under 18 years of age, the offender is 21 years of age or older, and the offender was the victim's coach at any time prior to the commission of the offense.

(2) CRIME CATEGORY 7: Sexual Abuse II shall be ranked at Crime Category 7 if it cannot be ranked at Crime Category 8.

Stat. Auth.: ORS 137.667 & 2009 OL Ch. 876

Stats. Implemented: ORS 137.667 - 137.669 & 2009 OL Ch. 876

Hist.: CJC 7-2009, f. 12-31-09, cert. ef. 1-1-10

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## Oregon Department of Aviation Chapter 738

**Rule Caption:** Leases of State-owned airports, including lease valuation and lease application.

**Adm. Order No.:** AVIA 1-2010(Temp)

**Filed with Sec. of State:** 1-7-2010

**Certified to be Effective:** 1-7-10 thru 7-6-10

**Notice Publication Date:**

**Rules Amended:** 738-010-0025, 738-010-0035, 738-015-0005

# ADMINISTRATIVE RULES

**Subject:** These rules govern the Oregon Department of Aviation's leases of State-owned airports, including determination of lease valuation and lease application requirements. Proposed amendments revise methodology and appraisals used to determine lease value, allow a payment-in-kind agreement as a lease payment option and provide the Department flexibility in determining who must file a written application to obtain a lease in order to streamline the application process.

**Rules Coordinator:** Cindy M. Pease—(503) 378-4881

## 738-010-0025

### Types of Rates, Charges and Fees

Each user of an Oregon State-owned airport shall be charged one or more of the following types of rates, charges and fees for the use of the premises and the rights granted by the Department:

(1) Lessees leasing unimproved or improved land for non-commercial and commercial building sites or buildings and hangars on the State-owned portion of a State-owned airport shall be assessed an annual rate per square foot. All lease rates and charges applicable to a property shall represent a fair market rent as determined by first considering most recent appraisal market rent analysis conducted by Department staff or a licensed real estate broker. The Department may consider all pertinent circumstances when determining fair market rent, including but not limited to whether the land is buildable with or without restrictions. Lessees shall also pay all real property taxes on the land portion of the lease property.

(a) Rent shall be paid to the Department as follows:

(A) Annually in full, with the first annual payment on or before the date the lease begins and subsequent payments on the anniversary date;

(B) Monthly in equal installments, payable at the beginning of each month; or

(C) By the terms of a payment-in-kind agreement that may constitute partial payment or full payment. Payment-in-kind value will be assigned upon determination of the value of the actual improvements, goods or services received. The determination of value will be based on an objective process which compares bids obtained by the Department from service providers for like services, goods or improvements. A payment-in-kind agreement and all documents used to determine payment-in-kind value must be retained in the lease file. Acceptance of an in kind payment offering requires documentation of an affirmative finding by the Department that the value of the in kind offering primarily benefits the airport generally rather than the individual lessee or the business of the individual lessee. Any payment-in-kind agreement previously executed is valid retroactively to the date of execution.

(b) In new or renewed leases where all or part of the capital improvements are constructed at the Department's expense, the Department reserves the right to amortize all or part of the construction costs of the capital improvements, plus a reasonable rate of return as part of the rent, during the term of the lease.

(2) A fuel flowage fee, not to exceed \$0.12 per gallon, shall be assessed to each FBO for all types of fuel received from a commercial distributor. Fuel flowage fees shall be calculated from the FBO's fuel flowage delivery report and shall be paid in full not later than two working days after the conclusion of the reporting period.

(3) Each user with an agreement to access the State-owned airport property shall pay an access fee according to a published fee schedule. To ensure equity among all users, the schedule shall be based on the quantity and individual weight of user's aircraft that will access the airport.

(a) Each commercial operator shall pay a fee to the Department, either annually on the agreement anniversary date or monthly on or before the 25th, for the month then in process.

(A) The fee shall be the greater of:

(i) A fee for each aircraft based on the adjacent property, based on aircraft maximum gross landing weight as shown below; or

(ii) A minimum guaranteed amount determined by Airport Category, as follows:

\$275.00 — Per month per Category II Airport  
\$175.00 — Per month per Category III and IV Airports  
\$75.00 — Per month per Category V Airport

(B) For multiple aircraft, payment shall be accompanied by a report listing each based aircraft showing aircraft class, N-number, aircraft type and the hangar or tie-down number where the aircraft is stored.

(b) Each non-commercial operator shall pay a fee for each aircraft based on the adjacent property, based on aircraft's maximum gross landing weight as set forth in Table 1 below. Payment is due either:

(A) Annually on the anniversary date of the agreement; or

(B) Monthly on or before the 25th, for the month then in process.

(c) At residential airparks, access fees as set forth below shall be assessed for each developed lot with airport access, whether or not the access is being utilized.

PER AIRCRAFT WEIGHT-BASED FEE FOR ALL STATE-OWNED AIRPORTS  
Aircraft Weight Class — Weight Range — Monthly Fee Per Aircraft  
Class 1 — Up to 5,000 lbs — \$15 per month  
Class 2 — 5,001 to 10,000 lbs — \$24 per month  
Class 3 — 10,001 to 20,000 lbs — \$44 per month

Class 4 — 20,001 to 30,000 lbs — \$66 per month  
Class 5 — 30,001 to 40,000 lbs — \$88 per month  
Class 6 — 40,001 lbs. and over — \$120 per month

(4) The Department shall offer tie-down facilities to based and transient aircraft at specific State-owned airports where there are no FBO-provided tie-downs. Based aircraft operators leasing an available tie-down shall pay rent for an entire year in full beginning at lease commencement and subsequently on each anniversary date of the lease, according to rates set forth below.

(a) NON-COMMERCIAL TIE-DOWN FEES:

Category II Airports — \$20 per month  
Category III and IV Airports — \$17.50 per month  
Category V Airports — \$15 per month

(b) COMMERCIAL TIE-DOWN FEES: ODA shall rent tie-down facilities to FBOs wherever possible. ODA shall collect 30% of all tie-down revenue generated. There shall be no flat fee per tie-down. FBOs shall be responsible for providing a monthly accounting of all tie-down revenue received.

(5) The Department may negotiate individual fee and rent agreements at each State-owned airport, recognizing the diversity of services performed by the caretakers of different airports. These agreements shall be based on the specific services provided by the caretaker the Department shall ensure that all the financial terms of those agreements are consistent among the same category of airport.

(6) The Director, or the Director's designee, may negotiate a unique rent or fee structure and enter into a special use agreement to benefit the general public, the local community or the State, for such activities as fire protection facilities, sports complexes, farming rights, weather equipment site leases and concession storage areas. All rental rates and charges applicable to special use agreements shall be determined through an analysis of similar activities, rates and charges at comparable airports in addition to consideration of overall benefit to the general public and the State aviation system.

(7) Each commercial operator conducting any type of agricultural-related aeronautical activity at a State-owned airport shall be required to lease property from the Department to store materials and equipment applicable to such operation. The rental rate shall be determined as of the day of occupancy.

(8) Each Mobile Service Provider (MSP) is required to obtain an annually renewable permit from the Department and pay the appropriate fee as represented below.

Category II Airports — \$25 per month or \$250 annually  
Category III and IV Airports — \$20.00 per month or \$200 annually  
Category V Airports — \$15 per month or \$150 annually

(9) The Director, or the Director's designee, may negotiate a specific rate or fee to support the Department's mission of developing and promoting aviation in the State of Oregon. Any such negotiated fee agreement will contain a fair and equitable rate structure, will not be used routinely and will only be considered for the most unique circumstances.

(10) The Director, or the Director's designee, may waive certain fees for government aircraft, in order to comply with Federal Airport improvement grant assurances. The Director, or the Director's designee, may also waive certain fees for an organization or person engaged in a non-profit aeronautical program or activity that benefits a charitable organization or community.

Stat. Auth.: ORS 835.035, 835.040 & 835.112  
Stats. Implemented: ORS 835.035, 835.040, 835.112 & 836.055  
Hist.: IAD 2-1981, f. & ef. 4-20-81; AVIA 3-2002, f. 10-30-02 cert. ef. 11-1-02; AVIA 4-2002, f. 11-27-02, cert. ef. 12-1-02; AVIA 2-2003, f. & cert. ef. 4-3-03; AVIA 1-2010(Temp), f. & cert. ef. 1-7-10 thru 7-6-10

## 738-010-0035

### Fair Market Value Cost of Construction — Adjustments of Unimproved Land, Improved Land and Facility Rents

All rents set forth in agreements for rental of improved or unimproved land, or for any facility or structure, may be adjusted by the Department as follows:

(1) Adjustments shall be made at intervals not to exceed every two years;

(2) Adjustments shall be based on the Consumer Price Index-Urban of the State of Oregon, provided that no adjustment shall exceed three percent (3%) of the rent for the previous year;

(3) Except as provided in subsection (4), at intervals of not less than five (5) years, the Department may engage a certified appraiser or equally qualified aviation consultant, at its sole expense, to determine by either appraisal or market rent analysis, the current fair market value or rent for any property subject to a rental agreement.

(4) The minimum five (5) year interval described in subsection (3) may be waived by the Department when the Department finds waiver necessary to meet a legitimate business need arising prior to conclusion of the five-year period.

(5) The Department shall be responsible for the engagement of an appraiser or aviation consultant. All expenses for the appraisal or market rent analysis shall be borne by the Department.

Stat. Auth.: ORS 835.035, 835.040 & 835.112  
Stats. Implemented: ORS 835.035, 835.040, 835.112 & 836.055  
Hist.: AVIA 3-2002, f. 10-30-02 cert. ef. 11-1-02; AVIA 1-2010(Temp), f. & cert. ef. 1-7-10 thru 7-6-10

# ADMINISTRATIVE RULES

738-015-0005

## Leasing Application for Commercial Aeronautical Activities

(1) To obtain an initial commercial lease at a State-owned airport, a person shall submit a written application to Oregon Department of Aviation (the Department or ODA) for review, in the form specified by ODA. As a prerequisite to initially granting commercial aeronautical activity privileges or occupancy at a State-owned airport, the prospective Lessee must submit a specific, detailed description of the scope of the intended commercial aeronautical activities, as well as the means and methods to be employed to accomplish the contemplated activities. Applications for the renewal of existing leases or applications for additional initial leases submitted by current lessees may require a written application at the discretion of the Department.

(2) Required information that must accompany an application for commercial lease shall include:

(a) The legal name of the person applying as prospective Lessee, and its business name if different;

(b) The name(s), address(es), and telephone number(s) of the person and the name of the primary contact individual;

(c) The names, addresses, and telephone numbers of all owners of five percent (5%) or more equity interest, management control, or debt in the entity;

(d) The proposed date for commencement of the intended activities and proposed base lease term for conducting these activities;

(e) A comprehensive listing of all activities proposed to be offered, along with copies of all applicable Federal, State, or local operating certificates and licenses held;

(f) For proposed agreements to lease existing structures or improvements, a description of the size, location, and proposed utilization of office, hangar, tiedown area(s), and vehicle parking area(s) to be utilized;

(g) For proposed agreements to lease unimproved State-owned airport areas, a layout (to scale) of the size, configuration, and location of the property proposed for occupancy, and preliminary drawing(s) of the building(s) and improvements to be constructed, together with identification of vehicle parking areas. Drawings shall be legible and reproducible with clearly defined dimensions. Each drawing shall be not less than 8.5 inches by 11 inches in size and be drawn in permanent media;

(h) The number of persons to be employed, including the name and qualifications of each management/supervisory person, and specifications as to whether the employees will be full-time, part-time, or seasonal;

(i) The number of aircraft to be utilized in connection with the proposed commercial aeronautical activities and, as soon as known, the make, model, passenger seating capacity, cargo capacity, aircraft registration number, and copies of applicable operating certificates for each aircraft; and

(j) A comprehensive list of the equipment, vehicles, and inventory proposed to be utilized in connection with the intended activities.

(3) The prospective lessee is responsible for providing any required infrastructure to support their proposed use of the site, at the lessee's expense. The prospective lessee shall provide to ODA prior to any construction, occupancy or use of the site written confirmation that all required services have been or will be installed (power, water, fire suppression, sewer, etc). Services must comply with local government and ODA requirements.

(4) At its option, the Department may:

(a) Request to review a written business plan; and

(b) Request a metes and bounds legal description of lease property boundaries.

Stat. Auth.: ORS 835.035, 835.040 & 835.112

Stats. Implemented: ORS 935.035, 935.040, 835.112 & 836.055

Hist.: AVIA 1-2002, f. & cert. ef. 9-3-02; AVIA 1-2006, f. & cert. ef. 1-27-06; AVIA 1-2010(Temp), f. & cert. ef. 1-7-10 thru 7-6-10

## Oregon Health Authority Chapter 943

**Rule Caption:** Operational Transition Period Roles and Responsibilities for Oregon Health Authority and Agencies.

**Adm. Order No.:** OHA 2-2009

**Filed with Sec. of State:** 12-31-2009

**Certified to be Effective:** 1-1-10

**Notice Publication Date:** 12-1-2009

**Rules Adopted:** 943-001-0000, 943-001-0010, 943-001-0015

**Rules Repealed:** 943-001-0000(T), 943-001-0010(T), 943-001-0015(T)

**Subject:** Effective June 26, 2009, 2009 Or. Laws Chapter 595 (House Bill 2009) created the Oregon Health Authority (OHA) and transferred, to OHA, certain duties, functions, and powers of the Department of Administrative Services related to the Public Employees' Benefit Board and the Oregon Educators Board; the Department of Consumer and Business Services related to the Oregon Medical Insurance Pool Board; the Office of Private Health Partnerships; and the Department of Human Services with respect to

health and health care. House Bill 2009 authorized an operational transition period beginning June 26, 2009 and ending no later than June 30, 2011. These rules explain the roles and responsibilities of OHA and the agencies and programs transferred to OHA during the operational transition period. The adoption of these rules repeal temporary rules currently in effect from 9/14/09 to 3/12/10.

**Rules Coordinator:** Kym Gasper—(503) 945-6302

943-001-0000

## Model Rules of Procedure

The Oregon Health Authority adopts the Attorney General Model Rules applicable to rulemaking, effective January 1, 2010, with the exception of OAR 137-001-0080.

[ED. NOTE: The full text of the Attorney General's Model Rules of Procedure is available from the office of the Attorney General or the Department of Human Services.]

Stat. Auth.: ORS 183.341 & 2009 OL Ch. 595 (HB 2009)

Stats. Implemented: ORS 183.341 & 2009 OL Ch. 595 (HB 2009)

Hist.: OHA 1-2009(Temp), f. & cert. ef. 9-14-09 thru 3-12-10; OHA 2-2009, f. 12-31-09, cert. ef. 1-1-10

943-001-0010

## Oregon Health Authority

(1) Effective June 26, 2009, 2009 Or. Laws Chapter 595 (House Bill 2009) created the Oregon Health Authority and transferred to the Oregon Health Authority certain duties, functions, and powers of:

(a) The Department of Administrative Services (DAS) related to the Public Employees' Benefit Board (PEBB) and the Oregon Educators Board (OEBB);

(b) The Department of Consumer and Business Services (DCBS) related to the Oregon Medical Insurance Pool Board (OMIP);

(c) The Office of Private Health Partnerships (OPHP); and

(d) The Department of Human Services (DHS) with respect to health and health care. The transferred subject areas of DHS are generally described in Section 19(1)(a), Or. Laws Chapter 595 (House Bill 2009) as including but not limited to:

(A) Developing the policies for and the provision of publicly funded medical care and medical assistance in Oregon;

(B) Ensuring the promotion and protection of public health and the licensing of health care facilities;

(C) Developing the policies for and the provision of mental health treatment and treatment for substance use disorders;

(D) Administering the Oregon Prescription Drug Program; and

(E) Establishing responsibility for the Office for Oregon Health Policy and Research and all functions of the office.

(2) The transferred functions described in section (1)(d)(A)–(E) above are generally carried out as currently described in DHS rules by the Public Health Division, the Addictions and Mental Health Division, and the Division of Medical Assistance Programs.

(3) As used in these rules (OAR 943-001-0000 to 943-001-0015) the term "agency" means DHS, PEBB, OEBB, OMIP, and OPHP, and within the context of transfer responsibilities, DAS and DCBS.

(4) Effective June 26, 2009, the administration of new non-transferred duties, functions, and powers established by 2009 Or. Laws, Chapter 595 (House Bill 2009), or other 2009 laws, in the Oregon Health Authority or its constituent units is temporarily delegated to the Department of Human Services, subject to the supervision and oversight of the Oregon Health Authority, until operationally transferred, either in whole or in part, to the Oregon Health Authority.

(5) Operational transfer may occur, in whole or in part, in any program, business transaction, judicial, or administrative proceeding on the date specified by the Oregon Health Authority but no later than June 30, 2011.

Stat. Auth.: 2009 OL Ch. 595 (HB 2009)

Stats. Implemented: 2009 OL Ch. 595 (HB 2009)

Hist.: OHA 1-2009(Temp), f. & cert. ef. 9-14-09 thru 3-12-10; OHA 2-2009, f. 12-31-09, cert. ef. 1-1-10

943-001-0015

## Transition Period Roles and Responsibilities

(1) Effective June 26, 2009, to maintain business continuity for the duties, functions, and powers transferred to the Oregon Health Authority, the agencies listed in OAR 943-001-0010(1)(a)–(d) shall continue to exercise their former duties, functions, and powers, subject to the supervision and oversight of the Oregon Health Authority, until superseded, by operational transfer, either in whole or in part, to the Oregon Health Authority, as follows:

(a) All rules shall remain in effect and ongoing rule filing processes may continue.

(b) All program administration, policies, and procedures remain in effect and may continue to be developed and implemented.

(c) Any judicial or administrative action, proceeding, contested case hearing, or administrative review matters, or new action, proceeding, or matter involving or relating to the duties or powers transferred to the Oregon Health Authority shall continue.

(d) Rights and obligations legally incurred under contracts, leases, and business transactions shall remain legally valid.

# ADMINISTRATIVE RULES

(e) Contract, grant, and business transaction procurement and administration duties, functions, and powers shall remain in effect and may continue.

(f) Any statutory obligations for taxes, assessments, fees, charges, or payments shall continue to be paid to or reimbursed by the appropriate agency.

(g) Any former statutorily required findings, determinations, or recommendations to be made by the agencies shall continue to be made by the agencies.

(h) Any former statutorily required filings, notices or service of papers, applications, notices or other documents to be mailed, provided to, or served on the agencies shall continue to be mailed, provided to, or served on the agencies and the agencies shall retain responsibility to take any appropriate actions to protect the interests of the state concerning or arising from any filings, notices, or service.

(A) Mailing or service of notices or documents on the agencies shall be considered notice to the Oregon Health Authority. For example, any notice sent to the Department of Human Services Estate Administration Unit for purposes of ORS 113.145, 114.525 and 130.370 shall be considered notice to the Oregon Health Authority.

(B) Any filings, notices, or service made to the Oregon Health Authority may be transmitted by the Oregon Health Authority to the appropriate agency.

(2) Any and all remaining duties, functions, or powers of the agencies relating to the duties, functions, and powers transferred to the Oregon Health Authority that are not described in section (1) shall continue in effect or be exercised by the agencies until superseded by operational transfer, either in whole or in part, to the Oregon Health Authority.

Stat. Auth.: 2009 OL Ch. 595 (HB 2009)  
Stats. Implemented: 2009 OL Ch. 595 (HB 2009)  
Hist.: OHA 1-2009(Temp), f. & cert. ef. 9-14-09 thru 3-12-10; OHA 2-2009, f. 12-31-09, cert. ef. 1-1-10

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## Oregon Health Licensing Agency, Board of Cosmetology Chapter 817

**Rule Caption:** Increase fees to avoid revenue shortfall and allow the agency time to update 2010 Interim Legislature on proposed fees.

**Adm. Order No.:** BOC 3-2009(Temp)

**Filed with Sec. of State:** 12-21-2009

**Certified to be Effective:** 12-26-09 thru 5-31-10

**Notice Publication Date:**

**Rules Amended:** 817-040-0003

**Subject:** The Oregon Health Licensing Agency and Board of Cosmetology originally filed and made effective temporary rules on July 1, 2009, to increase fees during the 2009 Legislative Session under SB 5525, in order to prevent further revenue shortfall. The agency and the board began the administrative rulemaking process with proposed changes published in the August 2009 Oregon Bulletin, and a public hearing held on August 31, 2009, where comments were taken and considered by the hearings officer. The board met on September 21, 2009, to review and approve permanent administrative rules to increase fees. However, based on the the public comment the agency/board decided to revise the proposed rules and requested proposed rules be re-filed with the Secretary of State to allow for further public comment. Permanent rules would have become effective December 15, 2009, but requirements set forth by the 2009 Legislature direct the agency to first report to the Interim Joint Committee on Ways and Means in January 2010. The original temporary rules expire December 25, 2009. Therefore, in order to continue the current fees and meet the requirements of the legislature, the agency must file temporary rules effective December 26, 2009.

**Rules Coordinator:** Samantha Patnode—(503) 373-1917

### 817-040-0003

#### Fees

(1) Applicants and authorization holders are subject to provisions of OAR 331-010-0010 and 331-010-0020 regarding payment of fees, penalties and charges.

(2) Fees established by the Oregon Health Licensing Agency, in consultation with the Board, are as follows:

(a) Application:

(A) Practitioner certificate: \$25 per field of practice.

(B) Practitioner certificate by reciprocity: \$50 per field of practice.

(C) Independent contractor registration: \$50.

(D) Certificate of identification: \$25.

(E) Facility license: \$100.

(F) Temporary facility permit: \$50.

(G) Demonstration permit: \$25.

(b) Examination:

(A) Oregon laws & rules: \$50.

(B) Barbering: \$50.

(C) Hair design: \$50.

(D) Esthetics: \$50.

(E) Nail technology: \$50.

(F) Certificate of identification: \$25.

(c) Original issuance of authorization to practice:

(A) Practitioner certificate (including by reciprocity): \$40.

(B) Independent contractor registration: \$75.

(C) Certificate of identification: \$100.

(D) Facility license: \$100.

(d) Permits:

(A) Temporary facility: \$100.

(B) Demonstration: \$50.

(e) Renewal of authorization to practice:

(A) Practitioner certificate: \$40.

(B) Practitioner certificate — on line payment: \$35.

(C) Independent contractor registration: \$100.

(D) Facility license: \$100.

(f) Other administrative fees:

(A) Delinquent (late) renewal of certificate: \$25 for the first month in expired status and \$10 for each month after, up to two years.

(B) Delinquent (late) renewal of license or registration: \$25 for the first month in expired status, and \$10 each month after while in an expired status.

(C) Replacement of certificate, license or registration, including name change: \$25.

(D) Duplicate certificate, license or registration document: \$25 per copy with maximum of three.

(E) Affidavit of licensure: \$50.

(F) An additional \$25 administrative processing fee will be assessed if a NSF or non-negotiable instrument is received for payment of fees, penalties and charges. Refer to OAR 331-010-0010.

Stat. Auth.: ORS 676.605, 676.615 & 690.235

Stats. Implemented: ORS 676.605, 676.615, 690.235 & 30.701

Hist.: BH 4-1984, f. & ef. 12-7-84; BH 1-1988, f. & cert. ef. 7-1-88; BH 1-1990(Temp), f. 4-20-90 & cert. ef. 6-1-90; BH 2-1990, f. & cert. ef. 10-29-90; BH 1-1992, f. 6-1-92, cert. ef. 7-1-92; BH 3-1994, f. 6-23-94, cert. ef. 7-1-94; BH 1-1996, f. 5-31-96, cert. ef. 7-1-96; BH 1-1997, f. 7-22-97, cert. ef. 8-1-97; BOC 1-2000, f. 5-12-00, cert. ef. 5-15-00; BOC 2-2001, f. 2-16-01, cert. ef. 3-1-01; BOC 1-2004, f. 6-29-04, cert. ef. 7-1-04; BOC 1-2005, f. 6-17-05, cert. ef. 7-1-05; BOC 1-2006, f. & cert. ef. 3-15-06; BOC 2-2008, f. 9-15-08, cert. ef. 10-1-08; BOC 2-2009(Temp), f. 6-30-09, cert. ef. 7-1-09 thru 12-25-09; BOC 3-2009(Temp), f. 12-21-09, cert. ef. 12-26-09 thru 5-31-10

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## Oregon Housing and Community Services Department Chapter 813

**Rule Caption:** Amends Homeownership Assistance Program to increase homeownership among minority populations.

**Adm. Order No.:** OHCS 4-2009

**Filed with Sec. of State:** 12-22-2009

**Certified to be Effective:** 12-22-09

**Notice Publication Date:** 11-1-2009

**Rules Adopted:** 813-044-0060

**Rules Amended:** 813-044-0000, 813-044-0010, 813-044-0020, 813-044-0030, 813-044-0040, 813-044-0050

**Subject:** HB 2436 (2009) establishes a \$15 fee for the recording of documents in the deed and mortgage records of the counties. This bill will provide a new revenue source to be used to increase housing opportunities.

The rule amendments will increase the focus of the Homeownership Assistance Program on minority homeownership.

**Rules Coordinator:** Sandy McDonnell—(503) 986-2012

### 813-044-0000

#### Purpose and Objectives

The rules of OAR chapter 813 division 044, are established to accomplish the general purpose of both the 1995 Legislative Session law Chapter 174, House Bill 2133, and the 2009 Legislative Session law Chapter 99, House Bill 2436. The Home Ownership Assistance Program (Account) of the Oregon Housing Fund, shall be administered by the Housing and Community Services Department to establish a program to expand the percentage of low and very low income Oregonian families and individuals who own their own homes including, but not limited to, more than 65 years of age, persons with disabilities, minorities and farm workers. These rules describe the Home Ownership Assistance Program and its objective to provide grants to organizations that both sponsor and manage low income home ownership programs, including lease-to-own programs, for purchase of land for homeownership

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housing, for purchase of land for placement of manufactured dwellings, for the construction of new home ownership housing or for the acquisition or rehabilitation of existing structures for home ownership housing for persons of low and very low income, or both. Program funding will be consistent with the intent to provide eligible home purchasers with assistance for down payment, closing costs, or other means to make ownership feasible, as well as assure home ownership education. Each biennium, the Department will review and reevaluate the effectiveness of its funding strategies under these rules.

Stat. Auth.: ORS 458.600 - 458.655  
Stats. Implemented: ORS 458.600, 458.605, 458.610, 458.620 & 458.625  
Hist.: HSG 2-1996, f. & cert. ef. 4-15-96; OHCS 4-2009, f. & cert. ef. 12-22-09

## 813-044-0010

### Definitions

All words and terms are used in OAR chapter 813, division 44, as defined in the Act, and as provided in 813-005-0005 and herein. As used in these rules, unless the context indicates otherwise:

(1) "Account" means the Home Ownership Assistance Account of the Oregon Housing Fund.

(2) "Council" means the State Housing Council established in ORS 456.567.

(3) "Department" means Housing and Community Services Department established under ORS 456.555.

(4) "In-Kind Contribution" means a supportive project contribution other than cash. In-Kind Contributions include, but are not limited to, office equipment, working space, office supplies, staff time, telephone, support staff time, auto use, donated project materials or labor, and non-Board volunteer time.

(5) "Low Income" means individuals or households that receive more than 50 percent and not more than 80 percent of the median family income for the area, subject to adjustment for areas with unusually high or low incomes or housing costs, all as determined by the council based on information from the United States Department of Housing and Urban Development.

(6) "Minority" means an individual:

(a) Who has origins in one of the black racial groups of Africa but who is not Hispanic;

(b) Who is of Hispanic culture or origin;

(c) Who has origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands; or

(d) Who is an American Indian or Alaskan Native having origins in one of the original peoples of North America.

(7) "Organization" means a:

(a) Nonprofit corporation established under ORS chapter 65;

(b) Housing authority established under ORS 456.055 to 456.235; or

(c) Local government as defined in ORS 197.015.

(8) "Persons with disabilities" means persons with handicaps described in 42 U.S.C. 3602(h).

(9) "Project" means the deliverables submitted by the Organization in response to the application form and process prescribed by the Department.

(10) "Very Low Income" means Individuals or households that receive 50 percent or less of the median family income for the area, subject to adjustment for areas with unusually high or low incomes or housing costs, all as determined by the Council based on information from the United States Department of Housing and Urban Development.

Stat. Auth.: ORS 458.600 - 458.655

Stats. Implemented: ORS 458.610

Hist.: HSG 2-1996, f. & cert. ef. 4-15-96; OHCS 4-2009, f. & cert. ef. 12-22-09

## 813-044-0020

### Purpose of Home Ownership Assistance Program

(1) The Department shall provide grants from Account revenue subject to the availability of funds and limitations otherwise prescribed by law for any or all of the following purposes:

(a) To aid low income home ownership programs, including program administration, in purchasing land, providing assistance with down payment costs which includes closing costs, or providing home ownership training and qualification services or any combination thereof. Funds may not be used by an organization to pay for its general operations or to pay for more than 25 percent of construction or rehabilitation costs per project;

(b) To match public and private moneys available from other sources for purposes of the provision of Low or Very Low Income home ownership housing.

(2) Eligible applicants are Organizations that both sponsor and manage low and/or very low income home ownership programs.

Stat. Auth.: ORS 458.600 - 458.655

Stats. Implemented: ORS 458.625

Hist.: HSG 2-1996, f. & cert. ef. 4-15-96; OHCS 4-2009, f. & cert. ef. 12-22-09

## 813-044-0030

### Distribution of Funds

(1) The Department shall distribute funds statewide and shall concentrate funds in those areas of the state with the greatest housing need, as determined by the Council.

(2) The Council will determine the maximum program award to an Organization.

Stat. Auth.: ORS 458.600 - 458.655

Stats. Implemented: ORS 458.625

Hist.: HSG 2-1996, f. & cert. ef. 4-15-96; OHCS 4-2009, f. & cert. ef. 12-22-09

## 813-044-0040

### Application Procedure and Requirements

The Department may provide grant funds subject to the availability of funds in the Account through a process which may include, but is not limited to, receipt and response to individual proposals or submission of proposals subject to a competitive review process. The applicant organization shall submit, in an application form and process prescribed by the Department, project information including, but not limited to:

(1) A written description of the Project including, but not limited to, the proposed program of services to program participants, criteria for selecting prospective homeowners, and any other information pertinent to the Project;

(2) A statement of Project purpose indicating the housing type and target home owners to be housed, how the Project may expand the percentage of home ownership for Oregonians and how the project will provide home ownership opportunities for Low or Very Low Income households, persons with disabilities, minorities and farm workers;

(3) A proforma of Project expenses, income (if applicable) and financing;

(4) Grant amount requested and total Project development costs, including a description of all additional Project funding and funding sources;

(5) A description of the sponsor/manager experience in developing, managing, and operating home ownership programs;

(6) A description of the Organization's program management responsibilities; and

(7) Such other documentation as the Department may require.

Stat. Auth.: ORS 458.600 - 458.605, 458.610, 458.620, 458.625 & 458.655

Stats. Implemented: ORS 458.625

Hist.: HSG 2-1996, f. & cert. ef. 4-15-96; OHCS 4-2009, f. & cert. ef. 12-22-09

## 813-044-0050

### Criteria for Funding

(1) A grant award may be given preference based on:

(a) Providing the greatest number of Low and Very Low Income home ownership housing units for the least amount of Account funds expended or committed toward leveraged funds from other loans, grants, or eligible In-Kind Contributions;

(b) Ensuring the longest possible use as Low or Very Low Income home ownership housing units such as including some form of equity recapture, land trust or shared equity provisions as determined by the Council;

(c) Including a program of services for home owners and proposed home owners of proposed housing including, but not limited to, programs that address home health care, mental health services, alcohol and drug treatment and post-treatment care, child care, case management, home ownership education training, mortgage qualification, credit repair, home owner budgeting and foreclosure counseling.

(d) Supporting a comprehensive strategy to reverse the decreasing rates of home ownership among minorities, giving priority to activities that support adopted comprehensive community plans that incorporate recognized best practices or demonstrate proven success in increasing home ownership for minorities;

(2) Other subordinate criteria as determined by the Department and included in a competitive proposal solicitation.

(3) Down payment, including closing cost, assistance programs shall include home ownership education/training as a requisite for program participant eligibility to receive assistance funds. The Department will establish and maintain a list of approved home ownership education/training programs.

(4) A grant shall be conditioned upon the continued use of the program for the targeted ownership group for the duration and to the extent indicated in the grant application. Programs should target recapture of assistance resulting from owner's home sale. Recycling recaptured funds is an acceptable program provision. The Department, at its discretion, may require repayment of the grant if all or part of the commitments to home owner groups, supportive services, or period of use for Low or Very Low Income housing are withdrawn from the project. Grant terms and conditions shall be established in a program use agreement and recorded (if applicable).

Stat. Auth.: ORS 458.600 - 458.650

Stats. Implemented: ORS 458.625

Hist.: HSG 2-1996, f. & cert. ef. 4-15-96; OHCS 4-2009, f. & cert. ef. 12-22-09

## 813-044-0060

### Charges

(1) The Department may require a non-refundable application charge from any applicant requesting Home Ownership Assistance Program Account funds.

(2) A supplemental application charge from applicants requesting additional resources on the project funded by the Department may be required.

Stat. Auth.: ORS 458.655, 456.505 - 456.720 & HB 2436 (2009)

Stats. Implemented: ORS 458.655 & HB 2436 (2009)

Hist.: OHCS 4-2009, f. & cert. ef. 12-22-09

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**Rule Caption:** The adoption of rules for the General Housing Account Program established by HB 2436 (2009).

**Adm. Order No.:** OHCS 5-2009

**Filed with Sec. of State:** 12-22-2009

**Certified to be Effective:** 12-22-09

**Notice Publication Date:** 11-1-2009

**Rules Adopted:** 813-055-0001, 813-055-0010, 813-055-0020, 813-055-0030, 813-055-0040, 813-055-0050, 813-055-0060, 813-055-0070, 813-055-0080, 813-055-0090, 813-055-0100, 813-055-0110

**Subject:** HB 2436 (2009) establishes a \$15 fee for the recording of documents in the deed and mortgage records of the counties. This bill will provide a new revenue source to be used to increase housing opportunities.

The rules as adopted creates the General Housing Account Program as a mechanism to allocate the funds for affordable housing development.

**Rules Coordinator:** Sandy McDonnell—(503) 986-2012

## 813-055-0001

### Purpose and Objectives

The rules of OAR chapter 813, division 55, are established to administer ORS 456.515 to 456.725 and 458.600 to 458.660, which authorize the Department to govern the allocation of moneys deposited in the General Housing Account to best meet critical housing needs and to build the organizational capacity of partners throughout the state; and require equitable distribution of resources over time based on objective measures of need, including the number and percentage of low and very low income households in an area. Each biennium, the Department will review and reevaluate the effectiveness of its funding strategies under these rules.

Stat. Auth.: ORS 456.515 - 456.725 & 458.600 - 458.660

Stats. Implemented: ORS 458.660

Hist.: OHCS 5-2009, f. & cert. ef. 12-22-09

## 813-055-0010

### Definitions

All terms are used in OAR 813, division 55, as defined in the Act and as provided in 813-005-0005 and herein. As used in these rules, unless the context indicates otherwise:

(1) "Account" means the General Housing Account.

(2) "Council" means the State Housing Council established in ORS 456.567.

(3) "Department" means Oregon Housing and Community Services Department established in ORS 456.555.

(4) "Low-Income" means individuals or households that receive more than 50 percent and not more than 80 percent of the median family income for the area, subject to the adjustment for areas with unusually high or low incomes or housing costs, all as determined by the council based on information from the U.S. Department of Housing and Urban Development.

(5) "Organization" means a:

(a) Nonprofit corporation established under ORS Chapter 65;

(b) Housing authority established under ORS 456.055 to 456.235; or

(c) Local government as defined in ORS 197.015; or

(d) Manufactured dwelling park cooperative as established under ORS 62.800 to 62.815.

(6) "Persons with disabilities" means persons with handicaps described in 42 U.S.C. 3602(h).

(7) "Very-Low Income" means individuals or households that receive 50 percent or less of the median family for the area, subject to adjustment for areas with unusually high or low incomes or housing costs, all as determined by the council based on information from the U.S. Department of Housing and Urban Development.

Stat. Auth.: ORS 456.515 - 456.725 & 458.600 - 458.660

Stats. Implemented: ORS 458.660

Hist.: OHCS 5-2009, f. & cert. ef. 12-22-09

## 813-055-0020

### Eligibility for General Housing Account Funds

The Department may disburse moneys in the account by contract, grant, loan or otherwise as the Department determines necessary, subject to the availability of funds and limitations otherwise prescribed by law for any or all of the following purposes:

(1) Multifamily Affordable Housing Development. To organizations, for-profit entities and individuals to construct new housing, to acquire and/or rehabilitate existing structures, and/or to operate housing for low and/or very-low income households.

(2) Affordable Housing Capacity Building. To build the capacity of non-profit entities and housing authorities to develop affordable housing.

Stat. Auth.: ORS 456.515 - 456.725 & 458.600 - 458.660

Stats. Implemented: ORS 458.660

Hist.: OHCS 5-2009, f. & cert. ef. 12-22-09

## 813-055-0030

### Distribution of Funds

The Department shall develop a distribution method for both Multifamily Affordable Housing Development and Affordable Housing Capacity Building which provides for an equitable distribution of resources statewide over time based on objective measures of need, including, but not limited to:

(1) The number and percentage of low and very-low income households in an area;

(2) The estimated need for affordable housing as determined by the Department and Council; and

(3) The need of a nonprofit or housing authority to build its capacity to develop and operate housing serving low and very low income populations.

Stat. Auth.: ORS 456.515 - 456.725 & 458.600 - 458.660

Stats. Implemented: ORS 458.660

Hist.: OHCS 5-2009, f. & cert. ef. 12-22-09

## 813-055-0040

### Application Procedure and Requirements

The Department may provide contract, grant and/or loan funds subject to the availability of funds in the Account through a process which may include, but is not limited to, a first-come, first-reviewed or a competitive review process. The applicant shall submit, in an application form and process prescribed by the Department, proposals specific to:

(1) Multifamily Affordable Housing Development which may include, but is not limited to:

(a) A written description of the project including the number of units, unit mix, proposed rents, site location, the proposed program of services to occupants, project amenities, and any other information pertinent to the project;

(b) A statement of project purpose indicating the housing type and residents to be housed, and the length of time the units will be committed to be available for low- or very-low income households;

(c) A pro forma of project expenses and income;

(d) Requested grant or loan funds including proposed repayment terms;

(e) Total project development costs, including a description of all additional project funding and funding sources;

(f) A description of the sponsor/developer/owner/manager experience in developing and operating housing projects; and

(g) Such other documentation as the Department may require.

(2) Affordable Housing Capacity Building which may include:

(a) A written description of proposal which describes the use of funds, and the impact to non-profit housing developers and housing authorities and their ability to expand their capacity in delivering affordable housing;

(b) Documentation that clearly demonstrates the financial need of a non-profit housing developer or housing authority;

(c) A plan that describes how the non-profit or housing authority developer will use the funds in a way that doesn't create significant reliance on future funding; and

(d) Such other documentation as the Department may require.

Stat. Auth.: ORS 456.515 - 456.725 & 458.600 - 458.660

Stats. Implemented: ORS 458.660

Hist.: OHCS 5-2009, f. & cert. ef. 12-22-09

## 813-055-0050

### Criteria for Funding

(1) Specific Criteria for Multifamily Affordable Housing Development includes the following:

(a) A grant and/or loan application may be given preference when it does one or more of the following:

(A) Provides the greatest number of low and very low income housing units for the least amount of Account funds expended or committed toward matching fund from other loans, grants or eligible In-Kind Contributions.

(B) Ensures the longest possible use as low- or very-low income housing units as established by the Council.

(C) Provides housing for specific populations which have historically faced barriers in finding housing, and which are identified as having a priority in the Consolidated Plan or its successor, or in a state-acknowledged initiative.

(D) Meets other criteria as established by the Department.

(b) Funding to a project development shall be conditioned upon the continued use of the project for the targeted tenant group and provision of supportive services for the duration and to the extent indicated in the grant and/or loan application. The Department, at its discretion, may require repayment of the funding if all or part of the commitments to residents, supportive services, or period of use for low- or very-low income housing is withdrawn from the project.

(c) Terms and conditions of the award shall be established in the grant or loan agreement or other documents required by the Department and recorded against the property.

(A) If the applicant does not own the property at the time of fund disbursement or is a long-term lessee, the applicant or lessor will be required to open an escrow account and have the Use Agreement with Trust Deed placed

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in escrow and recorded immediately upon obtaining title to or control of the property.

(2) Specific Criteria for Affordable Housing Capacity Building may include the following:

(a) A grant and/or loan may be given preference based on one or more of the following:

(A) Demonstration that the funds will enhance the ongoing capacity of the nonprofit or housing authority developer;

(B) The financial need of a non-profit or housing authority; and

(C) Other criteria as established by the Department.

(b) Funding awards are not to become an ongoing subsidy.

(c) Terms and conditions of the award shall be established in the grant or loan agreement or other documents required by the Department.

Stat. Auth.: ORS 456.515 - 456.725 & 458.600 - 458.660

Stats. Implemented: ORS 458.660

Hist.: OHCS 5-2009, f. & cert. ef. 12-22-09

## 813-055-0060

### Application Review

(1) The Department shall consider all applications and make application approval, deny application approval, forward for State Housing Council review, or request additional information within the timeframe set forth in the application materials.

(2) A grant, loan or other funding award in excess of an applicable threshold, as established by the State Housing Council, requires Council review and approval under ORS 456.561. The Council shall approve or disapprove the application at a public hearing of the Council, pursuant to ORS 456.571(2).

(3) In reviewing applications for assistance, the Department and the Council, as appropriate, may consider, in addition to any special evaluation criteria, the following:

(a) Amount of available funds in the Program;

(b) Ability of the applicant to meet proposed terms of loan repayment in cases where funding is awarded as a loan;

(c) Availability of other sources of assistance; and

(d) Applicant's efforts to leverage public or private funds.

(4) The Department shall select those applications which, in the judgment of the Department, best achieve the purposes of the Program and any evaluation criteria outlined in the Program application forms and handbooks.

Stat. Auth.: ORS 456.515 - 456.725 & 458.600 - 458.660

Stats. Implemented: ORS 458.660

Hist.: OHCS 5-2009, f. & cert. ef. 12-22-09

## 813-055-0070

### Charges

(1) The Department may impose a charge from any applicant requesting General Housing Account funds.

(2) For Multifamily Affordable Housing Development awards, the Department may require a transfer application charge from owners of projects that receive contracts, grants, loans, or tax credits through the Department, who request the Department's approval of a change in project ownership. The Department may assess a transfer review charge to project owners and transferees who effect a change in project ownership without prior written Department approval.

(3) The Department may charge for Department of Justice time required for review of applicant requested changes to proscribed documents.

Stat. Auth.: ORS 456.515 - 456.725 & 458.600 - 458.660

Stats. Implemented: ORS 458.660

Hist.: OHCS 5-2009, f. & cert. ef. 12-22-09

## 813-055-0080

### General Administrative and Monitoring Requirements

(1) The Department's monitoring of Program compliance may require annual reports from the recipient.

(2) The Department may perform such reviews or field inspections as it deems necessary to ensure Program compliance. The Department may require that a recipient take such remedial actions as described in the terms and conditions of the award and OAR 813-52-0090.

(3) Financial records, supporting documents, and all other pertinent records shall be retained by a General Housing Account recipient for six years after the project is complete, or after any litigation or audit claim is resolved, whichever is later. The Department shall have access to all books, accounts, documents, records and other property belonging to or in use by the recipient which relate to the use of General Housing Account funds.

Stat. Auth.: ORS 456.515 - 456.725 & 458.600 - 458.660

Stats. Implemented: ORS 458.660

Hist.: OHCS 5-2009, f. & cert. ef. 12-22-09

## 813-055-0090

### Remedies for Noncompliance

At any time before the expiration of the affordability period, the Department may find that a recipient is not in compliance with the requirements of the Program for reasons including but not limited to use of funds for activities not approved in the Use Agreement, failure to complete activities in a timely manner, failure to comply with applicable rules or regulations, or the

lack of a continued capacity by the recipient to carry out the approved activities. Remedies for noncompliance may include penalties imposed by the Department, including but not limited to, repayment of General Housing Account funds.

Stat. Auth.: ORS 456.515 - 456.725 & 458.600 - 458.660

Stats. Implemented: ORS 458.660

Hist.: OHCS 5-2009, f. & cert. ef. 12-22-09

## 813-055-0100

### Sanctions

(1) The Department may invoke sanctions against a recipient that fails to comply with the provisions of its grant or loan agreements. The following circumstances may warrant sanctions:

(a) General Housing Account funds have not been disbursed within one year of award by the Department or the recipient;

(b) Any local or private party funding agreements related to the project are not executed within six months of the award of General Housing Account funds;

(c) There is a material breach of the Use Agreement;

(d) The Use Agreement was not recorded on the property required by OAR 813-042-0050(3) or as agreed; or

(e) The Department finds that significant corrective actions are necessary to protect the integrity of the project funds, and those corrective actions are not, or will not be, made within a reasonable time (the funds were used for costs not eligible under the General Housing Account program or the project has not served the population stated in the Use Agreement).

(2) One or more of the following sanctions may be imposed by the Department:

(a) Prohibit a recipient from applying for future General Housing Account assistance or other Department assistance;

(b) Revoke an existing General Housing Account award;

(c) Withhold unexpended General Housing Account funds;

(d) Require return of General Housing Account funds that have been disbursed to the recipient but not expended by the recipient;

(e) Require repayment of expended General Housing Account funds; and

(f) Invoke other remedies that may be incorporated into the Use Agreement.

(3) Sanctions will not be imposed by the Department until the recipient has been notified in writing of its deficiencies and given a reasonable time to respond and correct the deficiencies noted. The sanctions and remedies set forth in this OAR 813-042-0100 are cumulative and not exclusive and are in addition to any other rights and remedies provided by law or under the Use Agreement.

Stat. Auth.: ORS 456.515 - 456.725 & 458.600 - 458.660

Stats. Implemented: ORS 458.660

Hist.: OHCS 5-2009, f. & cert. ef. 12-22-09

## 813-055-0110

### Waiver

The Director may waive or modify any requirements of these Program rules, unless such waiver or modification would violate applicable federal or state statutes or regulations.

Stat. Auth.: ORS 456.515 - 456.725 & 458.600 - 458.660

Stats. Implemented: ORS 458.660

Hist.: OHCS 5-2009, f. & cert. ef. 12-22-09

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**Rule Caption:** Requires landlords of manufactured dwelling parks to register in writing; sets out continuing education requirements.

**Adm. Order No.:** OHCS 1-2010

**Filed with Sec. of State:** 1-7-2010

**Certified to be Effective:** 1-7-10

**Notice Publication Date:** 12-1-2009

**Rules Adopted:** 813-007-0005, 813-007-0010, 813-007-0015, 813-007-0020, 813-007-0025, 813-007-0030, 813-007-0035, 813-007-0040, 813-007-0045, 813-007-0050, 813-007-0055, 813-007-0060, 813-007-0065, 813-007-0070

**Subject:** The rules establish the requirement and a process for landlords or owners of manufactured dwelling parks to register annually in writing with Oregon Housing and Community Services Department. An annual charge of \$25 will be required for each manufactured dwelling park owned or managed by a manufactured park landlord.

Six hours of continuing education shall be required for a person in each manufactured dwelling park who has authority to manage the premises of the park every two years. Approved continuing education classes will be offered at least once every six months. The department shall designate nonprofit trade associations approved to provide the required training and provide training materials. Estab-

# ADMINISTRATIVE RULES

lishes the civil penalties that may be assessed by the department for manufactured dwelling park landlords or owners not in compliance with Oregon Laws 2005, Chapter 619(2)9£) or Oregon Laws 2009 Chapter 816.

**Rules Coordinator:** Sandy McDonnell—(503) 986-2012

## 813-007-0005

### General Purpose

OAR chapter 813, division 007 is promulgated to accomplish the general purpose of 2005 Oregon Laws chapter 619 sections 2, 3 and 4 as amended by 2009 Oregon Laws chapter 816 sections 9, 10, 11, and 12. These rules pertain to:

- (1) Manufactured dwelling park advisory committee.
- (2) Annual registration procedures.
- (3) Annual registration charges.
- (4) Annual registration notification reminders.
- (5) Annual registration changes.
- (6) Manufactured dwelling park continuing education requirements.
- (7) Continuing education notification reminders.
- (8) Approval of statewide nonprofit trade association trainers.
- (9) Civil penalty assessment for noncompliance.
- (10) Liens for noncompliance.
- (11) Contested case hearings. Unless otherwise extended by the Oregon Legislature, 2005 Oregon Laws chapter 619 sections 2, 3 and 4, 2009, Oregon Laws chapter 816, and all rules within OAR 813 Division 7 are repealed as of January 2, 2012.

Stat. Auth.: 2005 OL Ch. 619, Sec. 2, 3 & 4 & 2009 OL Ch. 816  
Stats. Implemented: 2009 OL Ch. 816  
Hist.: OHCS 1-2010, f. & cert. ef. 1-7-10

## 813-007-0010

### Definitions

(1) Words and terms used in OAR chapter 813, division 007 are consistent with the words and terms used in 2005 Oregon Laws chapter 619 sections 2, 3 and 4 as amended by 2009 Oregon Laws chapter 816 and, except with regard to the definition of “manage” in subsection (2) of this section, ORS Chapter 90.

(2) In relation to these rules and 2005 Oregon Laws chapter 619 sections 2, 3 and 4 and 2009 Oregon Laws chapter 816, “manage” means the act of exercising administrative and supervisory direction over the operations of a manufactured dwelling park and the residents who reside therein; including but not limited to the ability to enter rental agreements, to apply the park rules and the law to the residents and to give or receive notices to the residents. Doing repair or passing information from residents to the owner and back does not constitute managing.

Stat. Auth.: 2005 OL Ch. 619, Sec. 2, 3 & 4 & 2009 OL Ch. 816  
Stats. Implemented: 2009 OL Ch. 816  
Hist.: OHCS 1-2010, f. & cert. ef. 1-7-10

## 813-007-0015

### Manufactured Dwelling Park Advisory Committee

(1) The department will appoint an advisory committee to advise the department in drafting the rules required by 2009 Oregon Laws chapter 816 and to assist the department in implementing and administering the duties of the department regarding the registration and continuing education requirements established in 2005 Oregon Laws chapter 619, sections 2 and 3.

(2) The advisory committee shall include representatives of interested parties, including but not limited to, representatives of manufactured dwelling park landlords and representatives of manufactured dwelling park tenants.

(3) Committee members shall serve on a voluntary basis without compensation for time, travel, or other expenses.

(4) The department will chair the committee, determine the number of committee members, provide administrative support to the committee as the department deems appropriate, and has the right to add or remove committee members as the department deems appropriate subject to 813-007-0015(2).

(5) An advisory committee meeting will be held at least once annually. The department may allow committee members to attend meetings via conference call as the department deems appropriate.

(6) The advisory committee will review the penalties and charges described in 813-007-0060 and their application and provide recommendations to the department.

Stat. Auth.: 2005 OL Ch. 619, Sec. 2, 3 & 4 & 2009 OL Ch. 816  
Stats. Implemented: 2009 OL Ch. 816  
Hist.: OHCS 1-2010, f. & cert. ef. 1-7-10

## 813-007-0020

### Annual Registration Procedures

(1) Every landlord of a manufactured dwelling park shall register annually in writing with the Housing and Community Services Department.

(2) The department will develop appropriate forms and instructions for this registration and will make this information available to manufactured dwelling park landlords through the department’s website or as the department otherwise deems appropriate.

(3) Registration required by the department will include but not necessarily be limited to the following information:

(a) The name and business mailing address of the manufactured dwelling park landlord and of any person authorized to manage the premises of the park.

(b) The name of the park.

(c) The physical address of the park, and, if different from the physical address, the mailing address.

(d) The telephone number of the park.

(e) The total number of spaces in the park.

(4) The manufactured dwelling park landlord shall file an annual registration satisfactory to the department and along with that registration pay a \$25 registration charge to the department for each park owned or managed by the manufactured dwelling park landlord per the process identified in 813-007-0025.

(5) The landlord of a new manufactured dwelling park shall register with the department and pay the registration charge identified in subsection (4) of this section no later than 60 days after the opening of the park.

(6) Each manufactured dwelling park landlord shall submit complete and accurate manufactured dwelling park registration(s) and accompanying registration charge(s) for their park(s) to the department by January 1st of each year.

(7) Manufactured dwelling park landlords shall submit registrations in written form, unless the department provides additional means of registration through the department’s website.

(8) If a manufactured dwelling park landlord submits the registration in written form, the registration shall be sent to:

Oregon Housing and Community Services  
North Mall Office Building  
Cashier — MCRC Registration  
725 Summer Street NE, Suite B  
Salem, Oregon 97301

or other such address as the department may designate on its website.

(9) If the department provides a means of registration through the department’s website, and if a manufactured dwelling park landlord chooses to register through this means, the manufactured dwelling park landlord must complete all of the required forms and submit all of the required information as stated on the website, and must submit such information to the department through the channels described on the website to complete the required annual registration.

Stat. Auth.: 2005 OL Ch. 619, Sec. 2, 3 & 4 & 2009 OL Ch. 816  
Stats. Implemented: 2009 OL Ch. 816  
Hist.: OHCS 1-2010, f. & cert. ef. 1-7-10

## 813-007-0025

### Annual Registration Charges

(1) The department will charge the manufactured dwelling park landlord a registration charge of \$25 for each manufactured dwelling park owned or managed by the manufactured dwelling park landlord. This charge is due to the department on January 1st of each year along with the manufactured dwelling park registration.

(2) The manufactured dwelling park landlord shall pay the registration charge through one of the allowed methods specified on the registration form.

(3) Manufactured dwelling park landlords must specify the park or parks to be registered with each payment submitted.

(4) The department may assess additional charges to recover costs or waive charges as it deems appropriate for the submission of changes and corrections to manufactured dwelling park registrations.

Stat. Auth.: 2005 OL Ch. 619, Sec. 2, 3 & 4 & 2009 OL Ch. 816  
Stats. Implemented: 2009 OL Ch. 816  
Hist.: OHCS 1-2010, f. & cert. ef. 1-7-10

## 813-007-0030

### Annual Registration Notification Reminders and Confirmation

(1) The department will send a written reminder notice to each manufactured dwelling park landlord that holds a current registration.

(2) Requirements for sending written notice will be met if the department sends a written reminder to the manufactured dwelling park landlord’s address on file with the department, or if the department sends an email notification to the manufactured dwelling park landlord’s email address on file with the department within the timeline specified in 813-007-0030(3).

(3) The department will send the reminder notice to the address or email address in subsection (2) of this section at least 2 weeks before the registration due date.

(4) The department will send confirmation in writing or via electronic notification within 45 days to the manufactured dwelling park landlord for each manufactured dwelling park registration and manufactured dwelling park registration charge received.

(5) Requirements for sending a confirmation notice will be met if the department sends the notice to the manufactured dwelling park landlord’s address on file with the department, or if the department sends an email notification to the manufactured dwelling park landlord’s email address on file with the department within the timeline specified in 813-007-0030(4).

Stat. Auth.: 2005 OL Ch. 619, Sec. 2, 3 & 4 & 2009 OL Ch. 816  
Stats. Implemented: 2009 OL Ch. 816  
Hist.: OHCS 1-2010, f. & cert. ef. 1-7-10



# ADMINISTRATIVE RULES

## 813-007-0035

### Deposits to and Uses of Mobile Home Parks Account

(1) The department will deposit moneys from registration charges and penalties collected under this division in the Mobile Home Parks Account established pursuant to ORS 446.533. Notwithstanding 446.533, moneys deposited in the account under this section are continuously appropriated to the department solely for the purpose of implementing and administering the duties of the department under sections 2 and 3, chapter 619 Oregon Laws 2005, and 2009 Oregon Laws chapter 816.

(2) The department will institute such accounting measures as appropriate to differentiate the funds from the registration charges and penalties described in subsection (1) of this section from other funds within the Mobile Home Parks Account. Deposits and interest earnings from the charges in this section will be used for the programs and administration of programs of this section.

(3) The department may use funds from manufactured dwelling park registration charges and penalties as appropriate for the administration of the account and the administration of all aspects of manufactured dwelling park registration including notification, collection, and enforcement.

(4) The department may use funds from manufactured dwelling park registration charges and penalties as appropriate for the administration of continuing education requirements given in Section 3, chapter 619, Oregon Laws 2005.

Stat. Auth.: 2005 OL Ch. 619, Sec. 2, 3 & 4 & 2009 OL Ch. 816  
Stats. Implemented: 2009 OL Ch. 816  
Hist.: OHCS 1-2010, f. & cert. ef. 1-7-10

## 813-007-0040

### Manufactured Dwelling Park Continuing Education Requirements

(1) At least one person for each manufactured dwelling park who has authority to manage the premises of the park shall, every two years, complete six hours of continuing education satisfactory to the department relating to the management of manufactured dwelling parks. The training must be completed by personally attending classes and cannot be satisfied by remote, self-study or online training.

(2) The following apply for a person whose continuing education is required:

(a) If there is any manager or owner who lives in the park, the person completing the continuing education must be a manager or owner who lives in the park.

(b) If no manager or owner lives in the park, the person completing the continuing education must be a manager who lives outside the park, or if there is no manager, an owner of the park.

(c) A manager or owner may satisfy the continuing education requirement for more than one park that does not have a manager or owner who lives in the park.

(3) If a person becomes the manufactured dwelling park manager or owner who is responsible for completing continuing education, and the person does not have a current certificate of completion issued under 813-007-0040(4)(d), the person shall complete the continuing education requirement by taking the next regularly scheduled continuing education class or by taking a continuing education class held within 75 days.

(4) The department will ensure that:

(a) Continuing education classes are offered at least once every six months;

(b) Continuing education classes are offered by a statewide nonprofit trade association in Oregon representing manufactured housing interests and approved by the department;

(c) Continuing education classes have at least one-half of the class instruction on one or more of the provisions of ORS Chapter 90, 105.105 to 105.168, fair housing law or other law relating to landlords and tenants;

(d) Continuing education providers provide a certificate of completion to all attendees; and

(e) Continuing education providers provide the department with the following information:

(A) The name and title (owner or manager) of each person who attends a class;

(B) The name of the attendee's manufactured dwelling park;

(C) The city or county in which the attendee's park is located;

(D) The date of the class; and

(E) The names of the persons who taught the class.

(5) The department, a trade association or instructor is not responsible for the conduct of a manufactured dwelling park landlord, manager, owner or other person attending a continuing education class under this section. This section does not create a cause of action against the department, a trade association or instructor related to the continuing education class.

(6) The owner of a manufactured dwelling park is responsible for ensuring compliance with the continuing education requirements in this section.

Stat. Auth.: 2005 OL Ch. 619, Sec. 2, 3 & 4 & 2009 OL Ch. 816  
Stats. Implemented: 2009 OL Ch. 816  
Hist.: OHCS 1-2010, f. & cert. ef. 1-7-10

## 813-007-0045

### Continuing Education Notification Reminders

(1) The department will annually send a written reminder notice regarding continuing education requirements under this section to each manufactured dwelling park at the address shown in the park registration filed under section 2, chapter 619, Oregon Laws 2005.

(2) Requirements for sending written notice will be met if the department sends a written reminder to the address on file with the department, or if the department sends an email notification to the email address on file with the department within the timelines specified in 813-007-0045(3).

(3) The department will send a reminder to each manufactured dwelling park landlord at least 1 month before the due date of the required continuing education.

(4) The department shall make information available, as the department deems appropriate, regarding:

(a) The schedule of upcoming continuing education classes available; and

(b) Contact information for those nonprofit trade associations authorized to provide manufactured dwelling park continuing education training.

Stat. Auth.: 2005 OL Ch. 619, Sec. 2, 3 & 4 & 2009 OL Ch. 816  
Stats. Implemented: 2009 OL Ch. 816  
Hist.: OHCS 1-2010, f. & cert. ef. 1-7-10

## 813-007-0050

### Approval of Statewide Nonprofit Trade Association Trainers

(1) The department will designate the nonprofit trade associations that are approved to provide the required manufactured dwelling park continuing education class instruction. Instruction from a non-approved provider does not satisfy the continuing education requirements of this chapter.

(2) The department will develop a nonprofit trade association manufactured dwelling park landlord trainer application for those associations that wish to be authorized to provide continuing education instruction. Associations pursuing authorization must submit the manufactured dwelling park landlord trainer application through the department website or by sending the application to:

Manufactured Communities Resource Center  
Continuing Education Trainer Application  
Oregon Housing and Community Services  
725 Summer Street NE, Suite B  
Salem, Oregon 97301

or other such address as the department may designate on its website.

(3) The manufactured dwelling park landlord trainer application will require various information from the nonprofit trade association including but not limited to:

(a) Current articles of incorporation for the organization, showing the organization is currently a statewide non-profit trade association.

(b) Documentation demonstrating that the organization represents manufactured housing interests.

(c) A copy of the outline or topic areas the organization anticipates it will be using for the training. Statute requires that at least half of the training cover ORS Chapters 90, and 105.105 to 105.168, as well as fair housing and other related law.

(d) A schedule of the anticipated training dates.

(e) A plan for providing a record of certificates of completion to the department.

(f) Documentation that demonstrates the organization's qualifications to deliver training of this type, especially regarding issues related to manufactured housing and/or fair housing.

(g) A plan to notify the training attendees of the limitation of liability contained in 2005 Oregon Laws chapter 619 section 3 (4).

(4) The department will provide notification to nonprofit trade associations and respective trainers the department authorizes to provide manufactured dwelling park continuing education training. The notification will specify the duration of the authorization.

(5) The department will monitor the nonprofit trade association to ensure compliance with the rules of 813-007.

(6) Nonprofit trade associations approved to provide the training described in this chapter shall make records available to the department and shall allow department personnel to attend any of its training sessions at no cost in accordance with the monitoring outlined in 813-007-0050(5).

(7) The department may revoke the authorization of an approved association at any time if in the department's view an association is not fulfilling its training obligations, is providing false information on the application, or is no longer meeting the qualification criteria and requirements of this section. The department will provide notice of a prospective revocation including the reasons for the revocation. The department will provide an opportunity for the association to respond to the revocation notice.

Stat. Auth.: 2005 OL Ch. 619, Sec. 2, 3 & 4 & 2009 OL Ch. 816  
Stats. Implemented: 2009 OL Ch. 816  
Hist.: OHCS 1-2010, f. & cert. ef. 1-7-10

## 813-007-0055

### Civil Penalty Assessment for Noncompliance

(1) The department may assess a civil penalty against a manufactured dwelling park landlord or owner if the department finds that the manufactured

# ADMINISTRATIVE RULES

dwelling park landlord or owner has not complied with section 2 or 3, chapter 619, Oregon Laws 2005 or 2009 Oregon Laws chapter 816.

(2) The civil penalty may not exceed \$1,000.

(3) The department will assess the civil penalty according to the schedule of penalties developed by the department under OAR 813-007-0060. In assessing a civil penalty under this section, the department shall give consideration for good faith efforts by the manufactured dwelling park landlord or owner to comply with section 2 or 3, chapter 619, Oregon Laws 2005 and 2009 Oregon Laws chapter 816.

(4) A civil penalty assessed under this section will be deposited by the department into the Mobile Home parks Account and continuously appropriated to the department for use in carrying out the policies described in ORS 446.515.

Stat. Auth.: 2005 OL Ch. 619, Sec. 2, 3 & 4 & 2009 OL Ch. 816

Stats. Implemented: 2009 OL Ch. 816

Hist.: OHCS 1-2010, f. & cert. ef. 1-7-10

## 813-007-0060

### Schedule of Penalties for Noncompliance

(1) The department may assess a civil penalty or civil penalties against a manufactured dwelling park landlord or owner if the department finds that the manufactured dwelling park landlord or owners has not complied with section 2 or 3, chapter 619, Oregon Laws 2005 or 2009 Oregon Laws chapter 816. These penalties may be assessed for each occurrence of non-compliance.

(2) The department will follow the schedule of penalties outlined in OAR 813-007-0060(3) in assessing civil penalties — with consideration for “good-faith” efforts given by manufactured dwelling park landlords and owners for effort and accuracy in complying with section 2 or 3, chapter 619, Oregon Laws 2005 or 2009 Oregon Laws chapter 816. In exercising its discretion regarding good faith efforts, the department may choose not to assess a penalty or may choose to assess a penalty below the maximum amount described in subsection (3) of this section.

(3) The department will assess penalties for non-compliance of provisions within OAR 813 division 007 up to the maximum penalty listed on the schedule of penalties below:

(a) No registration and no registration charge submitted — up to \$1,000.

(b) No registration submitted — up to \$500.

(c) Incomplete or inaccurate registration submitted — up to \$300.

(d) Late registration — up to \$300.

(e) No registration charge submitted — up to \$500.

(f) Inaccurate registration charge submitted — up to \$300.

(g) Continuing Education requirements not fulfilled — up to \$1,000.

(4) The department may waive penalties under 813-007-0060 or may assess partial penalties at its discretion.

(5) The department may charge manufactured dwelling park landlords or owners to cover costs associated with the appeal of any charges or penalties under 813-007-0060.

Stat. Auth.: 2005 OL Ch. 619, Sec. 2, 3 & 4 & 2009 OL Ch. 816

Stats. Implemented: 2009 OL Ch. 816

Hist.: OHCS 1-2010, f. & cert. ef. 1-7-10

## 813-007-0065

### Liens for Noncompliance

If a civil penalty assessed under this section is not paid on or before 90 days after the order assessing the civil penalty becomes final by operation of law, the department may file the order with the county clerk of the county where the manufactured dwelling park of the landlord or owner is located as a lien against the park. In addition to any other available remedy, recording the order in the County Clerk Lien Record has the effect provided for in ORS 205.125 and 205.126 and the order may be enforced as provided in 205.125 and 205.126.

Stat. Auth.: 2005 OL Ch. 619, Sec. 2, 3 & 4 & 2009 OL Ch. 816

Stats. Implemented: 2009 OL Ch. 816

Hist.: OHCS 1-2010, f. & cert. ef. 1-7-10

## 813-007-0070

### Waiver

The Department may waive or modify any requirements of these rules upon a determination by it of good cause in order to promote the best interests of the program or of the department, unless such waiver or modification would violate applicable federal or state statutes or regulations.

Stat. Auth.: ORS 456.515 - 456.725

Stats. Implemented: ORS 456.515 - 456.725

Hist.: OHCS 1-2010, f. & cert. ef. 1-7-10

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**Rule Caption:** Amendments streamline the application approval process.

**Adm. Order No.:** OHCS 2-2010

**Filed with Sec. of State:** 1-7-2010

**Certified to be Effective:** 1-7-10

**Notice Publication Date:** 12-1-2009

**Rules Amended:** 813-140-0096

**Subject:** 813-140-0096 Amends the rules to allow the Director of Oregon Housing and Community Services to select projects for financing under the program.

**Rules Coordinator:** Sandy McDonnell—(503) 986-2012

## 813-140-0096

### Application Process for Housing Preservation Community Incentive Fund

(1) All housing projects financed by OHCS with HUD Section 8 rental assistance contracts which have been renewed or will be renewed are eligible to apply.

(2) Applicants must obtain application materials directly from the Department.

(3) Applicants must submit their applications to the Department contact person listed on application materials.

(4) The Department will analyze the application and determine the appropriate mix of funding sources including tax credits, credit equity, grants and/or loans.

(5) The applications that, in the judgment of the Department, meet program requirements (see Program Overview and application materials), will be summarized for submission to the Director of Oregon Housing & Community Services for review.

(6) Projects will be selected for financing, which in the judgment of the Director achieve the requirements of the Housing Preservation Incentive Fund based on the criteria outlined in application materials and Program Overview.

Stat. Auth.: ORS 458.705 - 458.740

Stats. Implemented: ORS 458.705 - 458.740

Hist.: OHCS 6-2008, f. & cert. ef. 6-23-08; OHCS 2-2010, f. & cert. ef. 1-7-10

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**Rule Caption:** Adds a definition for lower income household and clarifies the reporting requirements for the IDA Program.

**Adm. Order No.:** OHCS 3-2010

**Filed with Sec. of State:** 1-7-2010

**Certified to be Effective:** 1-7-10

**Notice Publication Date:** 12-1-2009

**Rules Amended:** 813-300-0010, 813-300-0100

**Subject:** 813-300-0010 Adds a definition of low income household.

813-300-0100 Amends language to clarify and remove redundant reporting requirements for the program.

**Rules Coordinator:** Sandy McDonnell—(503) 986-2012

## 813-300-0010

### Definitions

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

(1) “Account holder” means a member, age 12 or older, of a lower income household that has a net worth of less than \$20,000 who is the named depositor of an individual development account.

(2) “Contributor” means a person or entity contributing funds to the Department or to a fiduciary organization for the purpose of matching IDA deposits by an account holder or for funding program plan operations.

(3) “Department” means the Housing and Community Services Department established in ORS 456.555 and, where applicable, its designee.

(4) “Designated beneficiary” means a minor-age member of the account holder’s household who is the beneficiary of an IDA used to pay the member’s extracurricular non-tuition expenses designed to prepare the member for post-secondary education or job training.

(5) “Fiduciary organization” means a non-profit, fund raising organization that is exempt from taxation under section 501(c)(3) of the Internal Revenue Code as amended and in effect on January 1, 1999, or a federally recognized Oregon Indian tribe that is located, to a significant degree, within the boundaries of this state, as selected by the department under these rules.

(6) “Fiduciary organization program plan” or “program plan” means a mission statement by a fiduciary organization and the corresponding detailed plan by it for the solicitation of contributions (tax credit or otherwise) and prospective account holders, the management of IDA’s and their associated personal development plans, and the operation of the fiduciary organization itself — all as approved by the Department and with such modifications as the Department may require. A prospective program plan must accompany any application to the Department for its approval of a fiduciary organization.

(7) “Financial institution” means an organization regulated under ORS Chapters 706 to 716, 722 or 723, or in the case of an account established for the purpose described in 458.685(1)(c) related to college savings plans, a financial institution as defined in 348.841.

(8) “Individual development account (IDA)” or “account” means a contract between an account holder and a fiduciary organization for the deposit of funds into a financial institution by the account holder, and the deposit of matching funds into a financial institution by the fiduciary organization, to

# ADMINISTRATIVE RULES

allow the account holder to accumulate assets for use toward achieving a specific purpose approved by the fiduciary organization.

(9) "Lower income household" means a household having an income equal to or less than the greater of the following:

(a) 80 percent of the median household income for the area as determined by the Department. In making the determination, the Department shall give consideration to any data on area household income published by the United States Department of Housing and Urban Development.

(b) 200 percent of the poverty guidelines as determined by the Department. In making the determination, the Department shall give consideration to poverty guidelines published by the United States Department of Health and Human Services or may consider other income data periodically published by other federal or Oregon agencies.

(10) "Median Household Income" means, for the appropriate household size, the higher of:

(a) The median family income for the Metropolitan Statistical Area or county as published annually by the United States Department of Housing and Urban Development, or

(b) The statewide median family income for Oregon as published annually by the United States Department of Housing and Urban Development.

(11) "Net worth" means the value of all assets owned in whole or part by household members other than equity in a residence and one vehicle minus the total debts and obligations of household members, all as measured at the time the prospective account holder applies to establish the IDA.

(12) "Oregon individual development account tax credit" or "tax credit" means a credit against taxes otherwise due under ORS Chapter 316, 317, or 318, as allowed in return for contributions to a fiduciary organization for eventual distribution to individual development accounts established under ORS 458.685.

(13) "Personal development plan" means a written plan developed jointly by the fiduciary organization and the prospective account holder for an IDA that is designed to provide the account holder with appropriate financial and asset training, counseling, career or business planning and other services that will increase the self-reliance of the account holder and his/her household through achievement of the IDA's approved purposes. The personal development plan must be in conformance with ORS 458.680, these rules and other requirements of the Department.

(14) "Related funds" means contributions to fiduciary organizations for IDA program purposes that do not qualify for tax credits and supplemental funding from the Department for IDA program purposes.

(15) "Resident of this state" has the meaning given in ORS 316.027

(16) "Reverted funds" means matching IDA deposits that devolve to a fiduciary organization because of the termination or revocation of a person as an account holder or unused tax credit contributions or supplemental funds upon termination or revocation of a fiduciary organization or at the expiration of its program plan.

(17) "Supplemental funding" means funds provided by the Department to fiduciary organizations for program plan purposes.

(18) "Tax credit contributor" means a contributor who receives a corresponding tax credit as allowed in ORS 315.271.

(19) "Tax credit contributions" means funds obtained from tax credit contributors who, in return, earn a tax credit.

(20) "Trust Land" means all lands held in trust by the United States on behalf of an Indian Tribe or individual Indian.

Stat. Auth.: ORS 456.555, 456.625 & 458.700

Stats. Implemented: ORS 315.271 & 458.670 - 458.700

Hist.: OHCS 12-2002(Temp), f. & cert. ef. 10-8-02 thru 4-5-03; OHCS 1-2003, f. & cert. ef. 4-4-03; OHCS 9-2003, f. & cert. ef. 12-19-03; OHCS 13-2007(Temp), f. & cert. ef. 10-2-07 thru 3-30-08; OHCS 2-2008, f. & cert. ef. 3-18-08; OHCS 3-2010, f. & cert. ef. 1-7-10

## 813-300-0100

### Fiduciary Organization Records and Reporting Requirements

(1) Fiduciary organizations shall prepare and maintain appropriate, accurate and complete program plan record-keeping systems and records satisfactory to the Department. Such record-keeping systems also must cover and include records generated by third-party contractors and other program plan partners.

(2) A fiduciary organization must maintain separate files for each account holder that, at a minimum, includes the following records:

(a) Documentation of income eligibility;

(b) The personal development plan;

(c) The IDA;

(d) Records of all IDA deposits, withdrawals, and other financial information;

(e) Evidence of training received;

(f) Documentation of any determination with respect to the status of the account holder or any beneficiaries;

(g) Documentation of any exit interviews; and

(h) Any other information required by the Department.

(3) Fiduciary organizations shall maintain such program plan record-keeping systems and records at their principal place of business in Oregon.

(4) Fiduciary organizations shall maintain program plan records for a period of six (6) years from the date of completion or termination of each account holder's or designated beneficiary's personal development plan and

the expiration of the IDA. The Department may require fiduciary organizations to maintain records for longer periods including, without limit, for unresolved audit matters.

(5) The Department, the Office of the Secretary of State, and the Department of Justice shall be permitted to inspect, copy, and audit any and all program plan records and take other action that to them seems appropriate in the conduct of such inspections or audits.

(6) Fiduciary organizations shall file quarterly reports with the Department in form, substance and timing acceptable to the Department.

(7) Quarterly reporting periods end on March 31, June 30, September 30, and December 31 of each calendar year. Fiduciary organizations shall deliver quarterly reports to the Department no later than 5:00 p.m. on the date determined by the Department. Reports shall be in a format approved by the Department.

(8) In addition to participating in data collection and reporting as required by the Department, quarterly and/or annual reports shall include, but are not limited to, the following:

(a) Summary demographic data and cumulative totals regarding current account holders;

(b) New account and graduate reports regarding account holders entering and exiting program; and

(c) A funds tracking report accounting for funds allocated to account holders, dispersed as match, for program delivery, for administration, and for funds held in reserve, in a format agreed upon with the Department;

Stat. Auth.: ORS 456.555, 456.625 & 458.700

Stats. Implemented: ORS 315.271 & 458.670 - 458.700

Hist.: OHCS 12-2002(Temp), f. & cert. ef. 10-8-02 thru 4-5-03; OHCS 1-2003, f. & cert. ef. 4-4-03; OHCS 13-2007(Temp), f. & cert. ef. 10-2-07 thru 3-30-08; OHCS 2-2008, f. & cert. ef. 3-18-08; OHCS 3-2010, f. & cert. ef. 1-7-10

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## Oregon State Marine Board Chapter 250

**Rule Caption:** Establish procedures for an aquatic invasive species prevention fund permit.

**Adm. Order No.:** OSMB 1-2010(Temp)

**Filed with Sec. of State:** 1-5-2010

**Certified to be Effective:** 1-5-10 thru 6-30-10

**Notice Publication Date:**

**Rules Amended:** 250-010-0650

**Subject:** This rule, as originally adopted, established and outlined the mechanism to issue and renew an Oregon aquatic invasive species prevention permit and collect associated permit fees as directed by the 2009 Oregon Legislature in HB 2220. This rule amendment identifies the age of the person(s) who need a valid permit when a boat is in use and establishes reciprocity with the states of Washington and Idaho.

**Rules Coordinator:** June LeTarte—(503) 378-2617

### 250-010-0650

#### Aquatic Invasive Species Prevention Permit

(1) Definitions:

(a) "Manually powered boat" means any watercraft as defined in ORS 830.005(2), but not a motorboat as defined in 830.005(6).

(b) "Aquatic Invasive Species Prevention Permit" means a document issued by the Oregon State Marine Board (Board) or through designated agents that certifies payment to the Aquatic Invasive Species Prevention Fund.

(c) "Board" means the Oregon State Marine Board.

(d) "Valid temporary permit" means a temporary aquatic invasive species prevention permit generated from a person purchasing a permit from a designated Internet agent.

(2) Permit Rules:

(a) A person may not operate a manually powered boat that is 10 feet or more in length, or a motorboat of any length, or a sailboat 12 feet or more in length, on the waters of this state without first obtaining an aquatic invasive species prevention permit from the Board or designated agent.

(b) The owner of a boat for which fees for a certificate of number or registration under ORS 830.790(1)(a)(b)(c) are required will pay an aquatic invasive species prevention permit surcharge of \$5 per biennium at the time of boat registration.

(A) The registration validation stickers are in lieu of an Aquatic Invasive Species Prevention Permit as described in (1)(b).

(B) The validation stickers are non-transferable.

(c) Persons age 14 and older operating manually powered boats that are 10 feet or more in length shall have a valid aquatic invasive species prevention permit or valid temporary permit on board when the boat is in use on the waters of this state.

(d) Out-of-state motorboats and out-of-state sailboats 12 feet in length or more shall purchase and carry a non-resident aquatic invasive species prevention permit on board when in use on waters of the state.

# ADMINISTRATIVE RULES

(e) Operators of manually powered boat liveries, and guides using manually powered watercraft for group-guided activities, may qualify to purchase aquatic invasive species prevention permits at a discounted rate described in HB 2220 (2009 Legislature). To qualify for the discounted rate:

(A) These operators shall register with the Board by documenting current business status as a livery.

(B) All boats rented by the livery must be clearly labeled with the livery name.

(f) Clubs or organizations that possess or own boats for communal use by members, participants, racing teams, or for public educational purposes except as exempted under HB 2220, may purchase aquatic invasive species prevention permits under the name of the organization or the club's presiding officer or secretary.

(A) The aquatic invasive species prevention permit may be attached to the boat in a manner allowing it to be easily produced for inspection by a peace officer.

(B) For boats classified as university or college racing shells which compete in intercollegiate crew races, aquatic invasive species prevention permits numbering not less than the maximum number of boats in use on the water at any given time during a planned event may be held by the event organizer, coach or other designated person at the event site as long as the permits are readily available for inspection by a peace officer.

(g) The Board or designated agent may issue a temporary aquatic invasive species prevention permit to an individual who pays for the permit using a Board designated Internet agent.

(A) The temporary aquatic invasive species prevention permit will be valid for 14 days from the date of issue listed on the temporary permit.

(B) Each temporary permit shall contain a unique number that corresponds to the electronic record for the individual named on the permit and to the annual permit.

(h) A person is considered in violation of the provisions contained in HB 2220 and subject to the penalties prescribed by law when they:

(A) Alter an aquatic invasive species prevention permit; or

(B) Produce or possess an unauthorized replica of an aquatic invasive species prevention permit; or

(C) Exhibit an altered aquatic invasive species prevention permit to a peace officer.

(i) The aquatic invasive species prevention permit expires on December 31 of the year indicated on the permit.

(j) The following vessels or classifications are exempt from the requirement to carry an aquatic invasive species prevention permit:

(A) State-owned boats

(B) County-owned boats

(C) Municipality-owned boats

(D) Eleemosynary-owned boats

(E) A ship's lifeboat used solely for lifesaving purposes

(F) Seaplanes

(G) The Lightship Columbia

(k) Violation of the provisions contained in HB 2220 is punishable as a Class A Misdemeanor.

(3) Out-of-state motorboats and out-of-state sailboats 12 feet in length or more shall purchase and carry a non-resident aquatic invasive species prevention permit on board when in use on waters of the state.

(a) Motor boats and sailboats 12 feet in length or more, registered in Washington or Idaho, that launch directly into waters that form a common interstate boundary, or launch in Oregon tributaries within one mile of these waters, that have a current boat registration, Coast Guard documentation, or an aquatic invasive species prevention permit issued by the States of Idaho or Washington, are exempt from the non-resident Oregon aquatic invasive species prevention permit.

(b) Manually powered boats from Idaho that are 10 feet or longer and affixed with an Idaho Aquatic Invasive Species Prevention sticker, and all manually powered boats from Washington, are exempt from Oregon aquatic invasive species permit carriage requirements when launching into waters that form a common interstate boundary, or when launching into Oregon tributaries within one mile of these waters.

Stat. Auth.: ORS 830 & HB 2220

Stats. Implemented: ORS 830.110

Hist.: OSMB 4-2009, f. 10-30-09, cert. ef. 1-1-10; OSMB 1-2010(Temp), f. & cert. ef. 1-5-10 thru 6-30-10

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**Rule Caption:** Rule will identify and classify personal flotation device (PFD) use in Class III rapids.

**Adm. Order No.:** OSMB 2-2010

**Filed with Sec. of State:** 1-15-2010

**Certified to be Effective:** 1-15-10

**Notice Publication Date:** 11-1-2009

**Rules Amended:** 250-010-0154

**Subject:** This rule will classify and identify the type of personal flotation device (PFD) used by persons on any section of waters rated class III or higher as directed by the 2009 Oregon Legislature.

**Rules Coordinator:** June LeTarte—(503) 378-2617

## 250-010-0154

### Personal Flotation Devices

(1) No person shall operate a boat on the waters of this state unless at least one Personal Flotation Device (PFD) of the following types is on board for each person:

(a) Type I PFD;

(b) Type II PFD;

(c) Type III PFD.

(2) No person shall operate a boat 16 feet or more in length unless one Type IV PFD is on board in addition to the total number of PFD's required in section (1) of this rule.

(3) No person shall operate a boat on the waters of this state with a child age 12 and under, unless the child is wearing a U.S. Coast Guard approved personal flotation device, of the appropriate size, while the boat is underway. For the purpose of ORS 830.215, a personal flotation device shall not be considered "readily accessible" for children age 12 and under unless the device is worn while the boat is underway. The PFD must be worn at all times by a child age 12 and under whenever the boat is underway and the child is on an open deck or open cockpit of the vessel. The following circumstances are excepted:

(a) While the child is below deck, or in the cabin of a boat with enclosed cabin.

(b) While a child is on a sailboat and tethered by means of a lifeline or harness attached to the sailboat.

(c) While a child is on a U.S. Coast Guard inspected passenger-carrying vessel operating on the navigable waters of the United States.

(4) A Type V PFD may be carried in lieu of any PFD required in section (1) of this rule provided:

(a) The approval label on the Type V PFD indicates that it is approved for the activity in which the vessel is being used, or that it is approved as a substitute for a PFD of the Type required on the vessel in use;

(b) The PFD is used in accordance with any requirements on the approval label; and

(c) The PFD is used in accordance with requirements in its owner's manual, if the approval label makes reference to such a manual.

(5) Canoes and kayaks 16 feet in length and over are exempted from the requirements for carriage of the additional Type IV PFD.

(6) Racing shells, rowing sculls, racing canoes and racing kayaks are exempted from the requirements for carriage of any Type PFD. Racing shells, rowing sculls, racing canoes, and racing kayaks are manually propelled vessels that are recognized by national or international racing associations for use in competitive racing in which all occupants row, scull, or paddle, with the exception of a coxswain, if one is provided, and are not designed to carry and do not carry any equipment not solely for competitive racing.

(7) PFD is defined as follows:

(a) Type I — A Type I PFD is an approved device designed to turn an unconscious person in the water from a face downward position to a vertical or slightly backward position, and to have more than 20 pounds of buoyancy;

(b) Type II — A Type II PFD is an approved device designed to turn an unconscious person in the water from a face downward position to a vertical or slightly backward position and to have at least 15.5 pounds of buoyancy;

(c) Type III — A Type III PFD is an approved device designed to keep a conscious person in a vertical or slightly backward position and to have at least 15.5 pounds of buoyancy;

(d) Type IV — A Type IV PFD is an approved device designed to be thrown to a person in the water and not worn. It is designed to have at least 16.5 pounds of buoyancy;

(e) Type V — A Type V PFD is an approved device for restricted use. A Type V PFD may be carried in lieu of any PFD, but only if that Type V PFD is approved for that activity in which the recreational boat is being used.

(8) No person shall operate a personal watercraft, as defined in OAR 250-021-0020, unless each person operating or riding on the vessel is wearing an inherently buoyant Coast Guard approved Type I, II or III PFD, (see 250-021-00030(1)).

(9) Exemptions:

(a) Sailboards are exempted from the requirements for carriage of any Type PFD.

(b) Float tubes as defined in OAR 250-010-0010 are exempted from the requirements for carriage of any Type PFD.

(10) Personal Flotation Device Requirements for Class III or Higher Water:

(a) A properly secured personal flotation device must be worn by persons in a boat while navigating sections of river with a commonly accepted scale of river difficulty rated Class III or higher.

(b) The personal flotation devices worn by boaters must:

(A) Be approved by the U.S. Coast Guard as a Type I, III, or V personal flotation device.

# ADMINISTRATIVE RULES

(B) Not have a limitation or restriction on its approval that would prevent its use on whitewater rivers.

(C) Not be an inflatable personal flotation device regardless of rating type.

Stat. Auth.: ORS 830

Stats. Implemented: ORS 830

Hist.: MB 8, f. 6-30-61; MB 18, f. 2-5-63; MB 54, f. 10-29-73, ef. 11-25-73; Suspended by MB 11-1983(Temp), f. 11-29-83, ef. 12-1-83; MB 2-1984, f. & ef. 1-5-84; MB 12-1988, f. 12-28-98, cert. ef. 1-1-89; MB 1-1995, f. 3-21-95, cert. ef. 5-1-95; MB 2-1996, f. & cert. ef. 2-13-96; MB 9-1997, f. & cert. ef. 10-8-97; MB 1-1998, f. 1-15-98, cert. ef. 2-14-98; OSMB 2-2010, f. & cert. ef. 1-15-10

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**Rule Caption:** Rule prohibits motorboats and float planes on Waldo Lake.

**Adm. Order No.:** OSMB 3-2010

**Filed with Sec. of State:** 1-15-2010

**Certified to be Effective:** 1-15-10

**Notice Publication Date:** 11-1-2009

**Rules Amended:** 250-020-0221

**Subject:** This rule will prohibit motorboats and float planes on Waldo Lake. Exemptions include emergency landings or watercraft used for official purposes such as search and rescue, law enforcement and fire suppression with US Forest Service approval.

**Rules Coordinator:** June LeTarte—(503) 378-2617

## 250-020-0221

### Boat Operations on Certain Waters in Lane County

(1) No person shall operate a motorboat in excess of 5 MPH ("Slow-No Wake") in the following areas:

(a) Triangle Lake: Within 200 feet of a marked swimming area or a designated public launching ramp;

(b) Fern Ridge Lake:

(A) Within 200 feet of a marked swimming area or a designated public launching ramp;

(B) In the Coyote Creek Channel;

(C) Between shore and buoy line which extends southerly from the north shore to a point approximately 200 feet of the northern most Eugene Yacht Club mooring dock thence generally south and west approximately 200 feet of the docks to a point approximately 200 feet south of the Tri Pass Club mooring dock thence generally west to the southern tip of the Tri Pass Club dock as buoyed except for the buoyed corridor immediately south of the Eugene Yacht Club southernmost dock;

(D) South of the buoy line which extends easterly from a point approximately 100 yards north of the Perkins Boat Ramp to the adjacent shoreline;

(E) In the Main Long Tom River Channel.

(c) Dexter Dam Reservoir:

(A) Within 200 feet of a marked swimming area or a designated public launching ramp;

(B) Within 50 feet of the causeway crossing the reservoir.

(d) Lookout Point Reservoir:

(A) Within 200 feet of a marked swimming area or a designated public launching ramp;

(B) East of the Southern Pacific Railroad bridge.

(e) Dorena Dam Reservoir:

(A) Within 200 feet of a marked swimming area or a designated public launching ramp.

(B) Southeast of a line between markers on Humphrey Point and the northeast shore.

(f) Cottage Grove Reservoir:

(A) Within 200 feet of a marked swimming area or a designated public launching ramp;

(B) South of a line between a marker on the east shore, near the Wilson Creek area, and on the west shore near Cedar Creek.

(g) Hills Creek Reservoir:

(A) Within 200 feet of a marked swimming area or a designated public launching ramp;

(B) On Packard Creek arm west of Rigdon Road (USFS Road #21);

(C) On Hills Creek south of the Hills Creek Crossing Bridge;

(D) On the Middle Fork, Willamette River south of the Rigdon Road (USFS #21) Upper Crossing) Bridge;

(E) No person shall operate a motorboat for any purpose on Larison Creek arm west of Rigdon Road (USFS Road #21).

(h) Collard Lakes;

(i) Picket Lake;

(j) Munsel Lake: West of the line of marker buoys;

(k) Fall Creek Lake:

(A) Within 200 feet of a designated public launching ramp or marked swimming area;

(B) On Fall Creek upriver from the buoys located approximately 200 feet downstream of the Big Fall Creek Road;

(C) On Winberry Creek upriver from the buoys located approximately 1800 feet downstream of the Winberry Creek Road Bridge.

(l) Siltcoos Lake:

(A) Within 200 feet of a designated public launching ramp or marked swimming area;

(B) Between shore and buoy line at the mouth of Kiechle Arm beginning at a point at the east shoreline of Arrowhead Point and extending northerly approximately 900 yards to a point approximately 100 yards off shore of Camp Baker during the period of June 1 through September 30.

(2) No person shall operate a motorboat in excess of 5 MPH on Leaburg Reservoir and the McKenzie River from the dam upstream to Good Pasture Bridge.

(3) No person shall operate a motorboat in excess of a "Slow-No Wake" speed within 300 feet of a boat launching ramp or a boat moorage on the following bodies of water (for purpose of this regulation, "Slow-No Wake" speed means the speed of a boat shall not exceed 5 MPH):

(a) Cougar Reservoir;

(b) Blue River Reservoir;

(c) Siuslaw River — between the river entrance and the highway bridge at Mapleton.

(4) No person shall operate a motorboat for any purpose on the following lakes: Scott, Melakwa, Hidden, Blair, Upper Erma Bell, Middle Erma Bell, Lower Erma Bell, Torrey, Whig, Wahanna, Rigdon, Lower Rigdon, Kiwa, Upper Eddeeleo, Round, Betty, and Alameda.

(5) No person shall operate a motorboat for any purpose in excess of 10 MPH on Munsel Lake east of the line of marker buoys, except from June 1 through September 30, between the hours of 10 a.m. and 5 p.m.

(6) No person shall operate a motorboat on the McKenzie River above Good Pasture Bridge, except a representative of the Oregon State Police or the County Sheriff's Office pursuant to a criminal investigation or search and rescue operation.

(7) No person shall operate a motorboat, except with an electric motor:

(a) In the Old Long Tom River Channel;

(b) On Fern Ridge Reservoir south of State Highway 126;

(c) On Hult Reservoir.

(8) No person shall operate a propeller-driven airboat or non-displacement hull type hovercraft in the following areas on Fern Ridge Reservoir where there is emergent vegetation present:

(a) Coyote Creek area — east of a line beginning at the West Coyote Creek bridge at Highway 126 extending north approximately one mile to a point near the mouth of Coyote Creek, then extending north approximately 1.4 miles to a point located approximately 100 yards off shore of the northwest corner of Gibson Island;

(b) Amazon Bay area — east of a line beginning at a point located approximately 100 yards off shore of the northwest corner of Gibson Island extending northeast approximately one mile to the Shore Lane access;

(c) South Marsh area — west of a line extending from a point on the shoreline at the southern boundary of Zumwalt Park near the end of Vista Drive extending southeast approximately one mile to a point on the shoreline at the tip of Perkins Peninsula;

(d) Long Tom Area — southwest of a line beginning at a point on the shore line at the end of Moyer Lane extending southeast approximately 0.9 miles to a point on the west shoreline of the Jeans Peninsula at the north end of Winter Lane.

(9) No person shall operate a motorboat north and east of a line across the entrance of Bannister Cove on Lookout Point Reservoir, as marked.

(10) Use of internal combustion motors in boats and floatplanes operating on the surface of Waldo Lake is prohibited year round. "Watercraft" includes boats and floatplanes operating on the surface of Waldo Lake. Official use of internal combustion motors in watercraft operated on the surface of Waldo Lake by local, state or federal governmental officials or agents is allowed for the following activities: search and rescue, law enforcement and fire suppression. Previous approval by the Willamette National Forest Supervisor is required for other activities undertaken by local, state or federal government officials or agents that involve use of internal combustion motors in watercraft operated on the surface of Waldo Lake. Emergency landings of private or governmental floatplanes on Waldo Lake are allowed without previous approval.

Stat. Auth.: ORS 830.110 & 830.175

Stats. Implemented: ORS 830.175

Hist.: MB 21, f. 8-23-63; MB 27, f. 6-3-65; MB 31, f. 6-20-66; MB 42, f. 12-3-68; MB 44, f. 8-21-69; MB 48, f. 6-28-71, ef. 7-25-71; MB 49, f. 8-14-72, ef. 9-1-72; MB 3-1979(Temp), f. & ef. 6-22-79; MB 5-1979, f. 7-31-79, ef. 8-1-79; Renumbered from 250-020-0131; MB 8-1981, f. & ef. 11-16-81; MB 5-1982, f. & ef. 6-1-82; MB 6-1982, f. & ef. 6-1-82; MB 15-1984, f. 11-30-84, ef. 12-1-84; MB 6-1995, f. & cert. ef. 7-14-95; MB 9-1996, f. & cert. ef. 5-29-96; OSMB 2-2000, f. & cert. ef. 7-14-00; OSMB 2-2001, f. & cert. ef. 1-25-01; OSMB 1-2008, f. & cert. ef. 1-15-08; OSMB 3-2010, f. & cert. ef. 1-15-10

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**Rule Caption:** Rule establishes recreational boating use in Cheadle Lake.

**Adm. Order No.:** OSMB 4-2010

**Filed with Sec. of State:** 1-15-2010

**Certified to be Effective:** 1-15-10

# ADMINISTRATIVE RULES

**Notice Publication Date:** 11-1-2009

**Rules Amended:** 250-020-0240

**Subject:** This rule will establish boating on Cheadle Lake in Linn County. Boating is restricted to human, sail and electric motors only.

**Rules Coordinator:** June LeTarte—(503) 378-2617

## 250-020-0240

### Boat Operations in Linn County

(1) No person shall operate a motorboat for any purpose in the following areas:

- (a) On Lake Ann;
- (b) On Carmen Reservoir.

(2) No person shall operate a motorboat in excess of 10 MPH in the following areas:

- (a) On Lost Lake;
- (b) On Smith Reservoir;
- (c) On Trail Bridge Reservoir;
- (d) On East, Middle, and West Freeway Lakes.

(3) No person shall operate a motorboat in excess of a "Slow — No Wake" speed within a distance of 50 feet of the boat dock and launching ramps at Bowman Park in the City of Albany.

(4) The following area is designated a racing motorboat testing area: On the Willamette River near Albany from the Southern Pacific Railroad Bridge to the east boundary of Bowman Park. Testing will be limited to Wednesdays between the hours of 8 a.m. and 12 noon.

(5) No person shall operate a motorboat except those propelled by electric motors on Cheadle Lake.

Stat. Auth.: ORS 830

Stats. Implemented: ORS 830.110 & 830.175

Hist.: MB 34, f. & ef. 6-2-67; MB 47, f. 7-14-70, ef. 8-11-70; MB 50, f. 4-2-73, ef. 4-15-73; Renumbered from 250-020-0180; MB 5-1980, f. & ef. 9-15-80; MB 12-1986, f. & ef. 12-8-86; OSMB 4-2010, f. & cert. ef. 1-15-10

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**Rule Caption:** Rule prohibits motorboats and float planes on Waldo Lake.

**Adm. Order No.:** OSMB 5-2010(Temp)

**Filed with Sec. of State:** 1-15-2010

**Certified to be Effective:** 1-15-10 thru 6-30-10

**Notice Publication Date:**

**Rules Amended:** 250-030-0030

**Subject:** The agency is authorized to carry out the provisions of the Federal Wild and Scenic Rivers Act and the State Scenic Waterways Act. This rule will be amended to adopt language that parallels OAR 250-020-0221 prohibiting the use of internal combustion motors in boats and floatplanes operation on Waldo Lake.

**Rules Coordinator:** June LeTarte—(503) 378-2617

## 250-030-0030

### Regulations

The State Marine Board is authorized to carry out the provisions of the Federal Wild and Scenic Rivers Act (PL 90-542) and the State Scenic Waterways Act (ORS 390.805 to 390.925) under 830.175 by regulating boat use through a permit system initiated by the Board. Authority to limit or prohibit motorboat use is also granted by this statute. The specific regulations which follow are adopted in accordance with these statutory provisions:

(1) In order to meet the goals and objectives of management and recreation plans for the subsequently named rivers, the State Marine Board will regulate commercial and noncommercial boat use, both for non-powered boats and for motorboats, by means of a permit system. On occasion the Board may find it necessary to establish interim boat use levels in order to protect the riverine environment and assure to the users a quality recreation experience. Such limits may be prescribed in those instances where, in the absence of river management or recreation plans, it finds it necessary to act to assure compliance with the objectives of appropriate federal and state laws.

(2) It is the policy of the State Marine Board to provide for equitable use of certain designated rivers by commercial and noncommercial boaters. A system of permits for all boaters, whether they plan to run a river as private individuals or as patrons of a commercial entrepreneur, may be initiated on controlled rivers when use approaches or exceeds approved levels or capacity.

(3) No person, other than a member of the Department of State Police, county sheriff, and governmental agencies of this state and the federal government having jurisdiction over the following described waters, shall use a motor for propelling a boat for any purpose on the following described waters, with the exceptions stated:

(a) Deschutes River:

(A) That portion bordering the Warm Springs Reservation, no motors year round. (ORS 830.180)

(B) Between the northern boundary of the Warm Springs Reservation and the mouth of Buckhollow Creek (downstream from Sherars Falls), no

person shall operate a motorboat with the exception of ingress/egress by landowners under permit issued by the Board.

(C) Between the mouth of Buckhollow Creek and Macks Canyon Campground, no motors from June 15 to September 30, with the exception of ingress/egress by landowners under permit by the Board.

(D) Between Macks Canyon Campground and the Heritage Landing boat ramp, motors will be prohibited during alternating Thursday, Friday, Saturday and Sunday periods commencing with the first Thursday to Sunday period that falls on or after June 15, continuing until September 30. No daily restrictions on motorized use from October 1 to June 14.

(E) Between Heritage Landing boat ramp and the confluence with the Columbia River, no prohibitions on motors, except for OAR 250-030-0041 rule for slow no wake, maximum 5 MPH.

(b) Illinois River — From Deer Creek downstream to Nancy Creek, which is located in the area immediately upstream of Oak Flat.

(c) John Day River — From State Highway 218 bridge at Clarno downstream to Tumwater Falls between May 1 and October 1.

(d) Minam Lake — From Minam Lake downstream to the Wallowa River.

(e) Owyhee River System:

(A) West Little Owyhee;

(B) North Fork Owyhee; and

(C) The mainstem Owyhee River above approximately river mile 70 at Pinnacle Rock, as marked.

(f) Rogue River — from Grave Creek downstream to the lowermost portion of Blossom Bar Rapids approximately 250 feet upstream of the top of Devil's Staircase Rapids as marked, between May 15 and November 15.

(g) Sandy River — From Dodge Park downstream to Dabney State Park.

(4) Use of internal combustion motors in boats and floatplanes operating on the surface of Waldo Lake is prohibited year round. "Watercraft" includes boats and floatplanes operating on the surface of Waldo Lake. Official use of internal combustion motors in watercraft operated on the surface of Waldo Lake by local, state or federal governmental officials or agents is allowed for the following activities: search and rescue, law enforcement and fire suppression. Previous approval by the Willamette National Forest Supervisor is required for other activities undertaken by local, state or federal government officials or agents that involve use of internal combustion motors in watercraft operated on the surface of Waldo Lake. Emergency landings of private or governmental floatplanes on Waldo Lake are allowed without previous approval.

Stat. Auth.: ORS 830.110 & 830.175

Stats. Implemented: ORS 830.110 & 830.175

Hist.: MB 53, f. 9-25-73, ef. 1-1-74; MB 64, f. 2-18-75, ef. 3-11-75; MB 66, ef. 4-22-75(Temp), 5-11-75(Perm); MB 76, f. & ef. 5-27-76; MB 79, f. 1-20-77, ef. 5-27-77; MB 89, f. 12-27-77, ef. 1-1-78; MB 12-1984, f. 8-13-84, ef. 8-14-84; MB 12-1985, f. & ef. 7-31-85; MB 21-1985, f. & ef. 12-4-85; MB 3-1993, f. 2-4-93, cert. ef. 5-15-93; MB 4-1994, f. & cert. ef. 3-23-94; MB 15-1996, f. & cert. ef. 12-4-96; MB 6-1997, f. & cert. ef. 5-30-97; OSMB 5-1998, f. & cert. ef. 4-3-98; OSMB 5-2010(Temp), f. & cert. ef. 1-15-10 thru 6-30-10

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**Rule Caption:** Establish procedures for an aquatic invasive species prevention fund permit.

**Adm. Order No.:** OSMB 6-2010(Temp)

**Filed with Sec. of State:** 1-15-2010

**Certified to be Effective:** 1-15-10 thru 6-30-10

**Notice Publication Date:**

**Rules Amended:** 250-010-0650

**Rules Suspended:** 250-010-0650(T)

**Subject:** The 2009 Oregon Legislature passed HB 2220 directing the Marine Board to create an aquatic invasive prevention fund by charging a small fee on all registered powerboats and manually power boats 10 feet or longer. This rule was effective January 1, 2010. This temporary rulemaking will clarify aspects of the rule including transferability of permits, state reciprocity and the violation provision.

**Rules Coordinator:** June LeTarte—(503) 378-2617

## 250-010-0650

### Aquatic Invasive Species Prevention Permit

(1) Definitions:

(a) "Manually powered boat" means any watercraft as defined in ORS 830.005(2), but not a motorboat as defined in 830.005(6).

(b) "Aquatic Invasive Species Prevention Permit" means a document issued by the Oregon State Marine Board (Board) or through designated agents that certifies payment to the Aquatic Invasive Species Prevention Fund.

(c) "Board" means the Oregon State Marine Board.

(d) "Valid temporary permit" means a temporary aquatic invasive species prevention permit generated from a person purchasing a permit from a designated Internet agent.

(2) Permit Rules:

# ADMINISTRATIVE RULES

(a) A person may not operate a manually powered boat that is 10 feet or more in length, or a motorboat of any length, or a sailboat 12 feet or more in length, on the waters of this state without first obtaining an aquatic invasive species prevention permit from the Board or designated agent.

(b) The owner of a boat for which fees for a certificate of number or registration under ORS 830.790(1)(a)(b)(c) are required will pay an aquatic invasive species prevention permit surcharge of \$5 per biennium at the time of boat registration.

(A) The registration validation stickers are in lieu of an Aquatic Invasive Species Prevention Permit as described in (1)(b).

(B) The validation stickers are non-transferable.

(c) Persons age 14 and older operating manually powered boats that are 10 feet or more in length shall have a valid aquatic invasive species prevention permit or valid temporary permit on board when the boat is in use on the waters of this state.

(d) Out-of-state motorboats and out-of-state sailboats 12 feet in length or more shall carry a non-resident aquatic invasive species prevention permit on board when in use on waters of the state.

(e) Non-motorized and out-of-state resident permits are transferrable. The name on the permit does not need to match the name of the person operating the boat. Persons may purchase multiple permits for use by family and friends.

(f) Operators of manually powered boat liveryes, and guides using manually powered watercraft for group-guided activities, may qualify to purchase aquatic invasive species prevention permits at a discounted rate described in HB 2220 (2009 Legislature). To qualify for the discounted rate:

(A) These operators shall register with the Board by documenting current business status as a livery.

(B) All boats rented by the livery must be clearly labeled with the livery name.

(g) Clubs or organizations that possess or own boats for communal use by members, participants, racing teams, or for public educational purposes except as exempted under HB 2220, may purchase aquatic invasive species prevention permits under the name of the organization or the club's presiding officer or secretary.

(A) The aquatic invasive species prevention permit may be attached to the boat in a manner allowing it to be easily produced for inspection by a peace officer.

(B) For boats classified as university or college racing shells which compete in intercollegiate crew races, aquatic invasive species prevention permits numbering not less than the maximum number of boats in use on the water at any given time during a planned event may be held by the event organizer, coach or other designated person at the event site as long as the permits are readily available for inspection by a peace officer.

(h) The Board or designated agent may issue a temporary aquatic invasive species prevention permit to an individual who pays for the permit using a Board designated Internet agent.

(A) The temporary aquatic invasive species prevention permit will be valid for 14 days from the date of issue listed on the temporary permit.

(B) Each temporary permit shall contain a unique number that corresponds to the electronic record for the individual named on the permit and to the annual permit.

(i) A person is considered in violation of the provisions contained in HB 2220 and subject to the penalties prescribed by law when they:

(A) Alter an aquatic invasive species prevention permit; or

(B) Produce or possess an unauthorized replica of an aquatic invasive species prevention permit; or

(C) Exhibit an altered aquatic invasive species prevention permit to a peace officer.

(j) The aquatic invasive species prevention permit expires on December 31 of the year indicated on the permit.

(k) The following vessels or classifications are exempt from the requirement to carry an aquatic invasive species prevention permit:

(A) State-owned boats

(B) County-owned boats

(C) Municipality-owned boats

(D) Eleemosynary-owned boats

(E) A ship's lifeboat used solely for lifesaving purposes

(F) Seaplanes

(G) The Lightship Columbia

(l) Violation of the provisions contained in HB 2220 is punishable as a Class D Violation.

(3) Out-of-state motorboats and out-of-state sailboats 12 feet in length or more shall purchase and carry a non-resident aquatic invasive species prevention permit on board when in use on waters of the state.

(a) Motor boats and sailboats 12 feet in length or more, registered in Washington or Idaho, that launch directly into waters that form a common interstate boundary, or launch in Oregon tributaries within one mile of these waters, that have a current boat registration, Coast Guard documentation, or an aquatic invasive species prevention permit issued by the States of Idaho or Washington, are exempt from the non-resident Oregon aquatic invasive species prevention permit.

(b) Manually powered boats from Idaho that are 10 feet or longer and affixed with an Idaho Aquatic Invasive Species Prevention sticker, and all manually powered boats from Washington, are exempt from Oregon aquatic invasive species permit carriage requirements when launching into waters that form a common interstate boundary, or when launching into Oregon tributaries within one mile of these waters.

Stat. Auth.: ORS 830 & HB 2220

Stats. Implemented: ORS 830.110

Hist.: OSMB 4-2009, f. 10-30-09, cert. ef. 1-1-10; OSMB 1-2010(Temp), f. & cert. ef. 1-5-10 thru 6-30-10; OSMB 6-2010(Temp), f. & cert. ef. 1-15-10 thru 6-30-10

## Oregon State Treasury Chapter 170

**Rule Caption:** Amend Oregon School Bond Guaranty rules to accommodate Qualified School Construction Bonds.

**Adm. Order No.:** OST 1-2010

**Filed with Sec. of State:** 1-15-2010

**Certified to be Effective:** 1-15-10

**Notice Publication Date:** 12-1-2009

**Rules Amended:** 170-061-0015, 170-063-0000

**Rules Repealed:** 170-061-0015(T), 170-063-0000(T)

**Subject:** The amendments are due to a new Federal program called Qualified School Construction Bonds (QSCBs). QSCBs are a type of tax credit bond authorized by the Federal government through the American Recovery and Reinvestment Act (ARRA) of 2009. Bonds sold using the QSCB program provide federal tax credits for bond holders in lieu of interest, which in turn can significantly reduce a district's cost of borrowing for school construction projects.

The State of Oregon offers a program that may reduce the cost of borrowing for qualified districts through the Oregon School Bond Guaranty (OSBG) program. This program guarantees repayment of both principal and interest on school district bonds, which have qualified for the program, allowing their bonds to be sold using the State's current credit rating of AA/Aa2. This credit rating may translate into lower borrowing costs for a large portion of school districts in the state.

The OSBG fee of the sum of 3 basis points (.0003 or .03%) times the debt service to maturity of the bonds will be maintained for processing and approving OSBG requests, other than QSCB tax credit bonds ("qualified bonds"). The OSBG fee for "qualified bonds" will be raised to 4.5 basis points (.00045 or .045%) times the original debt service to maturity of the qualified bonds. This additional fee compensates the State for the additional administrative effort and increased amount that the State would pay under the guarantee if the tax credit were eliminated for qualified bonds, and the interest rate converts to a taxable interest rate. The higher fee is offset by the potential interest rate savings of qualified bonds.

**Rules Coordinator:** Sally Wood—(503) 378-4990

### 170-061-0015

#### Fees Charged by the Debt Management Divisions

(1) State agencies. The OST shall charge the following fees in connection with the services, duties and activities of the OST related to bonds issued for state agencies by the State Treasurer:

(a) Agency Bond Issues of \$15 million or less. For a single series bond sale of \$15 million or less, a state agency will be charged \$15,000 per sale. For a bond sale of \$15 million or less by a single state agency with multiple series, the state agency will be charged the greater of i) \$15,000 or ii) \$6,000 per series. For a bond sale of \$15 million or less by two or more state agencies, each agency will be charged the greater of i) \$7,500 or ii) \$6,000 for each series sold for the agency. This subsection does not apply if the bond sale is a private placement conduit sale of \$5 million or less as described below in subsection (c).

(b) Agency Bond Issues of more than \$15 million. For a single series bond sale of more than \$15 million, a state agency will be charged \$20,000. For a bond sale of more than \$15 million by a single state agency with multiple series, the state agency will be charged the greater of i) \$20,000 or ii) \$7,000 per series. For a bond sale of more than \$15 million by two or more state agencies, each agency will be charged the greater of i) \$10,000 or ii) \$7,000 for each series sold for the state agency. This subsection does not apply if the bond sale is a private placement conduit sale described below in subsection (c).

(c) Conduit Bond Sales. A state agency will be charged \$5,000 for conduit bond sales of \$5 million or less that are payable solely from moneys owed by a party other than the State of Oregon, with no recourse for payment

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to the State of Oregon, and when the bonds are sold by a private placement, with no publicly disseminated official statement or other offering circular, to one or more sophisticated investors, accredited investors or qualified institutional buyers.

(d) Advance refunding plan application and review. The fee for review and approval of an advance refunding plan is \$3,000 per sale of refunding bonds for sales of \$2 million or less, and \$5,000 per sale of refunding bonds for sales exceeding \$2 million. If the plan is not approved or the refunding not completed the review and approval fee will not be charged. When necessary to review complex proposals, OST may consult recognized experts whose fees will be charged to the agency, whether or not the refunding is approved or completed.

(e) Tax Anticipation Notes. A state agency shall be charged \$30,000 for each sale of tax anticipation notes.

(f) Interest Rate Exchange Agreements. In addition to any other fee, \$25,000 will be charged for the review and approval of a state agency's first executed interest rate exchange agreement for a specific bond program of the agency. After the first agreement, a fee of \$10,000 will be charged for each executed interest rate exchange agreement subsequently entered into by the agency for the same bond program or indenture. These charges do not include costs such as interest rate exchange advisor fees, rating agency charges or printing costs which are payable by the agency or authority for whom the cost is incurred.

(2) Public Bodies. OST shall charge the fees set forth below in connection with the services, duties and activities of the OST related to bonds issued by public bodies in Oregon; expenses incurred in reviewing refunding and defeasance plans may be charged against the bond proceeds or may be paid by the public body from such other funds as may be available:

(a) Advance refunding plan application and review. The application fee for submission of an advance-refunding plan is \$350. The fee for review and approval of an advance refunding plan is \$3,000 per sale of refunding bonds for sales of \$2 million or less, and \$5,000 per sale of refunding bonds for sales exceeding \$2 million. If the plan is not approved or the refunding not completed the review and approval fee will not be charged.

(b) Oregon School Bond Guaranty Program. School Districts that submit an application for participation in the Oregon School Bond Guaranty Program shall submit an application fee of \$200 to OST at the time their application is submitted. School Districts whose bonds are guaranteed by the state shall submit to OST, within 10 business days of closing of any guaranteed bonds, a fee equal to .03% (.0003) of the total principal and interest due, assuming the bonds are paid on their regularly scheduled maturity or redemption dates. If bonds are issued as "Qualified Bonds" under OAR 170-063-000 that may be converted to an interest bearing format over and above interest payments that may be due and payable under the original terms of bonds, the fee for such Qualified Bonds shall be equal to .045% (.00045) of the total principal and interest due, assuming the bonds are paid on their regularly scheduled maturity or redemption dates and that there is no conversion to a different interest bearing format than the original terms of the bonds.

(3) Municipal Debt Advisory Commission. OST shall charge the following fees in connection with the services, duties and activities of the OST as staff to the Municipal Debt Advisory Commission.

(a) Overlapping debt report. Report length, complexity and the time required to produce an overlapping debt report is determined by the number of districts which overlap the district for which the report is generated and the number of such districts which have issued debt. A base fee of \$200 shall be charged for all overlapping debt reports. An additional \$5 shall be charged for each overlapping indebted district up to ten districts; then an additional \$2.50 for each overlapping indebted district up to thirty districts; then an additional \$1 for each overlapping indebted district over thirty districts.

(b) Other fees and charges. Fees for specialized reports and services shall be determined by the number of hours spent producing such specialized report or service times the rate of \$115 per hour.

(4) Private Activity Bonds.

(a) Current Year Allocation. State agencies or public bodies that submit an application for allocation of the state's private activity bond volume limit ("CAP") for the current year to the Private Activity Bond Committee under OAR 170-071-0005 shall submit an application fee of \$200 to OST when their application is submitted. State agencies or public bodies who receive CAP and sell bonds under that allocation shall submit to OST, within 10 business days of closing of any such private activity allocation bonds: i) for a bond sale of \$10 million or less, a fee equal to \$3,000 or ii) for a bond sale of more than \$10 million, a fee equal to \$10,000.

(b) Carry Forward Allocation. State agencies or public bodies that submit an application for carry forward CAP allocation under OAR 170-071-0005(10) shall submit an application fee of \$200 to OST when their application is submitted. State agencies or public bodies who receive carry forward CAP shall pay to OST: i) for a bond sale of \$10 million or less, a fee equal to \$3,000 of which the first \$500 is payable within 10 days of the date of the notice of allocation by OST, and the balance is payable within 30 days of the closing of the first bond sale associated with the allocation or ii) for a bond sale of more than \$10 million, a fee equal to \$10,000 of which the first \$2,000 is payable within 10 days of the date of the notice of allocation by OST, and

the balance payable within 30 days of the closing of the first bond sale associated with the allocation.

Stat. Auth.: ORS 286A.014, 287A.370 & 287A.634  
Stats. Implemented: ORS 287A & 286A

Hist.: TD 3-1990, f. & cert. ef. 12-21-90; TD 2-1994, f. & cert. ef. 9-9-94; OST 1-1999, f. & cert. ef. 2-1-99; OST 1-2005, f. & cert. ef. 4-22-05; OST 5-2006, f. & cert. ef. 10-25-06; OST 7-2008, f. & cert. ef. 12-29-08; OST 2-2009, f. & cert. ef. 4-22-09; OST 3-2009, f. & cert. ef. 7-21-09; OST 5-2009(Temp), f. & cert. ef. 10-30-09 thru 4-27-10; OST 1-2010, f. & cert. ef. 1-15-10

## 170-063-0000

### Oregon School Bond Guaranty Program

(1) Definitions. For purposes of this rule, the following definitions shall apply:

(a) "OST" means the Office of the State Treasurer.

(b) The "Act" means the Oregon School Bond Guaranty Act set forth in ORS 328.321 to 328.356.

(c) "Authorized District Official" means the chairperson of the board, the superintendent, president, or business administrator for the School District, or other designee of the board.

(d) "Certificate of Qualification" means a letter from OST pursuant to Section 4 of the Act.

(e) "Determination of Ineligibility" means a letter from OST pursuant to Section 5 of the Act.

(f) "Guaranty Program" means the school bond guaranty program established by the Act.

(g) "Nationally Recognized Bond Counsel Firm" means a bond counsel firm listed in the most recent publication of The Bond Buyer's Municipal Market Place.

(h) "Qualified Bonds" means bonds that are originally issued as tax credit bonds under the Internal Revenue Code and any bonds resulting from a conversion of such tax credit bonds to an interest bearing format over and above interest payments that may be due and payable under the original terms of such tax credit bonds.

(i) "Qualified Paying Agent" means a paying agent acceptable to OST who agrees to comply with the applicable requirements of the Act and provides a letter to OST acknowledging as such.

(j) "School District" means a common or union high school district, an education service district, or a community college district.

(k) Terms not otherwise specifically defined herein shall have the meanings given in the Act.

(2) Request for Certificate of Qualification to Participate in Guaranty Program. School Districts may request a Certificate of Qualification at any time during the year by filing a Request for Certificate of Qualification. Such requests, however, must be submitted no less than three weeks prior to sale of the bonds for which the guaranty, if granted, will apply. Requests, and all other written communications pursuant to the Guaranty Program, shall be submitted to OST as provided in OAR 170-055-0001(4), and shall include:

(a) The name, county, and district number (if applicable) of the requesting School District;

(b) The name of the business administrator or other contact person for the requesting School District;

(c) The mailing address, phone number, fax number, and e-mail address (if applicable) of the requesting School District;

(d) A statement of whether any of the School District's previously issued debt is covered by the Guaranty Program;

(e) A copy of the requesting School District's most recent audited financial statements, audit opinion, and management letter; and a statement by an Authorized District Official that they have not been contacted and are not participating in any investigation by an oversight agency or, alternatively, documentation of any conclusions reached by such agency regarding their activities.

(f) A listing of outstanding debt and associated debt service schedules, for debt issued by the School District since the date of its most recent financial audit;

(g) A certificate, signed by an Authorized District Official:

(A) Stating whether the requesting School District has ever failed to pay debt service on any of its bonds, certificates of participation, or other financial obligations when due, and explaining the circumstances and resolution of any such defaults or failures;

(B) Describing current lawsuits against the School District challenging the ability or authority of the School District to issue bonds or that may materially affect the ability of the School District to make scheduled debt service payments on its bonds when due;

(C) Stating that the requesting School District has filed its current budget document(s) with the Oregon Department of Education, and in accordance with Oregon Local Budget Law;

(D) Outlining the amount of debt the School District is authorized by law to incur, and stating that the requesting School District is within this limit;

(E) Outlining the possible repayment structure of all bonds the School District may issue during the period of the requested Certificate of Qualification, including any Qualified Bonds. Such repayment structure shall cover the estimated debt service schedule and, for Qualified Bonds, include



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any scheduled deposits to a sinking fund and the interest rate to which such bonds may be converted, if they may be converted to an interest bearing format over and above interest payments that may be due and payable under the original terms of such bonds;

(F) Attesting to the accuracy and completeness of the materials provided; and

(G) Stating that the School District has engaged a Qualified Paying Agent, who, under the terms of the agreement between the two parties (the "Paying Agent Agreement"), has agreed to provide the School District with a written notification by January 15 of each year of the required debt service amounts (including any scheduled deposits to a sinking fund for Qualified Bonds) which are due in the then-current fiscal year and the following two fiscal years, such that the School District may have the proper information to levy adequate amounts for such payments coming due in the following fiscal years.

For example, a notification provided by January 15, 2010 shall include information on debt service due in the current FY 2010 year (July 1, 2009 through June 30, 2010), the FY 2011 year (July 1, 2010 through June 30, 2011), and FY 2012 year (July 1, 2011 through June 30, 2012).

(h) A non-refundable application processing fee as set forth in OAR 170-061-0015; and

(i) Any additional materials that may be required by OST in support of the request for participation in the Guaranty Program.

(3) Review of Request for Certificate of Qualification. Upon receipt of a request for a Certificate of Qualification, OST shall determine whether all items listed in section (2) of this rule have been provided, whether such items are current, and whether such items call into question the fiscal stability of the requesting School District. In determining the School District's eligibility under the Guaranty Program, OST may request additional information from the School District, as well as from any other person or entity that collects information pertaining to the financial well-being of the requesting School District.

(4) Issuance of Certificate of Qualification. Upon determining that a School District is eligible to participate in the Guaranty Program, OST shall issue a Certificate of Qualification to the School District. A Certificate of Qualification will not apply to Qualified Bonds unless the School District indicated in its request for a Certificate of Qualification that it planned to issue Qualified Bonds under the Certificate of Qualification. The Certificate of Qualification:

(a) Shall evidence the School District's immediate qualification for the Guaranty Program contingent upon compliance with section (5) and all other sections of this rule for each bond issue contemplated for guaranty under the Act;

(b) Be valid for one year from the date of its issuance;

(c) May be applied to any or all general obligation bonds or general obligation refunding bonds issued by the School District during such one-year period that comply with this rule and the Act, except Qualified Bonds for which specific approval must be noted as set forth in OAR 170-061-0015(4)(d). A bond shall be considered issued as of its dated date.

(d) Will specifically state whether it applies to Qualified Bonds issued by the School District during the period of its validity.

(5) A School District that has received a Certificate of Qualification, but did not request Qualified Bonds to be included under the Certificate of Qualification, may submit an amended request at least one month prior to the scheduled issuance date for any Qualified Bonds requesting an amended Certificate of Qualification that specifically covers the Qualified Bonds, which request shall include the information required for such bonds in OAR 170-063-0000(2). OST shall act upon such request within five business days.

(6) School Districts to Provide Information Specific to Each Bond Issued Under the Program. A School District which has received a Certificate of Qualification may, while the Certificate of Qualification is in effect, obtain the state's guaranty of a series of its bonds under the Guaranty Program, by:

(a) Fully complying with Oregon Administrative Rule 170-61-0000 (Notice and Reporting Requirements by Public Bodies When Issuing Bonds), including providing notification on MDAC Form 1 to OST at least 10 days prior to the marketing of any bonds referencing participation in the Guaranty Program, for the bonds which will be guaranteed (this may be submitted simultaneously with information described in section (2) of this rule);

(b) Submitting the following documents to OST at least five business days prior to the closing of the bonds to which the guaranty will apply:

(A) A copy of a resolution adopted by the board or governing body of the School District, authorizing the School District to issue the bonds and participate in the Guaranty Program;

(B) An opinion from a Nationally Recognized Bond Counsel Firm that the bonds, when issued, will be general obligation bonds as defined in the Act, and will be valid and binding obligations of the issuer;

(C) A certificate stating that no litigation is pending or threatened against the School District, questioning the authority of the School District to issue the bonds or levy taxes to pay the bonds;

(D) A specific statement as to whether any of the bonds will be Qualified Bonds; and

(E) Any additional materials that may be required by OST in support of the request for participation in the Guaranty Program, including but not limited to, any information or agreement requested by OST with respect to cre-

ation of sufficient debt service funds or other repayment mechanisms to pay any Qualified Bonds when payment is due.

(7) Letter of Confirmation. Not later than the day on which the bonds are scheduled to close, OST shall, if the Certificate of Qualification is in effect and the School District has complied with Section 5(a) and 5(b) of this rule, issue a letter of confirmation identifying the series of bonds to which the guaranty shall apply, and stating that the guaranty shall apply to that series of bonds if the series of bonds closes within fifteen business days after the date of the letter, and there is filed with bond counsel a certificate, signed by an Authorized District Official and dated the date of the closing, stating that no litigation is pending or threatened against the School District which questions the authority of the District to issue the bonds or levy taxes to pay the bonds. If the series of bonds described in the letter of confirmation is closed within that fifteen day period, and the non-litigation certificate is filed with bond counsel as required by this Section, the series of bonds shall be guaranteed under the Guaranty Program, and the guarantee shall not be affected by any denial or revocation pursuant to Section 9 of this rule.

(8) Guaranty Fees. School Districts whose bonds are guaranteed by the state shall submit to OST, within 10 business days of closing of any guaranteed bonds, a fee as set forth in OAR 170-061-0015.

(9) Ratings. OST will undertake to have the Oregon School Bond Guaranty Program rated by one or more of the major debt rating agencies. School Districts may contact the Debt Management Division of OST to determine which agencies have rated the program. School Districts proposing to issue bonds under the Guaranty Program may:

(a) Engage, at their own expense, one or more of the rating agencies to apply the rating of the Guaranty Program to their bonds; and

(b) At their discretion, and at their own expense, choose to obtain an underlying rating on the bonds.

(10) Denial or Revocation of Qualification/Determination of Ineligibility. OST may deny a School District's request for a Certificate of Qualification, or revoke a previously issued Certificate of Qualification, and issue a Determination of Ineligibility in accordance with the Act, if:

(a) The School District fails to meet the provisions outlined in the Act or any of the requirements outlined in this rule;

(b) The State has ever paid, pursuant to the Guaranty Program, any principal of or interest on any of the School District's bonds; or

(c) OST has reason to question the financial integrity of the School District, including but not limited to, whether sufficient funds exist to repay any outstanding Qualified Bonds when payment is due.

(11) Guaranty Final Upon Issuance. Pursuant to ORS 328.336, issuance of a Determination of Ineligibility shall not affect the validity of the state's guaranty of any outstanding bonds issued under a letter of confirmation pursuant to Section (6) of this rule.

(12) Reference to Guaranty. School Districts with a valid Certificate of Qualification, and that have complied with section (5) and all other sections of this rule, shall evidence the State's guaranty of the School District's bonds by:

(a) Referencing the guaranty on the cover of the preliminary official statement(s) and official statement(s), or other offering document(s), for the applicable bond(s);

(b) Referencing the guaranty on the face of the School District's applicable bond(s); and

(c) Including language describing the guaranty (to be provided by OST) in the School District's preliminary official statement(s) and official statement(s), or any other offering document(s), for the applicable bond(s). Language supplied by OST must be used in its entirety and may not be modified or amended.

(13) School Districts to Report Changes Affecting Qualification. School Districts who have had bonds guaranteed under the Guaranty Program shall promptly notify OST if at any time there are material changes or occurrences that might affect the School District's eligibility to qualify or maintain its qualification to participate in the Guaranty Program, including but not limited to:

(a) Failure to adopt a resolution or ordinance that formally adopts the budget, sets appropriations, and if needed, levies property taxes in accordance with Oregon local budget law;

(b) Failure to pay debt service on any outstanding bond, certificate of participation, or similar financial obligation; or

(c) Failure to establish or levy for debt service scheduled (including any sinking fund deposits) for Qualified Bonds or a material change in any other repayment mechanism for Qualified Bonds.

(14) Notice to OST of debt service payments. School Districts who are unable to transfer scheduled debt service payments to the paying agent 15 days prior to the payment date and Qualified Paying Agents who have not received sufficient funds 10 days prior to the payment date, shall provide notice to OST as provided in OAR 170-055-0001(4) and by telephone to (503) 378-4930.

(15) Notice to OST of sinking fund deposits. School Districts shall provide written verification that they have made any required sinking fund deposits for Qualified Bonds by May 1 of each year to their Qualified Paying Agents and such Qualified Paying Agent shall promptly notify OST if they do not receive such annual verification.

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(16) Repayment. Respective School Districts are responsible for paying all of their obligations guaranteed by the State under the Guaranty Program and for the advance funding of any debt service fund established for such obligations. Any funds paid by the State on behalf of a School District under the Guaranty Program shall be recovered by OST in a manner consistent with the Act.

(17) Reporting on Debt Service Fund. Any School District with outstanding Qualified Bonds guaranteed under the Guaranty Program shall report to the OST at least annually the amount of moneys paid into the School District's debt service fund to pay the Qualified Bonds together with a calculation demonstrating that such advance payments are scheduled to be fully funded and sufficient to repay the Qualified Bonds in full when payment is due. To the extent moneys are not scheduled to be paid into the debt service fund on an annual basis, the School District in its notification shall demonstrate that current balances in the debt service fund, along with any future deposits, will be sufficient to repay the Qualified Bonds in full when due. School Districts with outstanding Qualified Bonds that are subject to conversion to taxable interest bearing bonds and any Qualified Paying Agents for such Qualified Bonds shall promptly notify OST of such conversion as provided in OAR-170-055-0001(4) and by telephone to (503) 378-4930.

(18) Interest. OST will charge interest in connection with the recovery of funds under the Act. Any interest charged will be in a manner consistent with the Act.

(19) Penalty. In addition to charging interest, OST may impose a penalty on a School District for which the State made a payment under the Guaranty Program. Any penalty imposed will be consistent with the Act.

(20) Exceptions. OST may waive any or all provisions of this rule to the extent provided by law.

This rule shall be effective on the date that is adopted by OST and filed with the Secretary of State and its requirements shall apply to any Certificates of Qualification that are in effect on such date.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 286A.005(6)

Stats. Implemented: ORS 286A.014(4)

Hist.: OST 3-1998(Temp), f. 12-14-98, cert. ef. 1-2-99 thru 6-30-99; OST 2-1999, f. 6-22-99, cert. ef. 7-1-99; OST 1-2000(Temp), f. 10-31-00, cert. ef. 10-31-00 thru 4-27-01. Administrative correction 6-7-01; OST 7-2008, f. & cert. ef. 12-29-08; OST 5-2009(Temp), f. & cert. ef. 10-30-09 thru 4-27-10; OST 1-2010, f. & cert. ef. 1-15-10

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## Oregon University System, Southern Oregon University Chapter 573

**Rule Caption:** Repeal Southern Oregon University's Procedures for Allocation of Incidental Fees.

**Adm. Order No.:** SOU 1-2010

**Filed with Sec. of State:** 1-11-2010

**Certified to be Effective:** 1-11-10

**Notice Publication Date:** 11-1-2009

**Rules Repealed:** 573-041-0005, 573-041-0010, 573-041-0020, 573-041-0025, 573-041-0027, 573-041-0030, 573-041-0035, 573-041-0036, 573-041-0037, 573-041-0040, 573-041-0045, 573-041-0050, 573-041-0055, 573-041-0060, 573-041-0065, 573-041-0085, 573-041-0090, 573-041-0095, 573-041-0096, 573-041-0100

**Subject:** Repeals guidelines for allocation of incidental fees from OARs. Guidelines will be housed within SOU's student government and will remain compliant with OAR 850-010-0090.

**Rules Coordinator:** Treasa Sprague—(541) 552-6319

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## Parks and Recreation Department Chapter 736

**Rule Caption:** Administrative rules governing "Rates" being amended to increase overnight and day use fees and makes miscellaneous changes.

**Adm. Order No.:** PRD 1-2010

**Filed with Sec. of State:** 1-5-2010

**Certified to be Effective:** 1-5-10

**Notice Publication Date:** 9-1-2009

**Rules Amended:** 736-015-0020, 736-015-0030, 736-015-0035, 736-015-0040

**Subject:** Amending OAR 736, division 15 to increase overnight and day-use fees, to clarify cancellation policies and rates; to make annual day-use permits transferrable; and to provide a fee waiver for adoptive foster families who have adopted foster children, those children being under 18 years of age at the time of camping. This certificate and order is being filed to correct clerical errors and omissions from

the rules as filed September 29, 2009, these correction being within the scope of the Notice published in the September 2009 Oregon Bulletin, reviewed at public hearings held in September of 2009, and approved by the State Parks and Recreation Commission on September 29, 2009.

**Rules Coordinator:** Joyce Merritt—(503) 986-0756

### 736-015-0020

#### Overnight Rentals

The director may designate a Type I campsite rental schedule at select high use campgrounds. All remaining campgrounds will be set at the Type II campsite rental schedule. The director is authorized by the commission to include transient lodging taxes in the nightly rental rate and to increase the rental rate to the nearest whole dollar. The department shall retain the additional revenue. Campsite Rental rates (per night per site before tax):

(1) Full Hookup Campsite: Provides campsite with individual water supply, electrical and sewage hookups, table, stove, and access to a restroom.

(a) Type I: \$24.

(b) Type II: \$20.

(2) Electrical Hookup Campsite: Provides campsite with individual water supply and electrical hookups, table, stove, and access to a restroom.

(a) Type I: \$24.

(b) Type II: \$20.

(3) Tent Campsite: Provides campsite with water supply nearby but does not have electricity or sewage hookup. Provides table, stove, and access to a restroom.

(a) Type I: \$19.

(b) Type II: \$17.

(4) Primitive Campsite: Provides campsite with table and stove; water and sanitary facilities may be some distance away. All primitive campsites: \$9.

(5) Yurt: Rustic units provide a temporary tent structure, covered deck, heat, lights and beds along with outdoor picnic facilities. Deluxe units add kitchen facilities, bathrooms and showers.

(a) Rustic: \$36.

(b) Deluxe: \$75.

(6) Cabin: Rustic units provide a hard-walled wooden structure, covered deck, heat, lights and beds along with outdoor picnic facilities. Totem units are primitive log units. Deluxe 1 units add kitchen facilities, bathrooms and showers. Deluxe 2 units add additional rooms.

(a) Totem: \$24.

(b) Rustic: \$39.

(c) Deluxe 1: \$75.

(d) Deluxe 2: \$85.

(7) Teepee: Teepee replica units vary in diameter from 18' to 26' and provide heat, lights and beds along with outdoor picnic facilities. All teepees: \$36.

(8) Wagon: Covered wagon replica units vary in size and provide heat, lights and beds along with outdoor picnic facilities. All wagons: \$36.

(9) Hiker/Boater/Bicyclist Campsite: Provides cleared area for campers without motor vehicles; water and sanitary facilities may be some distance away. All hiker/boater/bicyclist campsites: \$5 per camper per night.

(10) Extra Vehicle in Campground: An additional rental rate of \$5 per vehicle is charged when an extra vehicle is driven into the campground and remains overnight.

(11) Extra Motorcycle in Campground: If the initial campsite rental is to a person riding a motorcycle, and the first extra vehicle is a motorcycle, the second motorcycle will not be charged. Each additional motorcycle will be charged \$5 as an extra vehicle.

(12) Express Check-In (where available): The department allows a person with a reservation for individual tent, electrical or full hook-up campsites to expedite the check-in process upon arrival at the park area.

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 390.111, 390.121, 390.124, 183.310 - 183.550

Hist.: 1 OTC 17, f. 12-20-73; 1 OTC 23(Temp), f. 2-19-74; 1 OTC 56(Temp), f. & ef. 4-4-75; 1 OTC 59, f. 8-1-75, ef. 8-25-75; 1 OTC 74, f. & ef. 4-30-76; 1 OTC 82, f. 5-11-77, ef. 5-14-77; 1 OTC 86(Temp), f. 7-21-77, ef. 7-25-77; 1 OTC 90, f. & ef. 9-26-77; 1 OTC 1-1978, f. & ef. 2-23-78; 1 OTC 4-1979, f. & ef. 2-9-79; 1 OTC 6-1979, f. & ef. 3-29-79; 1 OTC 8-1979 (Temp), f. & ef. 5-17-79; 1 OTC 14-1979(Temp), f. & ef. 6-21-79; 1 OTC 2-1980, f. & ef. 1-4-80; PR 1-1981(Temp), f. 1-8-81, ef. 1-12-81; PR 9-1981, f. & ef. 4-6-81; PR 14-1981, f. & ef. 10-23-81; PR 5-1983, f. & ef. 3-30-83; PR 3-1984, f. & ef. 3-5-84; PR 11-1986, f. & ef. 7-9-86; PR 2-1987, f. & ef. 3-27-87; PR 1-1988, f. & cert. ef. 3-25-88; PR 6-1989(Temp), f. 12-29-89, cert. ef. 1-8-90; PR 1-1990, f. & cert. ef. 5-14-90; PR 4-1991, f. 4-30-91, cert. ef. 5-13-91; PR 1-1992, f. & cert. ef. 2-14-92; PR 16-1992, f. & cert. ef. 12-1-92; PR 2-1994, f. & cert. 2-9-94; PR 6-1995, f. & cert. ef. 7-14-95; PR 3-1996, f. & cert. ef. 5-13-96; PRD 8-2004, f. & cert. ef. 6-3-04; Renumbered from 736-010-0100, PRD 4-2005, f. & cert. ef. 5-5-05; PRD 2-2009, f. & cert. ef. 2-10-09; PRD 15-2009, f. & cert. ef. 9-29-09; PRD 1-2010, f. & cert. ef. 1-5-10

### 736-015-0030

#### Day Use Parking Permit

(1) Purpose: Based on the department's goal to manage increased use of park areas, the director may require a motor vehicle day use parking permit at selected park areas.

(2) General Regulations:

# ADMINISTRATIVE RULES

(a) Parking permits are to be clearly displayed in the windshield of motor vehicles with the expiration date visible;

(b) Persons with motorcycles or other motor vehicles, such as convertibles, where the permits could be subject to theft, may keep the permit with them and must show it to an enforcement officer or park employee upon request.

(3) Day Use Parking Permit Fees:

(a) Daily Motor Vehicle — \$5;

(b) 12-month Permit — \$30;

(c) 24-month Permit — \$50;

(4) The department may enter into a written agreement with privately owned commercial vendors and non-profit cooperative associations affiliated with the department under ORS 390.143 to sell 12-month and 24-month permits:

(a) The director shall establish a minimum allowable fee of \$1 for vendors who sell the 12-month and 24-month permits;

(b) Non-profit cooperative associations affiliated with the department may by agreement retain fees in excess of the minimum vendor fee for use in funding interpretive programs in park areas;

(c) The vendor's fee will be included in the price of the permit;

(d) Only a park employee may issue replacement permits in the event an original permit is lost, stolen, or mutilated.

(5) Daily Access Exceptions: The director may grant exceptions to the day-use permit requirement under the following circumstances:

(a) Emergency vehicles;

(b) Government vehicles on official business;

(c) Business and delivery vehicles on official business;

(d) A person who is currently a registered camper at a park area and clearly displays the overnight rental receipt;

(e) Park concessionaires and their employees;

(f) A person entering the park to engage in specially permitted non-recreation activities;

(g) Park volunteers on duty in the park;

(h) A person with a permit issued by another entity with which the department has a written agreement to honor their passes;

(i) Other persons as designated by the director.

(6) Park Areas Subject to Day-Use Fees: Park areas at which a day use fee shall be charged include: Fort Stevens State Park, Cape Lookout State Park, Nehalem Bay State Park, Honeyman Memorial State Park (West side), L.L. "Stub" Stewart Memorial State Park, Heceta Head Lighthouse, Shore Acres State Park, Milo McIver State Park, Viento State Park, Benson State Recreation Area, Dabney State Recreation Area, Historic Columbia River Highway State Trail, Mayer State Park, Rooster Rock State Park, Champoeg State Heritage Area, Detroit Lake State Recreation Area, Fall Creek State Recreation Area (Winberry), Silver Falls State Park, Jasper State Recreation Site, Mongold Day-use Area, Willamette Mission State Park, Tou Velle State Recreation Site, The Cove Palisades State Park, Tumalo State Park, Smith Rock State Park, Farewell Bend State Recreation Area.

Stat. Auth.: ORS 390

Stats. Implemented: ORS 390.111 & 390.121

Hist.: 1 OTC 56(Temp), f. & ef. 4-4-75; 1 OTC 59, f. 8-1-75, ef. 8-25-75; 1 OTC 74, f. & ef. 4-30-76; 1 OTC 82, f. 5-11-77, ef. 5-14-77; 1 OTC 5-1979, f. & ef. 2-9-79; 1 OTC 22-1979 (Temp), f. & ef. 9-24-79; 1 OTC 2-1980, f. & ef. 1-4-80; PR 9-1981, f. & ef. 4-6-81; PRD 4-2005, f. & cert. ef. 5-5-05; PRD 7-2007, f. & cert. ef. 8-28-07; PRD 15-2009, f. & cert. ef. 9-29-09; PRD 1-2010, f. & cert. ef. 1-5-10

## 736-015-0035

### Fee Waivers and Refunds

(1) The director, at the direction of the commission, may waive, reduce or exempt fees established in this division under the following conditions:

(a) A person or group provides in-kind services or materials equal to or greater than the value of the applicable rate, as determined by criteria approved by the director;

(b) Marketing or promotional considerations, including but not limited to special events and commercial filming, that promote the use of park areas and Oregon tourism;

(c) Traditional tribal activities in accordance with policy adopted by the Commission;

(d) Reduced service levels at a park, campsite or other facility as determined by the Park Manager.

(2) Reservation Facility Deposit Fee Waivers for individual primitive, tent, electric, full hook-up or horse camp campsites only:

(a) The facility deposit fee is waived for all persons with reservations commencing on State Parks Day (first Saturday of June). All other fees apply.

(b) The facility deposit fee is waived for foster families and adoptive foster families as defined in OAR 736-015-0006. The fee waiver is limited to the first two campsites, and an adult care provider must be present with the foster children. All other fees apply.

(c) The facility deposit fee is waived for U. S. veterans with a service connected disability or active duty U. S. military personnel as provided in ORS 390.124. All other fees apply.

(d) The person making the reservation must pay the \$8 non-refundable transaction fee at the time the reservation is made. This fee is not included in the fee waiver.

(e) Reservations made on the Internet are not eligible for fee waivers.

(3) Overnight Rental Fee Waivers for individual primitive, tent, electric, full hook-up or horse camp campsites only:

(a) The overnight rental fee is waived for all persons on the night of State Parks Day (first Saturday of June). All other fees apply.

(b) The overnight rental fee is waived for foster families as defined in OAR 736-015-0006. The fee waiver is limited to the first two campsites, and an adult care provider must be present. All other fees and rules apply.

(c) The overnight rental fee is waived for U. S. veterans with a service connected disability or active duty U. S. military personnel on leave as provided in ORS 390.124. The waiver of individual campsite fees shall be limited to no more than five consecutive days per stay and no more than ten days total in a calendar month. All other fees and rules apply.

(d) The director may waive the overnight rental fee for volunteer hosts traveling to an assignment at a park area.

(4) Day Use Parking Fee Waivers:

(a) The day use parking fee is waived for all persons on State Parks Day (first Saturday of June).

(b) The day use parking fee is waived for U. S. veterans with a service connected disability or active duty U. S. military personnel on leave as provided in ORS 390.124.

(c) The day use parking fee is waived for an adoptive foster family, as defined in OAR 736-015-0006, with an adopted foster child under 18 years of age or a foster family, as defined in OAR 736-015-0006, if the foster care provider has a valid Certificate of Approval to Provide Foster Care in Oregon issued by the Oregon Department of Human Services. The waiver shall be valid until the expiration date of the Certificate of Approval to Provide Foster Care or the adopted foster child turns 18 years of age.

(d) All other fees apply.

(5) A person may request a refund under the following circumstances.

(a) Reservations Northwest may refund a reservation fee when the department has made a reservation error.

(b) Reservations Northwest may refund a facility deposit and may waive the cancellation/change rules when requested by the person due to the following emergency situations:

(A) Emergency vehicle repair creates a late arrival or complete reservation cancellation;

(B) A medical emergency or death of a family member creates a late arrival or complete reservation cancellation;

(C) Acts of Nature create dangerous travel conditions; or

(D) Deployment of military or emergency service personnel creates a late arrival or complete reservation cancellation.

(c) The director or his/her designee may approve a refund under other special circumstances.

(d) All requests for refunds listed above must be sent in writing to Reservations Northwest via email, fax or surface mail to be considered for a refund.

(e) The department will issue refunds for specific site or park area closures and no written request is required.

(f) The park manager may only issue a refund at the park due to the person leaving earlier than expected, and while the person is present and has signed for the refund. Once the person has left the park, refund requests must be sent to Reservations Northwest for processing.

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 390.111, 390.121 & 390.124

Hist.: 1 OTC 17, f. 12-20-73; 1 OTC 56(Temp), f. & ef. 4-4-75; 1 OTC 59, f. 8-1-75, ef. 8-25-75; 1 OTC 74, f. & ef. 4-30-76; 1 OTC 82, f. 5-11-77, ef. 5-14-77; 1 OTC 5-1979, f. & ef. 2-9-79; 1 OTC 22-1979 (Temp), f. & ef. 9-24-79; 1 OTC 2-1980, f. & ef. 1-4-80; PR 9-1981, f. & ef. 4-6-81; PR 11-1986, f. & ef. 7-9-86; PR 1-1988, f. & cert. ef. 3-25-88; PR 1-1990, f. & cert. ef. 5-14-90; PR 4-1991, f. 4-30-91, cert. ef. 5-13-91; PR 3-1996, f. & cert. ef. 5-13-96; PRD 7-2002, f. & cert. ef. 7-1-02; PRD 6-2003, f. 10-3-03 cert. ef. 11-1-03; PRD 8-2004, f. & cert. ef. 6-3-04; Renumbered from 736-010-0120, PRD 4-2005, f. & cert. ef. 5-5-05; PRD 5-2005(Temp), f. 10-14-05, cert. ef. 11-11-05 thru 4-30-06; PRD 1-2006, f. & cert. ef. 2-14-06; PRD 8-2009, f. & cert. ef. 6-2-09; PRD 15-2009, f. & cert. ef. 9-29-09; PRD 1-2010, f. & cert. ef. 1-5-10

## 736-015-0040

### Miscellaneous Rentals and Products

(1) Firewood: Where conditions permit, firewood will be sold.

(2) Boat Moorage Facilities — \$10 per day per boat: Where boat moorage facilities are provided they may only be reserved with other campsite reservations.

(3) Showers — \$2 per person: Charged where showers are available to non-campers in a campground.

(4) Horse Camping Area:

(a) Type I non-hookup site: \$19 per night per camper unit;

(b) Type II non-hookup site: \$17 per night per camper unit;

(c) Type I hookup site: \$24 per night per camper unit;

(d) Type II hookup site: \$20 per night per camper unit;

(e) Type I group site (accommodates 3-5 units): \$57 per night;

(f) Type II group site (accommodates 3-5 units): \$51 per night;

(g) Type I double site: \$43 per night per two camper units;

(h) Type II double site: \$37 per night per two camper units;

(i) A camper unit consists of a motor home, trailer, tent or camper.

# ADMINISTRATIVE RULES

(5) Group Tent Camps: Small group tent areas available in some parks which are designed to accommodate approximately 25 people. Water and toilet facilities are provided nearby, but shower facilities may be some distance away.

(a) Base rate (0-25 people): \$70 per night;

(b) Charges for persons in excess of the 25 person base rate will be \$3 per person per night.

(6) Group RV Camp: Special camp area designed to accommodate RV's requiring hookups in a group setting. The camp has electrical hookups available, water, table, stove, and access to a restroom.

(a) Base rate (up to 10 units): \$100 per night;

(b) Charges for units in excess of the 10-unit base rate: \$10 per unit per night.

(7) Pets Staying Overnight in Facilities (Yurts, Cabins, Tepees): Not more than two pets (cat or dog only) staying overnight in facilities: \$10 per night.

(8) Ranch/Bunkhouse: Large communal type bunkhouse facility which includes kitchen and restroom facilities. Minimum fee of \$200 per night for up to 25 persons and \$8 per person per night thereafter up to the maximum occupancy.

(9) Youth Camp (Silver Falls): Large capacity group camp facility with cabins, commercial kitchen facilities, dining hall, showers, meeting halls and swimming facilities. Minimum fee of \$800 per night for up to 80 persons and \$10 per person per night thereafter up to a maximum occupancy of 250 persons.

(10) Lodge/Community Hall: Large meeting facility with kitchen and restroom facilities which may be reserved overnight: \$200 per night.

(11) Meeting Hall: Small meeting facility, generally associated with a campground, which may have limited kitchen facilities and restrooms: \$75 per day.

(12) Pavilion: A large, covered day-use facility for group use: Minimum fee of \$100 per event for up to 50 people, and \$1 per person thereafter up to the maximum occupancy of the facility.

(13) Shore Acres Garden: All facility prices, no matter which facility or combination of facilities are booked, start with a minimum of 50 persons per event. Additional people beyond the minimum of 50 are \$1 per person up to a maximum of 100 people per event.

(a) Event Site: A lawn area outside the formal garden or a section of the formal garden (NOTE: sites in the garden must be booked in conjunction with another facility): \$100 per event.

(b) Pavilion (inside the formal garden and must be booked with an event site or the garden house): \$100 per event.

(c) Garden House (inside the formal garden and must be booked with the Pavilion): \$200 per event.

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 390.111, 390.121 & 390.124

Hist.: 1 OTC 17, f. 12-20-73; 1 OTC 56(Temp), f. & ef. 4-4-75; 1 OTC 59, f. 8-1-75, ef. 8-25-75; 1 OTC 74, f. & ef. 4-30-76; 1 OTC 82, f. 5-11-77, ef. 5-14-77; 1 OTC 2-1980, f. & ef. 1-4-80; PR 9-1981, f. & ef. 4-6-81; PR 11-1986, f. & ef. 7-9-86; PR 1-1988, f. & cert. ef. 3-25-88; PR 1-1990, f. & cert. ef. 5-14-90; PR 4-1991, f. 4-30-91, cert. ef. 5-13-91; PR 3-1996, f. & cert. ef. 5-13-96; PRD 8-2004, f. & cert. ef. 6-3-04; Renumbered from 736-010-0125, PRD 4-2005, f. & cert. ef. 5-5-05; PRD 2-2009, f. & cert. ef. 2-10-09; PRD 15-2009, f. & cert. ef. 9-29-09; PRD 1-2010, f. & cert. ef. 1-5-10

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**Secretary of State,  
Archives Division  
Chapter 166**

**Rule Caption:** Amends records retention rule for vote by mail elections to conform with statutory requirements.

**Adm. Order No.:** OSA 10-2009

**Filed with Sec. of State:** 12-23-2009

**Certified to be Effective:** 12-23-09

**Notice Publication Date:** 11-1-2009

**Rules Amended:** 166-150-0035

**Subject:** The rule amendment state the record retention rule for vote by mail elections to conform with the state and federal statutory requirements specified in ORS 254.535. The amended rule accurately restates the statutory requirement that ballot return envelopes be retained two years after all elections, regardless of federal or non-federal candidates in the election.

**Rules Coordinator:** Julie Yamaka—(503) 378-5199

**166-150-0035**

**County Clerk — Elections**

(1) **Absentee Ballot Requests** Used to enter a citizen's request for a ballot to be sent to them for the purpose of voting, without going to their designated polling place, or to change their current status as an absentee voter. Information includes voter name, address of residence, mailing address, and witness signature for illiterates making their mark. (Minimum retention: 1 year.)

(2) **Abstract of Votes (Record of Elections)** Documents election results for General, Primary, Emergency, and Special Elections. Information includes candidate name/ballot title, precinct name, total votes per candidate/ballot title, total per precinct, under/over votes, and certification by County Clerk or election official. (Minimum retention: Permanent.)

(3) **Ballots** Documents ballots and stubs of ballots of voters who voted in Primary, General, Emergency, and Special District elections. Includes ballots cast at polls, by voteby mail, or by absentee request. Used to register and count votes. Information contains numbers that correspond to a candidate or "yes" or "no" on an issue. May also include written challenge statements and replacement affidavits. (Minimum retention: (a) Special District and Emergency Election: 90 days after last date to contest election; (b) Primary and General Election: 2 years after last date to contest election.)

(4) **Contribution and Expenditure Reports** Documents contributions and expenditures by candidates or political action committees. Includes statement of organization, amount, source, and detail of expenditures over the amount of fifty dollars. May also include receipts for expenditures. (Minimum retention: (a) Statement of Organization: Permanent; (b) All other records: 4 years after the date required to file update reports.)

(5) **Election Filings** Documents all necessary papers required to be filed by a candidate or governing body for primary, general, emergency, and special elections. May include petition of nomination, declaration of candidacy, certification of nomination, filing forms for county voters pamphlet, notice of measure election, and withdrawal of candidates. (Minimum retention: 4 years.)

(6) **Election Preparation Records** Used to prepare and administrate elections within each precinct in the county. Records may include such information as number of ballots going to each precinct, number and type of pages for each voting machine for each precinct, listing of issues and candidates by precinct order, guides to preparing voting machines, ballot layout records, and public certification test notice. Also may include guides to assist Election Board personnel in reconciling votes cast with eligible voters. (Minimum retention: 2 years.)

(7) **Election Security Plan** Records document the clerk's compliance with ORS 254.074 in which they clearly outline, in writing, the county's procedures for ensuring a secure elections process. Information in the plan includes but is not limited to a written security agreement entered into with any vendor handling ballots; security procedures for transporting ballots; security procedures at official places of deposit for ballots; security procedures for processing ballots; security procedures governing election observers; security procedures for ballots located in county elections work areas, buildings and storage areas; security procedures for vote tally systems, including computer access to vote tally systems; and postelection ballot security. These plans are required to be filed with the Secretary of State by the January 31 in each calendar year or one business day after any revision is made to the county elections security plan. (Minimum retention: 5 years.)

(8) **Help America Vote Act Identification Records** Records are used to verify the identity of a person registering to vote exists and their residence in the county they are attempting to register to vote in. Records include but are not limited to current and valid photo identification containing voter name and address, or a current copy of a utility bill, bank statement, government check, paycheck, or other government document that shows their name and address. The address listed must match the residence or mailing address submitted on their voter registration card. (Minimum retention: Retain until verified by county elections official.)

(9) **Initiative, Referendum, and Recall Records** Documents the initiative, referendum, and recall process by which voters propose laws and amendments to the State Constitution, refer an act of the Legislature or other governing body to a vote of the electorate, or recall a public official. Includes petitions, signature sheets, summaries of signature verification, text of proposed law, amendment, or response from public. (Minimum retention: (a) Signature sheets: 6 years after election if measure is approved; (b) Signature sheets if measure is not approved: 90 days after election or 90 days after deadline for sufficient signatures; (c) All other records: Permanent.)

(10) **Legal Notices and Publications** Documents required preelection legal notices by the County Clerk. May include publication of ballot title, notice of election, sample ballot, and the county voters pamphlet. (Minimum retention: (a) County Voters Pamphlet (One copy): Permanent; (b) All other records: 4 years.)

(11) **Poll Books** Records issuance of ballot to eligible voter in an election. Includes name of elector, party affiliation, home address, ballot number, precinct number, and signature of voter. Cover includes number of voters casting ballots for the election and names, signatures, and oaths of Election Board members. May also include certificates of registration. (Minimum retention: (a) Records created prior to 1931: Permanent; (b) All other records: 2 years.)

(12) **Registration List Authorizations** Documents the request and authorization for transmittal of voter registration information to citizens. Record consists of request and authorization for list of electors for a particular political boundary. (Minimum retention: 2 years.)

(13) **Secretary of State Reports** Documents required reports to the Office of the Secretary of State summarizing election registration, participation, and costs. May include Special District Election Report, Election

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Equipment Amortization Worksheet, Average Ballots Cast Worksheet, Allocated Cost Worksheet, and Local Elections Billing Worksheet. (Minimum retention: 2 years.)

(14) **Vote by Mail Records** are used to prepare, administer and abstract elections conducted by mail. Records include counted, duplicated, rejected, and defective ballots; returned signed, nondeliverable, and secrecy envelopes; and other documents used to prepare, administer and abstract elections conducted by mail. (Minimum retention: (a) Retain counted, duplicated, rejected, and defective ballots 22 months after elections containing federal candidates and 90 days after the last day to contest the election for all other elections; (b) Retain returned signed envelopes 2 years after the election regardless of federal/nonfederal candidates; (c) Retain secrecy and nondeliverable envelopes 60 days after the last day to contest the election for all elections regardless of federal/nonfederal candidates; (d) Retain all other documents used to prepare, administer and abstract elections conducted by mail 2 years after the election to which they relate.)

(15) **Voter Registration Records** Documents registration or cancellation of registration of eligible voters. Voter Registration Cards include the following information: name, signature, mailing and residence address, previous registration information, if ever registered in Oregon, date (and place) of birth, (parents names, spouse name,) affirmation of citizenship, state residency, (telephone number) and political party. May also include records canceling or making inactive voter registration such as the notice of deceased list from Secretary of State, notice of change of address from Department of Motor Vehicles, U.S. Postal Service notice, and related correspondence. (Minimum retention: 2 years after cancelled.)

(16) **Voters Pamphlet Records** document the compilation, publication, and distribution of the County Voters' Pamphlet for primary, general, and statewide special elections. The County Voters' Pamphlet contains candidate statements, candidate photographs, ballot measure arguments, explanatory and fiscal impact statements of ballot measures, and other information to assist voters. (Minimum retention: (a) Retain 1 copy permanently; (b) Retain pamphlet preparation records: 4 years after election, destroy.)

Stat. Auth.: ORS 192 & 357  
Stats. Implemented: ORS 192.005 - 192.170 & 357.805 - 357.895  
Hist.: OSA 4-2004, f. & cert. ef. 9-1-04; OSA 10-2009, f. & cert. ef. 12-23-09

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**Secretary of State,  
Corporation Division  
Chapter 160**

**Rule Caption:** These rules cover trade and service mark applications, classes, and renewals.

**Adm. Order No.:** CORP 3-2009

**Filed with Sec. of State:** 12-22-2009

**Certified to be Effective:** 1-1-10

**Notice Publication Date:** 12-1-2009

**Rules Adopted:** 160-010-0210, 160-010-0220, 160-010-0230, 160-010-0240

**Rules Repealed:** 160-010-0200

**Subject:** These rules state content required for trade and service mark applications and clarifies when a new trade or service mark application is required to be filed. It also established classes of goods and services.

**Rules Coordinator:** Karen Hutchinson—(503) 986-2364

## 160-010-0210

### Definitions

(1) "Specimen" means a facsimile of a mark that is an attached drawing, photocopy, or electronic version in PDF format, for the purposes of 647.015 and 647.055. The words and design that comprise the mark must be clear and legible.

(2) "Stamped filed date" on the filed copy sent to registrant means the registration date, for purposes of 647.045(2).

(3) "Correspondent name and mailing address" means the registrant's mailing address for purposes of 647.055.

(4) "Applicant," after the application has been filed under 647.015, means a "registrant."

(5) "Proof of concurrent United States Patent and Trademark office registration" has the same effect as a renewal for the purposes of 647.075(2).

Stat. Authority: OAR 647.015  
Stat. Implemented: OAR 647  
Hist.: CORP 3-2009, f. 12-22-09, cert. ef. 1-1-10

## 160-010-0220

### Application for trade or service mark

An application for trade or service mark may be submitted, if the Secretary of State's systems permit, by fax, mail, electronically, and in person. The content of the application to file a trade or service mark must include:

(1) Applicant name and address. The applicant can be either:

- (a) An individual, or
- (b) An entity.
- (2) If the applicant is an entity, the following must be included:
  - (a) Entity type,
  - (b) State of domicile, if the entity is a corporation, partnership, or an LLC, and
  - (c) Names of the general partners, if the entity is a partnership.
- (3) Correspondent name and address for mailing notices.
- (4) Goods or services on or in connection with which the mark is used.
- (5) Mode and manner in which the mark is used on or in connection with the goods or services.
- (6) Class into which the goods or services fall.
- (7) Date mark was first used anywhere.
- (8) Date mark was first used by applicant or a predecessor in interest in Oregon.
- (9) Written description that comprises all words and designs included in the mark.
- (10) One specimen of the mark as actually used.

(11) A statement that the applicant owns the mark, the mark is in use, and no other person has registered the mark with the federal government or in Oregon or has the right to use the mark or a mark that resembles the mark as to be likely to cause confusion or mistake or deceive when applied to the goods or services of the other person.

(12) The trade or service mark application must be signed and verified by the applicant by declaration under penalties of perjury. If the applicant is an entity, the application must be signed by a member of the firm, officer of the corporation, limited liability company or association applying to register the mark, as evidenced by title.

Stat. Authority: ORS 647.015  
Stat. Implemented: ORS 647.015  
Hist.: CORP 3-2009, f. 12-22-09, cert. ef. 1-1-10

## 160-010-0230

### Renewal of Trade/Service Mark

A trade or service mark specimen cannot be altered through renewal. A new application must be filed if the design or words that comprise the trade or service mark is altered.

Stat. Auth.: ORS 56.022  
Stats. Implemented: ORS 647.055  
Hist.: CORP 3-2009, f. 12-22-09, cert. ef. 1-1-10

## 160-010-0240

### Classes of Goods and Services

Pursuant to ORS 647.024, the Secretary of State establishes the following classes of goods and services. Applications to register a trade or service mark must designate the code number for goods or services with which the mark is being used:

- (1) **Goods:**
  - (a) **101:**
    - (A) Chemical Products used in industry;
    - (B) Artificial and Synthetic Resins;
    - (C) Plastics in the Form of Powders, Liquids or Paste;
    - (D) Fertilizers;
    - (E) Tanning and Adhesive Substances.
  - (b) **102:**
    - (A) Paints, Varnishes, and Lacquers;
    - (B) Coloring Matters and Natural Resins.
  - (c) **103:**
    - (A) Laundry, Cleaning, and Polishing Substances;
    - (B) Cleansing and Cosmetic Items;
    - (C) Perfumery and Essential Oils.
  - (d) **104:**
    - (A) Industrial Oils and Greases;
    - (B) Lubricants and Absorbing Compositions;
    - (C) Fuels and Illuminants.
  - (e) **105:**
    - (A) Pharmaceutical, Veterinary and Sanitary Substances;
    - (B) Infants' and Invalids' Foods;
    - (C) Bandaging Material;
    - (D) Dental Wax;
    - (E) Disinfectants and Weed Killers.
  - (f) **106:** Metal and Articles Made from Metal and not Included in Other

Classes.

- (g) **107:**
  - (A) Machines and Machine Tools;
  - (B) Motors (Except for Land Vehicles);
  - (C) Large Size Agricultural Implements;
  - (D) Incubators.
- (h) **108:** Hand Tools and Cutlery.
- (i) **109:**
  - (A) Scientific, Nautical, Surveying and Electrical Apparatus and Instruments;
  - (B) Photographic, Cinematographic, Optical, Lifesaving, and Teaching Apparatus;

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- (C) Cash Registers and Calculating Machines.
  - (j) **110:** Surgical, Medical, Dental, and Veterinary Instruments and Apparatus.
  - (k) **111:** Installations for Lighting, Heating, Steam Generating, Cooking, Refrigerating, Drying, Ventilating, Water Supply and Sanitary Purposes.
  - (l) **112:** Vehicles.
  - (m) **113:** Firearms, Ammunition, and Fireworks.
  - (n) **114:** Precious Metals and Jewelry.
  - (o) **115:** Musical Instruments and Supplies; Phonographs, Recording Tapes, Records, and Tape Recorders.
  - (p) **116:**
    - (A) Paper Articles and Bookbinding Materials;
    - (B) Printed Matter, Photographs and Stationery;
    - (C) Artists' Materials and Paint Brushes;
    - (D) Instructional and Teaching Material.
  - (q) **117:**
    - (A) Plastics in the Form of Sheets, Blocks and Rods;
    - (B) Packing or Insulating Materials;
    - (C) Hose Pipes (Non-metallic).
  - (r) **118:**
    - (A) Leather, Imitations and Articles Made from Both and Not Included in Other Classes;
    - (B) Skins and Hides;
    - (C) Travel Gear, Umbrellas and Walking Sticks;
    - (D) Saddlery.
  - (s) **119:**
    - (A) Building and Road Materials;
    - (B) Stone, Stone Products; Cement and Earthenware Pipes.
  - (t) **120:**
    - (A) Furniture, Mirrors, Picture Frames;
    - (B) Articles (not Included in Other Classes) of Wood, Wicker, Ivory, Shell;
    - (C) Substitutes for all These Materials, or of Plastics.
  - (u) **121:**
    - (A) Small Domestic Utensils and Containers;
    - (B) Combs, Sponges and Brushes (Other than Paint Brushes);
    - (C) Brush Making Materials;
    - (D) Glassware, Porcelain and Earthenware, Not Included in Other Classes.
  - (v) **122:**
    - (A) Ropes, String and Nets;
    - (B) Canvas Products and Stuffing Materials.
  - (w) **123:** Yarns and Threads.
  - (x) **124:**
    - (A) Bed and Table Covers;
    - (B) Textile Articles not Included in Other Classes.
  - (y) **125:** Clothing and Footwear.
  - (z) **126:** Garment Decorations and Buttons.
  - (aa) **127:** Floor Coverings and Non-textile Wall Hangings.
  - (bb) **128:** Toys; Sporting Articles (except Clothing); Decorations.
  - (cc) **129:**
    - (A) Meats; Fruits and Vegetables (Except Fresh);
    - (B) Dairy Products; Jams; Oils; Fats; Preserves and Pickles.
  - (dd) **130:** Coffee, Tea, Cocoa and Coffee Substitutes, Rice, Tapioca, Sago, Flour, Cereals, Yeast, Baking Powder and Condiments, Breads, Pastry, Confectionary, and Honey.
  - (ee) **131:**
    - (A) Agricultural, Horticultural, Forestry Products and Grains not Included in Other Classes;
    - (B) Living Animals, Plants and Flowers;
    - (C) Fruits, Vegetables and Seeds;
    - (D) Foodstuffs for Animals.
  - (ff) **132:** Beer and Nonalcoholic Drinks.
  - (gg) **133:** Wines, Spirits and Liqueurs.
  - (hh) **134:** Tobacco and Smokers' Articles.
- (2) **Services:**
- (a) **135:** Advertising and Business;
  - (b) **136:** Insurance and Financial;
  - (c) **137:** Construction and Repair;
  - (d) **138:** Communication;
  - (e) **139:** Transportation and Storage;
  - (f) **140:** Material Treatment;
  - (g) **141:** Education and Entertainment;
  - (h) **142:** Miscellaneous.
- Stat. Auth.: ORS 647.024  
Stats. Implemented: ORS 647.024  
Hist.: CORP 3-2009, f. 12-22-09, cert. ef. 1-1-10
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**Rule Caption:** These rules update acceptable UCC forms.  
**Adm. Order No.:** CORP 4-2009  
**Filed with Sec. of State:** 12-22-2009

**Certified to be Effective:** 1-1-10  
**Notice Publication Date:** 12-1-2009  
**Rules Adopted:** 160-040-0507

**Rules Amended:** 160-040-0103, 160-040-0311  
**Subject:** New rule 160-040-0507 identifies UCC renewal report notice content and format. Amended rule 160-040-0103 changes the date UCC forms are acceptable through. Amended rule 160-040-0311 changes the name of the UCC correction statement to statement of claim.  
**Rules Coordinator:** Karen Hutchinson—(503) 986-2364

## 160-040-0103 Forms

Acceptable forms. In addition to the forms outlined in ORS 79.0521(1), the Secretary of State shall accept for filing only the standard forms approved for use by the International Association of Commercial Administrators up to May 21, 2009.

Stat. Auth.: ORS 79.0526  
Stats. Implemented: ORS 79.0515 & 79.0521  
Hist.: CORP 2-2001, f. 7-9-01, cert. ef. 8-1-01; CORP 1-2002, f. 11-15-02, cert. ef. 12-1-02; CORP 1-2005, f. & cert. ef. 2-1-05; CORP 4-2008, f. 7-15-08, cert. ef. 8-1-08; CORP 4-2009, f. 12-22-09, cert. ef. 1-1-10

## 160-040-0311 Statement of Claim

(1) Status of parties. The filing of a statement of claim shall have no effect upon the status of any party to the financing statement.  
(2) Status of financing statement. A statement of claim shall have no effect upon the status of the financing statement.

Stat. Auth.: ORS 79.0526  
Stats. Implemented: ORS 79.0518  
Hist.: CORP 2-2001, f. 7-9-01, cert. ef. 8-1-01; CORP 4-2008, f. 7-15-08, cert. ef. 8-1-08; CORP 4-2009, f. 12-22-09, cert. ef. 1-1-10

## 160-040-0507 Renewal Report

In accordance with ORS 79.0515, a renewal notice report will be posted on the Corporation Division website twice a year: January 1 and July 1.

(1) The renewal notice report shall contain the following:

- (a) Secured party name and address;
- (b) Filing/lien number;
- (c) Lien type:
  - (A) UCC;
  - (B) EFS; or
  - (C) Revenue warrants;
- (d) Lapse date; and
- (e) Debtor name.

(2) The Renewal Report will be posted in the following formats:

- (a) Microsoft Excel, and
- (b) Tab-delimited text.

(3) A statement will be posted on the Corporation Division website that the secured party must file a continuation statement or an initial financing statement to continue a financing statement or effective financing statement.

Stat. Auth.: 79.0526  
Stats. Implemented 79.0515  
Hist.: CORP 4-2009, f. 12-22-09, cert. ef. 1-1-10

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**Rule Caption:** UCC fees not refundable when filing is rejected.

**Adm. Order No.:** CORP 5-2009

**Filed with Sec. of State:** 12-22-2009

**Certified to be Effective:** 1-1-10

**Notice Publication Date:** 12-1-2009

**Rules Amended:** 160-040-0104

**Subject:** Rule 160-040-0104 is amended to clarify a rejected UCC filing is in accordance with 79.0516. Therefore, the processing fee is nonrefundable.

**Rules Coordinator:** Karen Hutchinson—(503) 986-2364

## 160-040-0104 Fees

(1) Filing fee. The fee for filing and indexing a UCC record is prescribed in ORS Ch. 79.525(1). However, if the UCC record is rejected, the submission of the record shall be deemed a filing in accordance with 79.0516, and the accompanying fee shall therefore be nonrefundable.

(2) UCC search fee. The fee for a UCC search request is prescribed in ORS Ch. 79.525(3).

(3) UCC search — copies. The fee for UCC search copies is prescribed in ORS Ch. 79.525(3).

(4) UCC search — state seal certificate. The fee for a state seal certificate is \$10 per certificate, plus (for requested copies) — \$5 per document number.

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Stat. Auth.: ORS 79.0526  
Stats. Implemented: ORS 79.0525  
Hist.: CORP 2-2001, f. 7-9-01, cert. ef. 8-1-01; CORP 4-2008, f. 7-15-08, cert. ef. 8-1-08;  
CORP 5-2009, f. 12-22-09, cert. ef. 1-1-10

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**Rule Caption:** This rule addresses when a notary public may protest paper.

**Adm. Order No.:** CORP 6-2009

**Filed with Sec. of State:** 12-22-2009

**Certified to be Effective:** 1-1-10

**Notice Publication Date:** 12-1-2009

**Rules Amended:** 160-100-0610

**Subject:** Amended rule 160-100-0610 makes protesting commercial paper when a notary doesn't meet the qualifications of 194.070(1) official misconduct.

**Rules Coordinator:** Karen Hutchinson—(503) 986-2364

## 160-100-0610

### Conduct Which Constitutes Official Misconduct

As provided in OAR 160-100-0600, the following conduct constitutes official misconduct, as defined in ORS 194.005, for purposes of refusing to issue, revoke or suspend a notary public's commission pursuant to ORS 194.166, assessing a civil penalty against a person pursuant to ORS 194.980, or issuing an official warning to a person pursuant to ORS 194.985:

(1) A person, who is in the business of making or selling official seals, provided an official seal to a person who did not present to such vendor the original Certificate of Authorization issued by the Secretary of State to the person pursuant to ORS 194.010(2). See ORS 194.010(4)(a). Sanction for First Act of Misconduct: Official warning.

(2) A person performed a notarial act within the state of Oregon when the person was not commissioned as a notary public. See ORS 194.012. Sanction for First Act of Misconduct: Refuse to commission. (Class B Misdemeanor)

(3) A notary public used as an official seal an object that was not a stamp, or was a stamp but the stamp was made of a substance that was incapable of making a legible imprint on paper or was incapable of making an imprint that could be legibly reproduced under a photographic method. See ORS 194.031(1). Sanction for First Act of Misconduct: Official warning.

(4) A notary public, who received the notary public's official seal from a vendor of official seals, did not file with the Secretary of State an imprint of the notary public's official seal and the information required by OAR 160-100-0140 within ten days after the date the notary public received the official seal from the vendor. See ORS 194.031(5). Sanction for First Act of Misconduct: Official warning.

(5) A notary public, whose official seal was lost, misplaced, destroyed, broken, damaged or otherwise unworkable, did not personally deliver or mail to the Secretary of State a written notice of that fact within ten days after the date the notary public discovered that the notary public's official seal was lost, misplaced, destroyed, broken, damaged or otherwise unworkable. See ORS 194.031(6) and OAR 160-100-0160(1). Sanction for First Act of Misconduct: Official warning.

(6) A notary public used the notary public's seal embosser in lieu of the notary public's official seal. See ORS 194.031(7) and OAR 160-100-0130(1). Sanction for First Act of Misconduct: Official warning.

(7) A notary public performed a notarial act in another state pursuant to the authority of the notary public's Oregon commission. See ORS 194.043. Sanction for First Act of Misconduct: Official warning.

(8) A notary public did not deliver or mail to the Secretary of State a written notice of change of address within 30 days after the date the notary public changed the notary public's residence or business street or mailing address. See ORS 194.047 and 194.166(15). Sanction for First Act of Misconduct: Official warning.

(9) A notary public performed a notarial act using a new name different than the notary public's name as it appeared on the notary public's written commission. See ORS 194.052(1). Sanction for First Act of Misconduct: Official warning.

(10) A notary public did not deliver or mail to the Secretary of State a written notice of change of name within 30 days after the date the notary public's name changed. See ORS 194.052(2) and 194.166(15). Sanction for First Act of Misconduct: Official warning.

(11) A notary public who does not meet the qualifications of ORS 194.070(1) protested commercial paper, as provided in ORS 73.0505. Sanction for First Act of Misconduct: Official Warning.

(12) A notary public issued a certificate of dishonor of a negotiable instrument (also known as a protest of commercial paper as defined in ORS 73.0505(2)) but in the certificate did not identify the negotiable instrument protested, certify that due presentment was made or the reason why presentment was excused, or certify that the instrument protested was dishonored by nonacceptance or nonpayment, as required by ORS 73.0505(2). See ORS 194.070. Sanction for First Act of Misconduct: Official warning.

(13) A notary public did not keep a record of all certificates of dishonor (also known as a protest of commercial paper as defined in ORS 73.0505(2)) issued by the notary public during the term of a commission. See ORS 194.090. Sanction for First Act of Misconduct: Official warning.

(14) A notary public performed an acknowledgment of a document executed by a corporation of which the notary public was a shareholder, director, officer or employee at the time of the notarization when the notary public was a party to the document either in an individual or representative capacity. See ORS 194.100(2)(a). Sanction for First Act of Misconduct: Official warning.

(15) A notary public issued a certificate of dishonor of a negotiable instrument (also known as a protest of commercial paper as defined in ORS 73.0505(2)) that was owned or held for collection by a corporation of which the notary public was a shareholder, director, officer or employee of a corporation at the time of the notarization when the notary public was a party to the negotiable instrument in an individual capacity. See ORS 194.100(2)(b). Sanction for First Act of Misconduct: Official warning.

(16) A notary public issued a certificate of dishonor (also known as a protest of commercial paper as defined in ORS 73.0505(2)) of a non-commercial or other document that does not fit the definition of negotiable instrument as defined in ORS 73.0104. See ORS 194.070. Sanction for First Act of Misconduct: Official warning.

(17) A notary public issued a certificate of dishonor (also known as a protest of commercial paper as defined in ORS 73.0505(2)) in a manner not in accordance with ORS 73.0505. See ORS 194.070. Sanction for First Act of Misconduct: Official warning.

(18) A notary public did not provide, keep, maintain or protect a chronological journal of notarial acts performed by the notary public during the term of a commission. See ORS 194.152(1). Sanction for First Act of Misconduct: Official warning.

(19) A notary public whose commission was terminated because of expiration and who did not reapply did not arrange for the storage of his/her notarial records, file a statement with Secretary of State or destroy the notary public's official seal and official seal embosser, if any. See ORS 194.154 and OAR 160-100-0300. Sanction for First Act of Misconduct: Official warning.

(20) A notary public whose commission terminated because of resignation did not arrange for the storage of his/her notarial records, file a statement or the notary public's official seal and official seal embosser, if any, with the Secretary of State. See ORS 194.154 and OAR 160-100-0320. Sanction for First Act of Misconduct: Official warning.

(21) A notary public whose commission terminated because of revocation did not file his/her notarial records, a statement or the notary public's official seal and official seal embosser, if any, with the Secretary of State. See ORS 194.154 and OAR 160-100-0330. Sanction for First Act of Misconduct: \$500.

(22) A notary public whose commission terminated because of expiration and who filed an application for a new commission within 30 days after the date of termination but was not issued a new commission within 90 days after the date of termination, did not dispose of the notary public's notarial records in accordance with OAR 160-100-0310 within 90 days after the date of termination. See ORS 194.154(3). Sanction for First Act of Misconduct: Official warning.

(23) A notary public notarized a document in which the notary public signed or was named other than as a notary public. See ORS 194.158(1). Sanction for First Act of Misconduct: Official warning.

(24) A notary public endorsed or promoted a product, service, contest or other offering by using the notary public's title or official seal. See ORS 194.158(2). Sanction for First Act of Misconduct: \$500 civil penalty.

(25) A notary public made a representation that the notary public had powers, qualifications, rights or privileges that the notary public did not have. See ORS 194.162(2). Sanction for First Act of Misconduct: \$500 civil penalty.

(26) A notary public, who was not licensed to practice law in the state of Oregon and who advertised in a language other than English to perform a notarial act, did not include in the advertisement the statement: "I am not licensed to practice law in the state of Oregon and I am not permitted to give legal advice on immigration or other legal matters or accept fees for legal advice." This should be written in the same language used in the advertisement and in English and prominently displayed. See ORS 194.162(3)(a) and 194.166(10). Sanction for First Act of Misconduct: Official warning.

(27) A notary public, who was not licensed to practice law in the state of Oregon and who advertised in a language other than English to perform a notarial act, did not include in the advertisement a list of notarial fees specified in OAR 160-100-0410. See ORS 194.162(3)(b) and 194.166(10). Sanction for First Act of Misconduct: Official warning.

(28) A notary public, who was not licensed to practice law in the state of Oregon and who advertised in a language other than English to perform a notarial act, did not display the statement and list of notarial fees required by ORS 194.162(3) in a conspicuous place in the notary public's place of business. See ORS 194.162(4) and 194.166(10). Sanction for First Act of Misconduct: Official warning.

(29) A notary public used the term "notario publico" or a non-English equivalent term in a business card, advertisement, notice, sign or in any other

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manner which misrepresents the authority of the notary public. See ORS 194.162(5). Sanction for First Act of Misconduct: Official warning.

(30) A notary public who charged a fee for traveling to perform a notarial act did not explain to the person who requested the notarial act that the traveling fee was in addition to the fee to perform the notarial act or was not required by law, or did not obtain in advance the agreement of the person who requested the notarial act to the amount of the traveling fee. See ORS 194.164(2). Sanction for First Act of Misconduct: Official warning.

(31) A notary public, except a notary public who filed with the Secretary of State a statement waiving the right to charge a notary fee, did not comply with the fee display requirements specified in OAR 160-100-0410. See ORS 194.164(3). Sanction for First Act of Misconduct: Official warning.

(32) A notary public failed to maintain the qualifications to be a notary public required under ORS 194.022. See ORS 194.166(1). Sanction for First Act of Misconduct: Revocation of commission.

(33) A notary public purports to be a citizen of a country other than one officially recognized by the United States Department of State. See ORS 194.005(3). Sanction for First Act of Misconduct: Official warning.

(34) A notary public or notary public applicant made a substantial and material misstatement or omission of fact in an application submitted to the Secretary of State. See ORS 194.166(2). Sanction for First Act of Misconduct: Revocation of commission or refusal to issue commission.

(35) A notary public or notary public applicant was convicted of a felony, or of a lesser offense incompatible with the duties of a notary public. See ORS 194.166(4) and OAR 160-100-0510. Sanction for First Act of Misconduct: Revocation of commission or refusal to issue commission.

(36) A notary public or a notary public applicant had a professional license that was issued by a governmental entity revoked, suspended, restricted or denied for misconduct, dishonesty or a cause substantially relating to the duties or responsibilities of a notary public. See ORS 194.166(5). Sanction for First Act of Misconduct: Revocation of commission or refusal to issue commission.

(37) A notary public was judicially determined to be liable for damages in a suit for fraud or misrepresentation or in a suit for failing to discharge fully and faithfully the duties as a notary public. See ORS 194.166(6). Sanction for First Act of Misconduct: Revocation of commission.

(38) A notary public used a false or misleading advertisement in which the notary public represented that the notary public had powers, qualifications, rights or privileges that the office of notary public does not have, including but not limited to the power to counsel on immigration matters. See ORS 194.166(7). Sanction for First Act of Misconduct: Suspension of commission for a period of 90 days and \$1,000 civil penalty.

(39) A notary public engaged in the unauthorized practice of law. See ORS 194.166(8). Sanction for First Act of Misconduct: Suspension of commission for a period of 90 days and \$1,000 civil penalty.

(40) A notary public charged a notary fee that was more than the maximum fee specified in OAR 160-100-0400. See ORS 194.166(9). Sanction for First Act of Misconduct: \$500 civil penalty.

(41) A notary public committed an act involving dishonesty, fraud or deceit with the intent to substantially benefit the notary public or another or substantially injure another. See ORS 194.166(11). Sanction for First Act of Misconduct: Suspension of commission for a period of 90 days and \$1,000 civil penalty.

(42) A notary public executed a notarial certificate that contained a statement known to the notary public to be false. See ORS 194.166(13). Sanction for First Act of Misconduct: \$500 civil penalty.

(43) A notary public used an official seal or official seal embosser that did not conform to ORS 194.031, OAR 160-100-0100 and 160-100-0120 to perform a notarial act. See ORS 194.166(14). Sanction for First Act of Misconduct: Official warning.

(44) A notary public did not determine either from personal knowledge as defined in ORS 194.515(7) or from satisfactory evidence as defined in ORS 194.515(6) and 194.515(8) that the person acknowledging a document as defined in ORS 194.505(1) in the presence of the notary public was the person whose signature was on the document. See ORS 194.515(1). Sanction for First Act of Misconduct: Suspension of commission for a period of 30 days.

(45) A notary public did not determine either from personal knowledge as defined in ORS 194.515(7) or from satisfactory evidence as defined in ORS 194.515(6) and 194.515(8) that the person verifying a statement by oath or affirmation as defined in ORS 194.505(3) in the presence of the notary public is the person whose signature was on the statement. See ORS 194.515(2). Sanction for First Act of Misconduct: Suspension of commission for a period of 30 days.

(46) A notary public did not determine either from personal knowledge as defined in ORS 194.515(7) or from satisfactory evidence as defined in ORS 194.515(6) and 194.515(8) that the signature on a document was the signature of the person signing the document in the presence of the notary public and named in the document. See ORS 194.515(3). Sanction for First Act of Misconduct: Suspension of commission for a period of 30 days.

(47) A notary public did not determine from satisfactory knowledge as defined in ORS 194.515(6) and 194.515(8) that the copy of a document presented to the notary public was a complete and correct transcription or repro-

duction of the document presented. See ORS 194.515(4). Sanction for First Act of Misconduct: Suspension of commission for a period of 30 days.

(48) A notary public did not determine or from satisfactory knowledge as defined in ORS 194.515(6) and 194.515(8) the identity of the negotiable instrument, that presentment was required and made, or that presentment was excused and not made and the reason why presentment was excused, that the instrument was dishonored by nonacceptance or nonpayment, or all or any combination of the above. See ORS 194.515(5). Sanction for First Act of Misconduct: Suspension of commission for a period of 30 days.

(49) A notary public did not evidence a notarial act by issuing a notarial certificate as defined in ORS 194.005(5) containing the signature of the notary public, the title of the notary public, the date the notary public's commission expires, the date the notary public performed the notarial act, the name of the governmental jurisdiction in which the notarial act was performed, the official seal of the notary public, and, if a United States commissioned officer on active duty, then also the notary public's military rank. See ORS 194.565(1). Sanction for First Act of Misconduct: Official warning.

(50) A notary public did not evidence a notarial act by a notarial certificate as defined in ORS 194.005(5) in a form prescribed by a law of the United States or of the State of Oregon or, if not prescribed, then in a form permitted by ORS 194.575 or in a form designed by the notary public that describes the acts of the notary public and such acts meet all of the requisite elements of the notarial act. See ORS 194.565(2). Sanction for First Act of Misconduct: Official warning.

(51) A notary public engaged in any other act or omission involving any act prohibited or mandated by ORS 194.005 to 194.200, 194.505 to 194.595 or any rule adopted by the Secretary of State or any other law governing notarization. See ORS 194.005(8). Sanction for First Act of Misconduct: \$500 civil penalty.

(52) A notary public did not use the notary public's official seal in performing a notarial act. See OAR 160-100-0110(1). Sanction for First Act of Misconduct: Official warning.

(53) A notary public used the notary public's official seal or official seal embosser to perform a notarial act but did not place an imprint of the official seal or official seal embosser on a notarial certificate. See OAR 160-100-0110(2) and 160-100-0130(2). Sanction for First Act of Misconduct: Official warning.

(54) A notary public used the notary public's official seal or official seal embosser to perform a notarial act but placed an imprint of the official seal or official seal embosser over any signature in a document to be notarized or in a notarial certificate or over any writing in a notarial certificate. See OAR 160-100-0110(3) and 160-100-0130(3). Sanction for First Act of Misconduct: Official warning.

(55) A notary public used the notary public's official seal or official seal embosser for a purpose other than to perform a notarial act. See OAR 160-100-0110(5) and 160-100-0130(5). Sanction for First Act of Misconduct: Official warning.

(56) A notary public permitted another person to use the notary public's official seal or official seal embosser. See OAR 160-100-0110(6) or 160-100-0130(6). Sanction for First Act of Misconduct: Suspension of commission for a period of 30 days and \$500 civil penalty.

(57) A notary public used another notary public's official seal or official seal embosser or an object in lieu of the notary public's official seal or official seal embosser to perform a notarial act. See OAR 160-100-0110(7) and 160-100-0130(7). Sanction for First Act of Misconduct: Suspension of commission for a period of 30 days and \$500 civil penalty.

(58) A notary public, whose Certificate of Authorization was lost, misplaced, destroyed or otherwise unusable, did not file with the Secretary of State a written statement, under oath or affirmation within ten days after the date the notary public discovered that the Certificate of Authorization was lost, misplaced, destroyed or otherwise unusable. See OAR 160-100-0150(1). Sanction for First Act of Misconduct: Official warning.

(59) A notary public, whose Certificate of Authorization was lost, misplaced, destroyed or otherwise unusable, did not file with the Secretary of State a written statement containing the information required by OAR 160-100-0150(2). See OAR 160-100-0150(2). Sanction for First Act of Misconduct: Official warning.

(60) A notary public, who was issued a duplicate Certificate of Authorization pursuant to OAR 160-100-0150 and 160-100-0160, did not file with the Secretary of State an imprint of the notary public's seal and duplicate Certificate of Authorization within ten days after the notary public received the completed duplicate Certificate of Authorization from a vendor of official seals. See OAR 160-100-0150(4) and 160-100-0160(3). Sanction for First Act of Misconduct: Official warning.

(61) A notary public who subsequently reacquired possession of a lost, misplaced, destroyed or otherwise unusable Certificate of Authorization did not file with the Secretary of State a written statement of explanation within ten days after the date the notary public reacquired possession of the unusable Certificate of Authorization. See OAR 160-100-0150(5). Sanction for First Act of Misconduct: Official warning.

(62) A notary public, whose official seal was lost, misplaced, destroyed, broken, damaged or otherwise unworkable, did not file with the Secretary of State a written statement containing the information required by OAR 160-



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100-0160(2). See OAR 160-100-0160(2) Sanction for First Act of Misconduct: Official warning.

(63) A notary public who subsequently reacquired possession of a lost or misplaced official seal did not file with the Secretary of State a written statement of explanation and the lost or misplaced official seal within ten days after the date the notary public reacquired possession of the lost or misplaced official seal. See OAR 160-100-0160(4). Sanction for First Act of Misconduct: Official warning.

(64) A notary public used a notarial journal that was not in the form required by OAR 160-100-0200. See OAR 160-100-0200. Sanction for First Act of Misconduct: Official warning.

(65) A notary public did not enter in a notarial journal the information about each notarial act performed by the notary public required by OAR 160-100-0210. See OAR 160-100-0210. Sanction for First Act of Misconduct: Official warning.

(66) A notary public recorded information about multiple notarial acts performed by the notary public in a manner that did not comply with the requirements of OAR 160-100-0220. See OAR 160-100-0220. Sanction for First Act of Misconduct: Official warning.

(67) A notary public used a record of protests that did not contain the information about each certificate of dishonor issued by the notary public required by OAR 160-100-0240. See OAR 160-100-0240. Sanction for First Act of Misconduct: Official warning.

(68) A notary public whose commission was terminated because of expiration, resignation or revocation did not file with the Secretary of State the notary public's record of protests and any other notarial records relating only to protests of commercial paper in accordance with OAR 160-100-0350 within 30 days after the date of termination. See OAR 160-100-0350(1). Sanction for First Act of Misconduct: Official warning.

(69) A notary public whose commission was terminated because of expiration, resignation or revocation did not file with the Secretary of State the statement required by OAR 160-100-0350(2) within 30 days after the date of termination. See OAR 160-100-0350(2). Sanction for First Act of Misconduct: Official warning.

(70) A notary public who entered into an agreement with an employer relating to the employer's retention and disposal of the notary public's notarial records following termination of employment pursuant to ORS 194.152(3) did not retain a written copy of the agreement or make such available upon request of the Secretary of State. See OAR 160-100-0360. Sanction for First Act of Misconduct: Official warning.

(71) A notary public who was convicted for a felony or lesser offense incompatible with the duties of a notary public did not file a statement with the Secretary of State within 30 days of conviction. See OAR 160-100-0500. Sanction for First Act of Misconduct: \$500 civil penalty.

(72) A notary public who submits the following types of documents to the Secretary of State in reply to correspondence from the Secretary of State or other government agency or seeks to initiate proceedings through the following document types:

(a) Conditional Acceptance, or a similar document purporting to "conditionally accept" presentment of an official document, and demanding proof of a list of claims in order to fully accept the official document.

(b) Affidavit in Support of Conditional Acceptance, or a similar document purporting to attest to the facts of a document described in paragraph (71)(1) and signed by the same notary public who is attesting.

(c) Notice of Dishonor, or a similar document purporting to give notice that a Conditional Acceptance (see paragraph (71)(1)) has not been accepted by the government agency to which it was sent and thereby was dishonored.

(d) Accepted for Value, or similar stamp or certificate purporting to accept for a disclosed or undisclosed value an official document sent to the notary public by the Secretary of State or other governmental agency. The certificate claims to establish an amount of money payable or accrued to the signor of the certificate.

(e) Notice of Protest, or a similar document purporting to be a Protest of Commercial Paper that has been dishonored, when said Commercial Paper is not, in fact, a negotiable instrument under ORS Chapter 73 and subject to the laws stated therein regarding dishonor and protest.

(f) Other documents attempting to apply ORS Chapter 73 to non-negotiable instruments or other documents not included in the scope of said chapter.

(g) Other document type purporting to follow the Uniform Commercial Code (U.C.C.), and not related to an ORS Ch. 79 filing.

(h) Other document type purporting to be according to ORS Ch. 79 that does not constitute filing under ORS Ch. 79.0516. See ORS 194.166. Sanction for First Act of Misconduct: Revocation of commission or refusal to issue commission.

Stat. Auth.: ORS 194.335  
Stats. Implemented: ORS 194.166, 194.980 & 194.070  
Hist.: SOS-AD 2-1990, f. 5-9-90, cert. ef. 7-1-90; CORP 1-1993, f. 12-29-93, cert. ef. 1-1-94, Renumbered from 164-100-0610; CORP 1-2003, f. 3-14-03, cert. ef. 4-1-03; CORP 6-2009, f. 12-22-09, cert. ef. 1-1-10

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**Rule Caption:** These rules set notary fees, notary administrative services fees, and provides for refund of fees.

**Adm. Order No.:** CORP 7-2009

**Filed with Sec. of State:** 12-22-2009

**Certified to be Effective:** 1-1-10

**Notice Publication Date:** 12-1-2009

**Rules Adopted:** 160-005-0008

**Rules Amended:** 160-100-0040, 160-100-0400

**Subject:** These rules set fees a notary can charge, administrative fees for notary public services, and provides for the refund of fees paid in excess of the amount due to the Corporation Division.

**Rules Coordinator:** Karen Hutchinson—(503) 986-2364

## 160-005-0008

### Fees for notarial acts by Corporation Division employees

The Secretary of State shall collect \$10 per notarial act performed by a notary public employed by the Secretary of State during the course of that person's employment. Notarial acts performed by the employee outside of the course of employment shall be subject to OAR 160-100-0400 through 0420.

Stat. Auth.: ORS 194.335

Stats. Implemented: ORS 194.164

Hist.: CORP 7-2009, f. 12-22-09, cert. ef. 1-1-10

## 160-100-0040

### Administrative Services Fees

The Secretary of State shall charge the following fees for performing the administrative services indicated:

(1) \$20, nonrefundable, for processing each application, including written examination, for a commission as a notary public.

(2) \$10 for apostilles for public officials and notaries public.

(3) \$10 for each notary public certificate of good standing.

(4) \$10 for each notarial act performed by a Corporation Division notary public.

(5) \$10 for each duplicate notary public commission.

(6) \$10 for each duplicate Certificate of Authorization to Obtain Official Seal.

(7) \$10 for processing a request to change the notary public's name on the notary public's written commission.

(8) \$50 for each list of new notaries public.

(9) \$50 for each standard list of all active notaries public.

Stat. Auth.: ORS 194.052 & 194.164

Stats. Implemented: ORS 177.130, 192.440, 194.020 194.052 & 194.164

Hist.: SOS-AD 2-1990, f. 5-9-90, cert. ef. 7-1-90; Suspended by SOS-AD 2-1992(Temp), f. & cert. ef. 2-14-92; CORP 1-1993, f. 12-29-93, cert. ef. 1-1-94, Renumbered from 164-100-0040; CORP 1-1994, f. 12-30-94, cert. ef. 1-1-95; CORP 7-2009, f. 12-22-09, cert. ef. 1-1-10

## 160-100-0400

### Maximum Amount of Notary Fees Permitted to be Charged

A notary public shall not charge, attempt to charge, or receive a notary fee that is more than:

(1) \$10 for taking an acknowledgment;

(2) \$10 for taking a verification upon an oath or affirmation;

(3) \$10 for administering an oath or affirmation without a signature;

(4) \$10 for certifying a copy of a document;

(5) \$10 for witnessing or attesting a signature;

(6) \$10 for protesting commercial paper, except a check drawn on an insolvent financial institution in which case the fee is \$0.

Stat. Auth.: ORS 194.164

Stats. Implemented: ORS 194.164

Hist.: SOS-AD 2-1990, f. 5-9-90, cert. ef. 7-1-90; CORP 1-1993, f. 12-29-93, cert. ef. 1-1-94, Renumbered from 164-100-0400; CORP 7-2009, f. 12-22-09, cert. ef. 1-1-10

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**Rule Caption:** This rule clarifies U.S. Passport Cards as satisfactory evidence to identify a person.

**Adm. Order No.:** CORP 8-2009

**Filed with Sec. of State:** 12-22-2009

**Certified to be Effective:** 1-1-10

**Notice Publication Date:** 12-1-2009

**Rules Adopted:** 160-100-0700

**Subject:** New rule 160-100-0700 clarifies a U.S. Passport Card is considered the same as a U.S. Passport for purposes of 194.515, and is satisfactory evidence to identify a person.

**Rules Coordinator:** Karen Hutchinson—(503) 986-2364

## 160-100-0700

### Satisfactory Evidence

For the purposes of 194.515:

(1) "Current" means not expired.

(2) "United States passport" means a U.S. passport and a U.S. passport card issued by the U.S. Department of State.

Stat. Auth.: ORS 194.335

Stats. Implemented: ORS 194.515

Hist.: CORP 8-2009, f. 12-22-09, cert. ef. 1-1-10

# ADMINISTRATIVE RULES

## Secretary of State, Elections Division Chapter 165

**Rule Caption:** Amendment of Procedural Rules for Contested Cases.

**Adm. Order No.:** ELECT 19-2009

**Filed with Sec. of State:** 12-31-2009

**Certified to be Effective:** 12-31-09

**Notice Publication Date:** 12-1-2009

**Rules Amended:** 165-001-0015, 165-001-0025, 165-001-0035, 165-001-0040, 165-001-0045, 165-001-0050, 165-001-0055, 165-001-0080

**Rules Repealed:** 165-001-0065

**Subject:** These rules are proposed for amendment to update the procedures for conducting contested case hearing and to incorporate a new requirement passed by the 2009 Legislative Assembly that requires the Secretary of State to use the Office of Administrative Hearing contested case hearings. OAR 165-001-0065 is proposed for repeal because the Office of Administrative Hearings will be conducting the hearings and have separate requirements for what constitutes unacceptable conduct.

**Rules Coordinator:** Brenda Bayes — (503) 986-1518

### 165-001-0015

#### Notice of Opportunity for Hearing

When the Secretary of State proposes to impose a civil penalty or find a violation of an election law, or both, under ORS 260.232 or 260.995, the Secretary of State shall cause a notice to be served by certified mail and regular mail on the person(s) subject to the penalty. The notice shall include:

(1) A statement of the person's right to a hearing before an Administrative Law Judge with the Office of Administrative Hearings.

(2) A statement that if the person desires a hearing, the agency must be notified within the number of days provided by statute from the date of receiving the notice.

(3) A statement of the authority and jurisdiction under which the hearing is to be held.

(4) A reference to the particular sections of the statutes and rules involved.

(5) A short and plain statement of the matters asserted or charged as a violation.

(6) A statement of the amount of penalty that may be imposed.

(7) A statement that the person may be represented by counsel at the hearing.

(8) If the person is an agency, corporation or an unincorporated association, that such person must be represented by an attorney licensed in Oregon, unless the person is a political committee which may be represented by any individual identified as the candidate, treasurer, alternate transaction filer, person designated as the correspondence recipient or director in the most recent statement of organization filed with the filing officer.

(9) A statement that the record of the proceeding to date, including the agency file or files on the subject of the contested case, automatically become part of the contested case record upon default for the purpose of proving a prima facie case.

(10) The person against whom a penalty may be assessed need not appear in person at a hearing held under ORS 260.232 or 260.995, but instead may submit written testimony and other evidence, sworn to before a notary public, to the Secretary of State for entry in the hearing record. Such documents must be received by the Secretary of State not later than three business days prior to the hearing as provided by 260.232(6).

(11) Unless precluded by law, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order or default.

Stat. Auth.: ORS 183.090, 183.470 & 246.150

Stats. Implemented: ORS 183.341, 183.470, 260.232 & 260.995

Hist.: ELECT 15-1988(Temp), f. & cert. ef. 1-27-88; ELECT 26-1988, f. & cert. ef. 8-1-88; ELECT 27-1993, f. & cert. ef. 7-1-93; ELECT 9-1999, f. & cert. ef. 9-29-99; ELECT 7-2003, f. & cert. ef. 9-3-03; ELECT 19-2009, f. & cert. ef. 12-31-09

### 165-001-0025

#### Orders When No Hearing Requested or Failure to Appear

(1) When a party has been given an opportunity to request a hearing and fails to request a hearing in writing within the specified time, or having requested a hearing fails to appear at the specified time and place, the agency shall, subject to section (2) of this rule, enter an order by default which supports the agency action. The time provided by statute to request a hearing is calculated from the delivery date indicated on the certified letter's postal confirmation. If the certified letter is refused or left unclaimed at the post office, the time shall be calculated from the date the post office indicates it has given first notice of a certified letter. If the certified card is not returned to the Secretary of State by the United States Postal Service (USPS), the Secretary

shall use the date recorded on the official USPS website utilizing the Track and Confirm delivery service.

(2) An order adverse to a party may be issued on default only if the agency record demonstrates a prima facie case justifying the order. The Administrative Law Judge will declare a party to be in default if the party which requested the hearing does not appear within 15 minutes of the time set for the hearing, unless the party gives notice of a reason for the inability to appear at the designated time and requests and receives a continuance. A continuance shall be granted only if the reason for the inability to appear is beyond the reasonable control of the party.

(3) The prima facie record upon default may be made at a scheduled hearing on the matter, or, if the notice of intended action states that the order will be issued or become effective upon the failure of the party to timely request a hearing, when the order is issued.

(4) The record may consist of oral (transcribed, recorded, or reported) or written evidence or a combination of oral and written evidence. When the record is made at the time the notice or order is issued, the agency file may be designated as the record. In all cases, the record must contain substantial evidence to support the findings of fact.

(5) When the Administrative Law Judge has set a specified time and place for a hearing and the party subsequently notifies the agency or the Administrative Law Judge assigned to the case that the party will not appear at such specified time and place, the agency may cancel the hearing and follow the procedure described in subsections (2), (3) and (4) of this rule.

(6) When a party requests a hearing after the time specified by the agency, but before entry of a final order by default, or, if a final order by default is entered, on or before 30 calendar days after entry of the order, the agency may accept the late request only if the cause for failure to timely request the hearing was beyond the reasonable control of the party. In determining whether to accept a late hearing request, the agency may require the request to be supported by an affidavit and may conduct such further inquiry, including holding a hearing, that it deems appropriate. The agency shall enter an order granting or denying the request.

(7) When a party requests a hearing after entry of a default order, the party must file the request within a reasonable time. If the request is received more than 30 days after the agency mailed the default order to the party or the party's attorney (based on the service date of the order), it is presumed that the request is not timely. The request shall state why the party should be relieved of the default order. If the request is allowed by the agency, it shall enter an order granting the request and schedule the hearing in due course. If the request is denied, the agency shall enter an order setting forth its reasons for the denial.

(8) The agency shall notify a defaulting party of the entry of a default order by mailing a copy of the order as required by ORS 183.470.

(9) Notwithstanding the provisions of this rule relating to late requests for a hearing, no hearing may be held if the timing of the request would cause the agency to miss the statutory deadlines established for the conduct of hearings in ORS 260.232(4) or 260.995(6).

Stat. Auth.: ORS 183.090, 183.470, 246.150, 260.232 & 260.995

Stats. Implemented: ORS 183.470, 260.232 & 260.995

Hist.: ELECT 15-1988(Temp), f. & cert. ef. 1-27-88; ELECT 26-1988, f. & cert. ef. 8-1-88; ELECT 27-1993, f. & cert. ef. 7-1-93; ELECT 15-1994, f. & cert. ef. 7-26-94; ELECT 7-2003, f. & cert. ef. 9-3-03; ELECT 19-2009, f. & cert. ef. 12-31-09

### 165-001-0035

#### Conducting Contested Case Hearings

(1) The contested case hearing shall be conducted by and under the control of the administrative law judge of the Office of Administrative Hearings that is assigned to the case.

(2) If the administrative law judge or any decision maker has an actual or potential conflict of interest as defined in ORS 244.020(1) or (7), that officer shall comply with the requirements of ORS Chapter 244 (e.g. ORS 244.120 and 244.130).

(3) The hearing shall be conducted, subject to the discretion of the administrative law judge, so as to include the following:

(a) The statement and evidence of the agency in support of its action;

(b) The statement and evidence of the person against whom the penalty may be assessed;

(c) Any rebuttal evidence;

(d) Any closing arguments.

(4) The administrative law judge, the agency, and the person against whom the penalty may be assessed shall have the right to question witnesses.

(5) The hearing may be continued with recesses as determined by the administrative law judge.

(6) The administrative law judge may set reasonable time limits for oral presentation and may exclude or limit cumulative, repetitious, or immaterial matter.

(7) Exhibits shall be marked and maintained by the administrative law judge as part of the record of the proceedings.

(8) If the administrative law judge receives any written or oral ex parte communication on a fact in issue during the contested case proceeding, that person shall notify all parties and otherwise comply with the requirements of OAR 165-001-0045.

Stat. Auth.: ORS 246.150, 260.232 & 260.995

# ADMINISTRATIVE RULES

Stats. Implemented: ORS 260.232 & 260.995  
Hist.: ELECT 15-1988(Temp), f. & cert. ef. 1-27-88; ELECT 26-1988, f. & cert. ef. 8-1-88;  
ELECT 7-2003, f. & cert. ef. 9-3-03; ELECT 19-2009, f. & cert. ef. 12-31-09

## 165-001-0040

### Evidentiary Rules

(1) Evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their serious affairs shall be admissible.

(2) Irrelevant, immaterial or unduly repetitious evidence shall be excluded.

(3) All offered evidence, not objected to, will be received by the administrative law judge subject to the administrative law judge's power to exclude irrelevant, immaterial or unduly repetitious matter.

(4) Evidence objected to may be received by the administrative law judge. If the administrative law judge does not rule on its admissibility at the hearing, the administrative law judge shall do so either on the record before a proposed order is issued or in the proposed order.

(5) The administrative law judge shall accept an offer of proof made for excluded evidence. The offer of proof shall contain sufficient detail to allow the agency or court to determine whether the evidence was properly excluded. The administrative law judge shall have discretion to decide whether the offer of proof is to be oral or written and at what stage in the proceeding it will be made. The administrative law judge may place reasonable limits on the offer of proof, including the time to be devoted to an oral offer or the number of pages in a written offer.

Stat. Auth.: ORS 246.150, 260.232 & 260.995

Stats. Implemented: ORS 183.450, 183.470, 260.232 & 260.995

Hist.: ELECT 15-1988(Temp), f. & cert. ef. 1-27-88; ELECT 26-1988, f. & cert. ef. 8-1-88;  
ELECT 9-1999, f. & cert. ef. 9-29-99; ELECT 7-2003, f. & cert. ef. 9-3-03; ELECT 19-2009,  
f. & cert. ef. 12-31-09

## 165-001-0045

### Ex Parte Communications

(1) An ex parte communication is:

(a) An oral or written communication;

(b) By a party, a party's representative or legal advisor, any other person who has a direct or indirect interest in the outcome of the proceeding, any other person with personal knowledge of the facts relevant to the proceeding, or any offer, employee or agent of the agency;

(c) That relates to a legal or factual issue in the contested case proceeding;

(d) Made directly or indirectly to the administrative law judge;

(e) While the contested case proceeding is pending;

(f) That is made without notice and opportunity for the agency and all parties to participate in the communication.

(2) If an agency decision maker or administrative law judge receives an ex parte communication during the pendency of the proceeding, the administrative law judge shall place in the record:

(a) The name of each individual from whom the administrative law judge received an ex parte communication;

(b) A copy of any ex parte written communication received by the administrative law judge;

(c) A memorandum reflecting the substance of any ex parte oral communication made to the administrative law judge;

(d) A copy of any written response made by the administrative law judge to any ex parte oral or written communication; and

(e) A memorandum reflecting the substance of any oral response made by the administrative law judge to any ex parte oral or written communication.

(3) The provisions of this rule do not apply to:

(a) Communications made to an administrative law judge by other administrative law judges;

(b) Communications made to an administrative law judge by any person employed by the Office of Administrative Hearings to assist the administrative law judge.

Stat. Auth.: ORS 246.150, 260.232 & 260.995

Stats. Implemented: ORS 260.232 & 260.995

Hist.: ELECT 15-1988(Temp), f. & cert. ef. 1-27-88; ELECT 26-1988, f. & cert. ef. 8-1-88;  
ELECT 7-2003, f. & cert. ef. 9-3-03; ELECT 19-2009, f. & cert. ef. 12-31-09

## 165-001-0050

### Proposed Orders in Contested Cases, Filing of Exceptions, Argument, and Adoption of Order

(1) The administrative law judge shall prepare a proposed order and serve the proposed order on the agency and each party. The proposed order shall be served not later than 30 calendar days after the hearing is adjourned. The agency shall notify the party when and where written exceptions to the proposed order must be filed to be considered by the agency.

(2) If the administrative law judge's proposed order recommended a decision favorable to a party and the agency intends to reject that recommendation and issue an order adverse to that party, the agency shall issue an amended proposed order. When the agency serves an amended proposed order on the party, the agency shall, at the same time notify the party when and where written exceptions for the amended order must be filed to be considered by the agency.

(3) The agency decision maker, after considering any the written exceptions may adopt the proposed order, amended proposed order or prepare a new order.

Stat. Auth.: ORS 183.090, 183.470, 246.150, 260.232 & 260.995

Stats. Implemented: ORS 183.470, 260.232 & 260.995

Hist.: ELECT 15-1988(Temp), f. & cert. ef. 1-27-88; ELECT 26-1988, f. & cert. ef. 8-1-88;  
ELECT 7-2003, f. & cert. ef. 9-3-03; ELECT 19-2009, f. & cert. ef. 12-31-09

## 165-001-0055

### Final Orders

(1) Final orders on contested cases shall be in writing and shall include the following:

(a) The case caption.

(b) The name of the administrative law judge(s), the appearance of the parties and identity of witnesses.

(c) A statement of the issues.

(d) References to specific statutes or rules at issue.

(e) Rulings on admissibility of offered evidence when the rulings are not set forth in the record.

(f) Findings as to each issue of fact and as to each ultimate fact required to support the order, along with a statement of the underlying facts supporting each finding.

(g) Conclusion(s) of law based on the findings of fact and applicable law.

(h) An explanation of the reasoning that leads from the findings of fact to the legal conclusion(s)

(i) An order stating the action taken by the agency as a result of the facts found and the legal conclusions arising therefrom.

(j) A citation of the statutes under which the order may be appealed.

(k) The date of service of the order on the party shall be specified in writing and be part of or attached to the order on file with the agency.

(1) The final order shall be served on each party and, if the party is represented, on the party's attorney.

(2) If the agency modifies the proposed order issued by the administrative law judge in any substantial manner, the agency must identify the modifications and explain to the parties why the agency made the modifications. For purposes of this provision, an agency modifies a proposed order in a "substantial manner" when the effect of the modification is to change the outcome or the basis for the order or to change a finding of fact.

Stat. Auth.: ORS 183.090, 183.470, 246.150, 260.232 & 260.995

Stats. Implemented: ORS 183.470, 260.232 & 260.995

Hist.: ELECT 15-1988(Temp), f. & cert. ef. 1-27-88; ELECT 26-1988, f. & cert. ef. 8-1-88;  
ELECT 7-2003, f. & cert. ef. 9-3-03; ELECT 19-2009, f. & cert. ef. 12-31-09

## 165-001-0080

### Telephone Hearings

(1) The administrative law judge will hold a hearing by telephone unless the party requesting the hearing specifically requests a personal appearance hearing. If the party requests a personal appearance hearing, the hearing shall be held in Salem at the Office of Administrative Hearings. Nothing in this rule precludes the agency from allowing some parties or witnesses to attend by telephone while others attend in person.

(2) The administrative law judge shall make an audio or stenographic record of any telephone hearing.

(3) Not less than 5 business days prior to the commencement of a hearing conducted by telephone, each party, including the agency, must deliver copies of the exhibits it intends to offer into evidence at the hearing. The exhibits must be delivered to the administrative law judge, all parties and the agency. For purposes of this rule, delivery may be accomplished by any of the following means, or by other means of a similar nature: hand delivery, deposit into first class or certified mail, facsimile or professional delivery service.

(4) Nothing in this rule precludes any party or the agency from seeking to introduce documentary evidence in addition to evidence described in subsection (3) during the telephone hearing. The administrative law judge shall receive such evidence, subject to the applicable rules of evidence, if inclusion of the evidence in the record is necessary to conduct a full and fair hearing. If any evidence introduced during the hearing has not previously been provided to the agency and to the other parties, the hearing may be continued upon the request of any party or the agency for sufficient time to allow the party or the agency to obtain and review the evidence.

(5) The agency will give primary consideration to accommodate the needs of persons that are disabled so that they are not disadvantaged due to their disability.

(6) As used in this rule, "telephone" means any two-way or multi-party electronic communication device, including video conferencing.

Stat. Auth.: ORS 260

Stats. Implemented: ORS 260.232 & 260.995

Hist.: ELECT 5-1999, f. 7-30-99, cert. ef. 9-1-99; ELECT 19-2009, f. & cert. ef. 12-31-09

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**Rule Caption:** Amendment Provides for Free Distribution of Manuals, Revises Fee Calculation.

**Adm. Order No.:** ELECT 20-2009

**Filed with Sec. of State:** 12-31-2009

**Certified to be Effective:** 12-31-09

# ADMINISTRATIVE RULES

**Notice Publication Date:** 12-1-2009

**Rules Amended:** 165-002-0010, 165-002-0020

**Subject:** OAR 165-002-0010 sets forth the schedule and fees for providing copies of public records. This rule is proposed for amendment to add copies of any manuals produced and adopted by the Secretary of State, Elections Division to the list of public records provided by the division free of charge.

OAR 165-002-0020 sets forth the schedule and fees for providing statewide and less than statewide voter lists. This rule is proposed for amendment to allow for rounding of the total amount due for providing a less than statewide voter list to the nearest nickel.

**Rules Coordinator:** Brenda Bayes—(503) 986-1518

## 165-002-0010

### Schedule and Fees for Providing Copies of Public Records

(1) Any person may request photocopies, facsimile (fax) copies, electronically distributed (email) copies, certifications and computer disks of public records which are on file in the Office of the Secretary of State, Elections Division in person, in writing, by telephone, by facsimile (fax) or by electronic submission (email). For purposes of this rule a page is considered to be a single sheet of paper with information on either one side or both sides.

(2) Charges for photocopy orders will be the lesser of:

(a) \$0.25 per page; or

(b) For orders requiring 4 or more hours of staff time to process, \$0.03 per page, plus labor charges calculated as provided in paragraph 7(b);

(c) If the completed photocopy order is mailed, the minimum charge will be \$1.00 prepaid. If the order is to be billed, the minimum charge will be \$5.00;

(d) There is no minimum charge for credit card transactions.

(3) Completion of copy orders is contingent upon the number of pending requests and staff availability. Orders will be processed in the order in which they are received.

(4) Facsimile (fax) copy orders shall be processed as follows:

(a) The cost of records transmitted by facsimile (fax) will be \$5.00 for the first page and \$1.00 for each additional page;

(b) Facsimile (fax) orders are limited to a 20 page maximum, not including the cover page;

(c) Facsimile (fax) orders are limited to in-state customers unless prepayment is received.

(5) Certified copies of public records shall be provided at a cost of \$5.00 for each certification plus \$0.25 for each page copied. Certified copies means photocopies which are certified to be true and accurate copies of the original documents.

(6) Copies of public records may also be provided on a 3.5-inch computer disk or compact disk (CD) if the document(s) are stored in the computer system. Disks will be provided at a cost of \$5.00 per disk and may contain as much information as it will hold.

(7) Labor charges for research projects shall be as follows:

(a) No charge for the first 15 minutes of staff time;

(b) Beginning with the 16th minute, the charge per total request shall be \$25.00 per hour or \$6.25 per quarter-hour. No proration will be done for less than a quarter-hour;

(c) "Research", for purposes of this rule, is defined as the compilation of information:

(A) Which is not readily and immediately available from a single source or a group of related sources;

(B) Which requires a search to locate the requested information; or

(C) Where the request is not specific and a staff determination must be made as to the nature of the information which would fulfill the request.

(8) Billing will be done on the following basis:

(a) Payment must be made not later than 30 days after the billing date. If payment is not received and a second notice is required, an additional \$5.00 may be charged;

(b) Billing will not be provided to any customer who has a past due balance from a previous order. Additional orders will be processed only upon receipt of the balance owed and prepayment of the cost of the new order.

(9) For orders, including research projects, which have an estimated total cost exceeding \$50.00, a deposit of one-half of the estimated total cost of the order will be required prior to processing.

(10) The following will be provided free of charge:

(a) Copies of any manual produced and adopted by the Secretary of State, Elections Division, limited to one copy of each requested manual per customer;

(b) Lists of federal and statewide elected officials, the legislative assembly, judges, and district attorneys;

(c) Voter registration statistics;

(d) Press releases;

(e) 8.5" X 11" maps;

(f) Any document distributed by electronic mail (email); and

(g) The first 25 pages of any photocopy order placed by a state agency.  
Stat. Auth.: ORS 192.440 & 246.150  
Stats. Implemented: ORS 192.440  
Hist.: ELECT 21-1989, f. & cert. ef. 10-31-89; ELECT 10-1994, f. & cert. ef. 5-31-94; ELECT 10-1998, f. & cert. ef. 11-3-98; ELECT 17-2003, f. & cert. ef. 12-5-03; ELECT 9-2006, f. & cert. ef. 5-15-06; ELECT 20-2009, f. & cert. ef. 12-31-09

## 165-002-0020

### Schedule and Fees for Providing Statewide and Less Than Statewide Voter List

(1) Any person may obtain an electronic copy of a statewide or less than statewide voter list from the Office of the Secretary of State, Elections Division, or any county elections official. The following fees for providing a list electronically will apply:

(a) \$25.00 fee for staff and processing time, and media used

(b) \$.025 per 100 voters

(c) The maximum charge excluding the fee assessed under paragraph 2 of this rule will be \$500.00.

(2) For any special formatting requests, an hourly fee of \$35.00 per hour will be assessed. The minimum fee assessed under this paragraph will be \$35.00 and the maximum \$100.00. Special formatting requests do not include providing the electronic copy of a statewide or less than statewide voter list in an alternate electronic format such as an Excel or Access file, rather than a tab delimited text file.

(3) In accordance with ORS 247.945(4) the charge for a statewide voter list is \$500.00. No special formatting requests will be permitted for a statewide voter list.

(4) A request for a hardcopy of a less than statewide voter list, labels, or other non-electronic formats must be made with the county elections official of each county in which voters to be listed reside.

(5) In accordance with ORS 192.440(3)(a) a county may establish fees reasonably calculated to reimburse the county for the actual cost of making the list available, including costs for summarizing, compiling or tailoring the public records, either in organization or media, to meet the person's request.

(6) Any fee calculated under paragraph 1 of this rule may be rounded up to the nearest nickel.

(7) All requests for a statewide or less than statewide voter list will be accompanied by a completed SEL 510, Customer Request Form for Statewide or Less Than Statewide Voter List.

(8) The voter list must not be used for commercial purposes. Under ORS 247.955 a person will not be considered to use the voter list for commercial purposes if the person obtains the list of electors for the purpose of resale to candidates or political committees for political purposes only.

Stat. Auth.: ORS 192.440, 246.150

Stats. Implemented: ORS 192.440

Hist.: ELECT 12-2006, f. & cert. ef. 8-23-06; f. & cert. ef. 12-31-07; ELECT 20-2009, f. & cert. ef. 12-31-09

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**Rule Caption:** Revises Who May Obtain a Residence Address Disclosure Exemption from a County Elections Official.

**Adm. Order No.:** ELECT 21-2009

**Filed with Sec. of State:** 12-31-2009

**Certified to be Effective:** 12-31-09

**Notice Publication Date:** 12-1-2009

**Rules Amended:** 165-005-0130

**Subject:** This rule is being revised to limit the individuals who may seek a residence address disclosure exemption from the county elections official to public safety officers as defined in OAR 181.610, as provided in section 1, Chapter 769 Oregon Laws 2009.

**Rules Coordinator:** Brenda Bayes—(503) 986-1518

## 165-005-0130

### Residence Address Disclosure Exemption

(1) The purpose of this rule is to define when a county elections official may exempt the residence address of an elector from disclosure as a public record.

(2) The terms used in this rule shall have the same meaning as defined in ORS Chapters 246 through 260, commonly referred to as "Oregon Election Laws".

(3) An elector may request that a county elections official not disclose the residence address of the elector. If the elector demonstrates to the satisfaction of the county elections official that the personal safety of the elector, or the personal safety of a family member residing with the elector, is in danger if the residence address remains available for public inspection, the county elections official shall not disclose that information except in compliance with a court order, a request by a law enforcement agency, or with the consent of the elector.

(4) An exemption from disclosure granted under this rule shall include the residence address on the elector's voter registration record, registration lists produced in accordance with ORS 247.940 and 247.945, poll books, and any other material produced or maintained by the county elections official which is available for public inspection that may reveal the requestor's resi-

# ADMINISTRATIVE RULES

dence address. The elector's mailing address may be used in place of the exempt residence address.

(5) A request under section (3) of this rule shall be submitted to the county elections official. The exemption request shall be submitted on form SEL 550 Application to Exempt Residence Address from Disclosure. The request shall be in writing, signed by the elector, and shall include:

- (a) The name of the elector requesting exemption;
- (b) A non-exempt mailing address for the elector; and
- (c) Evidence sufficient to establish to the satisfaction of the county elections official that disclosure of the elector's residence address would constitute a danger to the personal safety of the elector, or of a family member residing with the elector. Such evidence may include copies of the following documents:

(A) An affidavit, medical records, police reports or court records showing that the elector, or a family member residing with the elector, has been a victim of domestic violence;

(B) A citation or an order issued under ORS 133.055 for the protection of the elector, or a family member residing with the elector;

(C) An affidavit or police report showing that a law enforcement officer has been contacted concerning domestic violence, other physical abuse, or threatening or harassing letters or telephone calls directed at the elector, or a family member residing with the elector;

(D) A temporary restraining order or other no-contact order to protect the elector, or a family member residing with the elector, from future physical abuse;

(E) Court records showing that criminal or civil legal proceedings have been filed regarding physical protection for the elector, or a family member residing with the elector;

(F) A citation or a court's stalking protective order pursuant to ORS 163.735 or 163.738, obtained for the protection of the elector, or a family member residing with the elector;

(G) An affidavit or police report showing that the elector, or a family member residing with the elector, has been a victim of a person convicted of the crime of stalking or of violating a court's stalking protective order;

(H) A conditional release agreement issued under ORS 135.250–135.260 providing protection for the elector, or a family member residing with the elector;

(I) A protective order issued pursuant to ORS 135.873 or 135.970 protecting the identity or place of residence of the elector, or a family member residing with the elector;

(J) An affidavit from a district attorney, or deputy district attorney, stating that the elector, or a family member residing with the elector, is scheduled to testify or has testified as a witness at a criminal trial, grand jury hearing or preliminary hearing, and that such testimony places the personal safety of the witness in danger;

(K) A court order stating that the elector, or a family member residing with the elector, is or has been a party, juror, judge, attorney or involved in some other capacity in a trial, grand jury proceeding or other court proceeding, and that such involvement places the personal safety of that elector in danger; or

(L) Such other documentary evidence that establishes to the satisfaction of the county elections official that disclosure of the elector's residence address would constitute a danger to the personal safety of the elector, or a family member residing with the elector.

(6) The county elections official receiving a request under this rule will promptly review the request and notify the elector, in writing, whether the evidence submitted is sufficient to demonstrate to the satisfaction of the county elections official that the personal safety of the elector, or a family member residing with the elector, would be in danger if the residence address remains available for public inspection. The county elections official may request that the elector submit additional information concerning the request.

(7) If a county elections official grants the request to exempt the residence address of an elector from disclosure as a public record, the county elections official must include a statement in its notice to the elector that: the exemption will remain effective until the elector requests termination of the exemption or the elector is required to update the elector's voter registration.

(8) If the elector is required to update the elector's voter registration, the elector may apply for another exemption from disclosure. At the time of updating if no SEL 550 Application To Exempt Residence Address From Disclosure As A Public Record accompanies the voter registration card or is incomplete, the county elections official must send notice, by certified mail return receipt requested, to the elector that states:

- (a) Currently the elector's address is non-disclosed; and
- (b) If an updated SEL 550 Application To Exempt Residence Address From Disclosure As A Public Record is not received within 10 business days of receipt of the notice, the elector's residence address will not be exempt from disclosure as a public record.

(9) An elector who has requested that a county elections official not disclose his or her residence address may revoke the request by notifying, in writing, the county elections official to which the request was made that disclosure no longer constitutes a danger to personal safety. The notification must be signed by the person who submitted the original request for nondisclosure of the residence address.

(10) Form SEL 550 may be used by a public safety officer, as defined by ORS 181.610, to request that the person's home address, home telephone number and electronic mail address be exempted from disclosure pursuant to 192.501. A public safety officer making such a request is not required to provide information described in paragraph (5)(c).

(11) Form SEL 550 shall be used by a participant or parent or guardian of a participant in the Address Confidentiality Program to request that the elector's residence address be exempted from disclosure pursuant to ORS 192.842. The form shall be completed by the participant and include:

- (a) The name of the elector requesting exemption;
- (b) The substitute address provided by the Address Confidentiality Program; and
- (c) A copy of the Address Confidentiality Program Authorization Card.

(12) A request under section (11) of this rule is not required to be signed and a copy of the Address Confidentiality Program Authorization Card is the only evidentiary documentation required.

(13) If a participant or parent or guardian of a participant in the Address Confidentiality Program is required to update the elector's voter registration due to a change in residence address, only an updated voter registration card is required to be completed.

(14) If a participant or parent or guardian of a participant in the Address Confidentiality Program is required to update the elector's voter registration due to a name change section (8) of this rule applies. If an updated SEL 550 is received in response to the notice in section (8) of this rule it must be accompanied by a copy of the Address Confidentiality Program Authorization Card.

(15) Pursuant to ORS 192.842 the county elections official may not disclose the elector's residence address, and the county elections official shall use the substitute address of the program participant for purposes of mailing a ballot to an elector under 254.470.

Stat. Auth.: ORS 246.150 & 247.969  
Stats. Implemented: ORS 247.965 & 192.501  
Hist.: ELECT 3-1994, f. & cert. ef. 2-4-94; ELECT 13-2001, f. & cert. ef. 6-15-01; ELECT 8-2003, f. & cert. ef. 9-3-03; ELECT 4-2006, f. & cert. ef. 4-18-06; ELECT 18-2006, f. 12-29-06, cert. ef. 1-1-07; ELECT 9-2007 f. & cert. ef. 12-31-07; ELECT 21-2009, f. & cert. ef. 12-31-09

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**Rule Caption:** Adds Forms to be Used by 17 Year Old Elector to Request Ballots.

**Adm. Order No.:** ELECT 22-2009

**Filed with Sec. of State:** 12-31-2009

**Certified to be Effective:** 12-31-09

**Notice Publication Date:** 12-1-2009

**Rules Amended:** 165-007-0035

**Subject:** This proposed rule amendment designates form SEL 111A, the Absentee Ballot Request Form, as the form to be used by an elector who is 17 years old who will be away during an election, may submit to a county elections official to request an absentee ballot.

**Rules Coordinator:** Brenda Bayes—(503) 986-1518

## 165-007-0035

### Designating Ballot Request Forms

(1) The Secretary of State designates form SEL 111, Absentee Ballot Request Form, as the form an elector who will be away during an election, may submit to a county elections official to request an absentee ballot, except that if the elector is serving in the Armed Forces, the Merchant Marine or is temporarily living outside the territorial limits of the United States, a Federal Absentee Ballot Request Form must be submitted.

(2) The Secretary of State designates form SEL 111A, Absentee Ballot Request Form, as the form an elector who is 17 years old who will be away during an election, may submit to a county elections official to request an absentee ballot, except that if the elector is serving in the Armed Forces, the Merchant Marine or is temporarily living outside the territorial limits of the United States, a Federal Absentee Ballot Request Form must be submitted. The elector will not receive a ballot until an election occurs on or after their eighteenth birthday.

(3) The Secretary of State designates form SEL 113, Provisional Ballot Request Form, as the form an individual whose eligibility as a voter is in question may use to request a ballot. The provisional ballot will not be counted until the individual's eligibility is determined.

Stat. Auth.: ORS 246.150, 254.465, 254.470, Help America Vote Act P.L. 107-252  
Stats. Implemented: ORS 247, 253.03 & 254  
Hist.: ELECT 5-2006, f. & cert. ef. 4-18-06; ELECT 22-2009, f. & cert. ef. 12-31-09

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**Rule Caption:** Hand Counts of Ballots at General Elections.

**Adm. Order No.:** ELECT 23-2009

**Filed with Sec. of State:** 12-31-2009

**Certified to be Effective:** 12-31-09

**Notice Publication Date:** 12-1-2009

**Rules Amended:** 165-007-0290

# ADMINISTRATIVE RULES

**Subject:** This rule describes the process by which county elections officials conduct hand counts of ballots counted by county vote tally systems at each general election. The amendments incorporate changes made by the 2009 Legislative Assembly. The changes include allowing notification to county officials of the election contest to be hand counted not later than the 3rd business day after the general election, and requiring county elections officials to begin the hand counts not later than the 21st day after the general election.

**Rules Coordinator:** Brenda Bayes—(503) 986-1518

## 165-007-0290

### Hand Count of Ballots at General Election

(1) This rule is adopted to implement hand counts of ballots counted by the vote tally system in the county at every general election as required by ORS 254.529. The hand count must be compared to the tally of votes produced by a vote tally system for the same ballots. The number of ballots that must be hand counted is dependent on the margin of victory between the two candidates in the same race receiving the largest number of votes in the county, as determined by the unofficial tally of ballots. Depending on the margin of victory, which will be determined by the results posted to the Secretary of State's electronic reporting system, ORESTAR, as of noon the day after the date of the general election, either 10%, 5% or 3% of all precincts or of ballots in ballot count batches will be hand counted.

(2) For purposes of implementing ORS 254.529 and this rule:

(a) "Margin of victory" means the percentage difference between the first and second place candidates in a given contest. For a contest for state measure the "margin of victory" is the difference between the "yes" and "no" votes.

(b) "Precinct" means any precinct with registered voters.

(c) "Ballot count batch" means a subset of ballots which can be associated with a subtotal in the vote tally system.

(3) In order to assist the Secretary in selecting the election contests for which ballots are to be hand counted, the Secretary shall appoint three members, one of whom will be an expert in statistics, to the Secretary of State's Hand Count Advisory Committee.

(4) Not later than 5 p.m. of the third business day after the date of the general election the Committee shall randomly select the election contests for which the county elections official is to conduct the hand count. The Committee shall randomly draw for each county to select:

(a) An office to be voted on in the state at large and state measure contests for which ballots are to be hand counted; and

(b) The precincts or ballot count batches in which ballots are to be hand counted. The same precincts or ballot count batches will be used to conduct the hand counts on all three election contests to be hand counted.

(c) If the randomly selected office to be voted on in the state at large is the same contest in the county receiving the largest number of votes between two candidates, another office to be voted on in the state at large will be randomly selected.

(5) Once the Committee has randomly selected the election contests and the precincts or ballot count batches in which ballots are to be hand counted, the Secretary of State will notify county elections officials. In addition to identifying the precincts or ballot batches to be hand counted, the notification will include the office to be voted on in the state at large, the state measure and the contest between the two candidates receiving the largest number of votes in the county.

(6) Not later than the 5th business day after the date of the general election the Secretary of State will notify by first-class mail all affected candidates for selected election contests, chief petitioners or legislative sponsor of the state measure selected and any registered opponents of the measure.

(7) Members of the public may observe the hand count. The County Elections Official shall permit only so many persons as observers as will not interfere with an orderly procedure at the office of the County Elections Official.

(8) A county elections official may only begin the hand count after certification of the official results to the Secretary of State, but not later than the 21st day after the election. All hand counts must be completed no later than the 30th day after the election.

(9) If a comparison of the tally of votes produced by a vote tally system with the tally of votes produced by the hand count shows that the tally of votes produced by the vote tally system differs by no more than one-half of one percent of the total votes cast in the contest, from the tally of votes produced by the hand count, the hand count is complete and the county elections official reports the results as provided in subsection (11). If the difference exceeds one-half of one percent of the total votes cast in the contest, a second hand count is conducted as provided in subsection (12).

(10) Valid votes that have been marked by the voter outside the vote targets or using a marking device that cannot be read by the vote tally system shall not be included in making the determination whether the voting system has met the standard of acceptable performance for any precinct or ballot batch under ORS 254.529(8)(a) through (c).

(11) Upon completion of the hand count, but not later than the 30th day after the election, the county elections official must submit to the Secretary of State form SEL 798 detailing any difference and providing an explanation of the difference between the hand count and the tally of votes produced by the vote tally system in the county. Over votes and under votes are excluded from the totals on the SEL 798. Valid votes referenced in (10) of this rule, are to be listed as exceptions on the SEL 798.

(12) If after the first hand count, a second hand count is required to be conducted, the county elections official must again upon completion, but not later than the 30th day after the election, submit to the Secretary of State form SEL 798 detailing any difference and providing an explanation of the difference between the hand count and the tally of votes produced by the vote tally system in the county.

(13) If the county elections official is required under ORS 254.529(8)(d) to conduct a hand count of all ballots counted by the vote tally system, the county elections official not later than the 30th day after the election must certify to the Secretary of State and any other appropriate elections official an amended abstract of votes.

Stat. Auth.: ORS 246.150

Stats. Implemented: ORS 254.529

Hist.: ELECT 9-2008, f. & cert. ef. 10-23-08; ELECT 23-2009, f. & cert. ef. 12-31-09

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**Rule Caption:** Adoption of County Security Plan Components.

**Adm. Order No.:** ELECT 24-2009

**Filed with Sec. of State:** 12-31-2009

**Certified to be Effective:** 12-31-09

**Notice Publication Date:** 12-1-2009

**Rules Adopted:** 165-007-0310

**Subject:** Chapter 592, Oregon Laws 2009 (HB 3451) allows county clerk to begin scanning ballots not sooner than the 7th day before the election in accordance with security plan approved by the Secretary of State. This proposed rule sets forth the component required to be present in a county security plan and requires written approval from the Elections Division approving the county security plan in order for the county elections official to scan ballots 7 days before the election.

**Rules Coordinator:** Brenda Bayes—(503) 986-1518

## 165-007-0310

### County Elections Security Plan

(1) A security plan shall be submitted to the Secretary of State Elections Division, not later than the 31st of January of each year.

(2) Approved Security Plans will be valid from March 1 of each year through the last day of February of the following year.

(3) Any revisions to the plan must be submitted to the Secretary of State Elections Division not later than one business day after the revision is made, and at least 30 days before the first election date at which the revisions are to be used.

(4) The security plan and all supporting documentation are confidential and not subject to public disclosure.

(5) All ballots must be secured from their inception into the county's computers, through final storage. This secure process must be followed through ballot reception, verification, inspection, scanning and tally of votes.

(6) The County Elections Official must include accountability procedures for ballots during the election process.

(7) During each phase of the process the County Elections Official must maintain an audit trail for all ballots, whether voted or unused.

(8) Copies of all security agreements with outside vendors must be submitted to the Secretary of State as part of the overall security plan.

(9) Upon receipt of the county security plan the Secretary of State Elections Division shall review the plan based upon the criteria in subsection (11).

(10) In order for a county to be permitted to scan ballots 7 days prior to the election pursuant to ORS 254.478, the county's security plan must be approved in writing by the Secretary of State Elections Division.

(11) The Security Plan must include the following components:

(a) Ballot security at the printer;

(b) Ballot storage security;

(c) Ballot security during transport to inserter (if applicable), to the county, or to the post office;

(d) Ballot security during insertion;

(e) Ballot security at dropsites;

(f) Security of voted ballots awaiting verification;

(g) Security of voted ballots verified and awaiting inspection;

(h) Security of voted ballots opened and inspected;

(i) Facsimile ballot security;

(j) Ballot tally system;

(k) Early scanning procedure (if applicable);

(l) Preventing the premature release of vote tally; and

(m) Post election security.

# ADMINISTRATIVE RULES

Stat. Auth.: ORS 246.150  
Stats. Implemented: ORS 254.074 & 2009 OL Ch. 592 (HB 2451)  
Hist.: ELECT 24-2009, f. & cert. ef. 12-31-09

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**Rule Caption:** Adopts the 2010 State Candidate's Manuals, County Candidates Manual and Forms.

**Adm. Order No.:** ELECT 25-2009

**Filed with Sec. of State:** 12-31-2009

**Certified to be Effective:** 12-31-09

**Notice Publication Date:** 12-1-2009

**Rules Amended:** 165-010-0005

**Subject:** This proposed rule amendment designates the *2010 State Candidate's Manual: Major Political Party*; *2010 State Candidate's Manual: Nonpartisan*; *2010 State Candidate's Manual: Minor Political Party*; *2010 State Candidate's Manual: Assembly of Electors*; *2010 State Candidate's Manual: Individual Electors*; and the *2010 County Candidate's Manual* and associated forms as the procedures and forms used by candidates filing and running for elected office. In addition this rule designates the *2010 State Candidate's Manual: Minor Political Party* to be used to the formation of a Minor Party.

**Rules Coordinator:** Brenda Bayes—(503) 986-1518

## 165-010-0005

**Designating the State Candidates Manuals, County Candidate's Manual and Forms**

(1) The Secretary of State designates the *2010 State Candidate's Manual: Major Political Party* and associated forms as the procedures and forms to be used by major political party candidates filing and running for state elective office.

(2) The Secretary of State designates the *2010 State Candidate's Manual: Nonpartisan* and associated forms as the procedures and forms to be used by nonpartisan candidates filing and running for state elective office.

(3) The Secretary of State designates the *2010 State Candidate's Manual: Minor Political Party* and associated forms as the procedures and forms to be used to form a Minor Political Party and by minor political party candidates filing and running for state elective office.

(4) The Secretary of State designates the *2010 State Candidate's Manual: Assembly of Electors* and associated forms as the procedures and forms to be used by nonaffiliated candidates filing and running by assembly of electors for state elective office.

(5) The Secretary of State designates the *2010 State Candidate's Manual: Individual Electors* and associated forms as the procedures and forms to be used by nonaffiliated candidates filing and running by individual electors for state elective office.

(6) The Secretary of State designates the *2010 County Candidate's Manual* and associated forms as the procedures and forms to be used by county office candidates and precinct committee person candidates filing and running for elective office.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 246.120, 246.150 & 249.009

Stats. Implemented: ORS 246.120, 246.150 & 249.009

Hist.: SD 35-1980, f. & ef. 3-6-80; SD 31-1983, f. & ef. 12-20-83; SD 5-1986, f. & ef. 2-26-86; ELECT 9-1992(Temp), f. & cert. ef. 4-9-92; ELECT 32-1992, f. & cert. ef. 10-8-92; ELECT 33-1993, f. & cert. ef. 11-1-93; ELECT 1-1996, f. & cert. ef. 1-3-96; ELECT 8-1997, f. & cert. ef. 10-3-97; ELECT 3-1998, f. & cert. ef. 2-11-98; ELECT 6-1998, f. & cert. ef. 5-8-98; ELECT 10-1999, f. & cert. ef. 10-18-99; ELECT 3-2002, f. & cert. ef. 3-13-02; ELECT 18-2003, f. & cert. ef. 12-5-03; ELECT 2-2004(Temp), f. & cert. ef. 4-9-04 thru 10-6-04; Administrative correction 10-22-04; ELECT 9-2005, f. & cert. ef. 12-14-05; ELECT 11-2007, f. & cert. ef. 12-31-07; ELECT 25-2009, f. & cert. ef. 12-31-09

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**Rule Caption:** Repeal of Prohibition Against Participating in More than One Nominating Process for Partisan Public Office.

**Adm. Order No.:** ELECT 26-2009

**Filed with Sec. of State:** 12-31-2009

**Certified to be Effective:** 12-31-09

**Notice Publication Date:** 12-1-2009

**Rules Repealed:** 165-010-0120

**Subject:** This rule is proposed for repeal because the 2009 Legislative Assembly repealed OAR 254.069 which provided that an elector may only participate in one nominating process for each partisan office to be filled at the general election.

**Rules Coordinator:** Brenda Bayes—(503) 986-1518

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**Rule Caption:** Adoption of the 2010 Campaign Finance Manual.

**Adm. Order No.:** ELECT 27-2009

**Filed with Sec. of State:** 12-31-2009

**Certified to be Effective:** 12-31-09

**Notice Publication Date:** 12-1-2009

**Rules Amended:** 165-012-0005

**Subject:** This proposed rule amendment designates the *2010 Campaign Finance Manual* and associated forms as the procedures and forms used for compliance with campaign finance regulations.

**Rules Coordinator:** Brenda Bayes—(503) 986-1518

## 165-012-0005

**Designating the Campaign Finance Manual and Forms; Examination of Transactions**

Pursuant to ORS 260.156, the Secretary of State designates the *2010 Campaign Finance Manual* and associated forms as the procedures and guidelines to be used for compliance with Oregon campaign finance regulations.

[Publications: Publications and Forms referenced are available from the agency.]

Stat. Auth.: ORS 246.120, 246.150, 260.156 & 260.200

Stats. Implemented: ORS 246.120, 246.150, 260.156 & 260.200

Hist.: SD 101, f. & ef. 12-3-75; SD 120, f. & ef. 12-21-77; SD 34-1980, f. & ef. 3-6-80; SD 28-1983, f. & ef. 12-20-83; SD 3-1986, f. & ef. 2-26-86; ELECT 32-1988(Temp), f. & cert. ef. 8-26-88; ELECT 22-1989(Temp), f. & cert. ef. 11-9-89; ELECT 19-1990, f. & cert. ef. 6-4-90; ELECT 14-1992 (Temp), f. & cert. ef. 6-10-92; ELECT 37-1992, f. & cert. ef. 12-15-92; ELECT 34-1993, f. & cert. ef. 11-1-93; ELECT 1-1995(Temp), f. & cert. ef. 2-23-95; ELECT 15-1995, f. & cert. ef. 12-18-95; ELECT 9-1996, f. & cert. ef. 7-26-96; ELECT 5-1997, f. & cert. ef. 3-24-97; ELECT 6-1997(Temp), f. & cert. ef. 4-18-97; ELECT 15-1997, f. & cert. ef. 12-31-97; ELECT 5-1998, f. & cert. ef. 2-26-98; ELECT 8-1998, f. & cert. ef. 6-2-98; ELECT 9-1998, f. & cert. ef. 9-11-98; ELECT 13-1998(Temp), f. & cert. ef. 12-15-98 thru 6-13-99; ELECT 2-1999(Temp), f. & cert. ef. 1-15-99 thru 7-14-99; ELECT 3-1999, f. & cert. ef. 3-1-99; ELECT 1-2000, f. & cert. ef. 1-3-00; ELECT 3-2002, f. & cert. ef. 3-13-02; ELECT 23-2003, f. & cert. ef. 12-12-03; ELECT 13-2005, f. & cert. ef. 12-30-05; ELECT 1-2007, f. & cert. ef. 1-5-07; ELECT 2-2007(Temp), f. & cert. ef. 5-2-07 thru 10-29-07; ELECT 4-2007(Temp), f. & cert. ef. 7-16-07 thru 12-31-07; ELECT 13-2007, f. & cert. ef. 12-31-07; ELECT 8-2009, f. & cert. ef. 5-4-09; ELECT 16-2009, f. & cert. ef. 7-30-09; ELECT 27-2009, f. & cert. ef. 12-31-09

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**Rule Caption:** Amends Rule Governing Valuation of Polls for Campaign Finance Reporting Purposes.

**Adm. Order No.:** ELECT 28-2009

**Filed with Sec. of State:** 12-31-2009

**Certified to be Effective:** 12-31-09

**Notice Publication Date:** 12-1-2009

**Rules Amended:** 165-012-0050

**Subject:** This rule establishes procedures for committees to report the contribution of poll results, the allocation of polling expenses, the valuation of poll results, and the reporting of in-kind contributions of poll results. The amendments updates language to conform to definitions revised by the 2009 Legislative Assembly.

**Rules Coordinator:** Brenda Bayes—(503) 986-1518

## 165-012-0050

**Contribution of Polls, Allocation of Polling Expenses**

(1) The purpose of this rule is to establish procedures for reporting the contribution of poll results, the allocation of polling expenses, the valuation of poll results, and the reporting of in-kind contributions of poll results.

(2) This rule does not apply to:

(a) Individuals mentioned in a poll who are not candidates; and  
(b) Polls conducted internally by a campaign or entity that are not contributed.

(3) For purposes of this rule and, except where otherwise defined:

(a) "Committee" refers to all candidates/candidate committees, measure committees, political party committees, miscellaneous committees, petition committees or an agent of a committee.

(b) "Contributor" means a purchaser of a poll or agent who gives the poll results to one or more nonpurchaser candidates or non-purchaser committees.

(c) "Date of purchase" means the date that a person pays for a poll.

(d) "Person" includes an agent of the person.

(e) "Poll:"

(A) Means a questioning of selected participants regarding one or more candidates or issues that comprises one or more questions, whether the questioning is commissioned or conducted by volunteers; and

(B) Includes a sample of participants that is a self-contained subset of all participants under paragraph (A) of this subsection.

(f) "Purchaser" means a person or committee that requests or otherwise commissions and pays for a poll.

(g) "Receipt" means in the custody of a candidate or committee. Examples of custody include but are not limited to physical or electronic possession or possession by means of telephonic, email or facsimile communication.

(h) "Results" means the raw data of a poll or any compiled conclusions and analysis supported by the raw data.

(4) The purchase of the results of a poll by a committee is an expenditure by the committee.

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(5) The acceptance of the results of a poll that have a value under section 9 of this rule by a committee is an in-kind contribution by the contributor and an in-kind expenditure in the amount determined under sections 8 and 9 of this rule and must be reported by:

(a) The recipient committee; and

(b) If the contributor is required to file statements of contributions received and expenditures made under ORS 260.057, 260.076, 260.112 or 260.118, the contributor.

(6) A committee accepts the results of a poll if the committee:

(a) Requests the poll results; or

(b) Obtains the poll results from the contributor.

(7) A contributor of poll results shall retain records for two years sufficient to support the valuation of poll results and any allocation of poll costs.

(8) The contributor of a poll shall determine:

(a) The percentage of the poll's overall cost to be allocated to each of the committees directly or indirectly affected by the poll (Divide the number of questions in the sample received by a committee by the total number of questions asked in the sample); and

(b) The base amount of in-kind contribution to each recipient committee (Multiply the overall cost of the poll by a particular committee's percentage of the overall cost as calculated under subsection (a) of this section).

(9) For purposes of valuing poll results accepted by a committee:

(a) A poll shall have no value to any recipient committee if the poll is simultaneously released to each candidate who is running for nomination or election to an office covered by the poll.

(A) The provisions of this subsection may be used only if a poll covers more than one candidate.

(B) If any individual files for an office covered by a contributed poll within 90 days of the poll being valued under this subsection, the contributor must give the individual the poll results not later than the 30th day after the date the individual files for the office.

(b) A poll shall have no value to any recipient committee if the poll is released (prior to or simultaneously with delivery to a candidate covered in the poll or any committee) to:

(A) The newspaper of largest circulation in the district from which a candidate or candidates are running, or if the district is statewide, to at least ten of the largest daily circulation newspapers in the state; and

(B) At least one broadcast media outlet licensed for commercial operations by the FCC whose primary broadcast coverage encompasses the district in which a candidate or candidates are running.

(c) A poll that is not valued under subsections (a) or (b) of this section shall be valued according to the valuation schedule provided in this subsection. Except as provided in subsection (d) of this section, poll results received by a committee within the following time periods after the last (closing) day that the purchaser or other entity conducting the poll accepts data from which the poll results will be compiled (for example, the day the last oral questions are asked or the day that the purchaser stops accepting mail returns) shall have the corresponding value to the recipient as an in-kind contribution:

(A) One to 15 days after the closing day, 100 percent of the:

(i) Recipient candidate committee's base amount of in-kind contribution for a poll calculated under section 8(b) of this rule;

(ii) Overall cost of a poll for all other recipient committees.

(B) 16 to 60 days after the closing day, 50 percent of the:

(i) Recipient candidate committee's base amount of in-kind contribution for a poll calculated under section 8(b) of this rule; or

(ii) Overall cost of a poll for all other recipient committees.

(C) Sixty one to 180 days after the closing day, five percent of the:

(i) Recipient candidate committee's base amount of in-kind contribution for a poll calculated under section (8)(b) of this rule; or

(ii) Overall cost of a poll for all other recipient committees.

(D) More than 180 days after the closing day, no value to the recipient committee.

(d) Notwithstanding subsection (c) of this section, a poll conducted and completed more than 180 days prior to the next election to be held after the poll is conducted and completed shall have no value to any recipient committee. "Conducted and completed" means that all questions, in any format, have been asked and further replies are not being accepted by the purchaser or other entity in charge of gathering data from which the poll results will be compiled, and that the poll results have been compiled.

(10) A committee that has accepted the results of a poll believing that the results have no value or a particular value is liable for any fees or penalties owed as a result of having to report the acceptance as a previously unreported or underreported in-kind contribution and expenditure if the results of the poll are subsequently determined to have value or a higher value to the committee.

Stat. Auth.: ORS 246.150 & 260.156

Stats. Implemented: ORS 260.083

Hist.: SD 24-1986, f. & ef. 8-1-86; ELECT 2-1996, f. & cert. ef. 1-3-96; ELECT 5-1997, f. & cert. ef. 3-24-97; ELECT 19-2003, f. & cert. ef. 12-5-03; ELECT 15-2006, f. & cert. ef. 12-29-06; ELECT 28-2009, f. & cert. ef. 12-31-09

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**Rule Caption:** Amendment of Procedure for Administrative Discontinuation of a Political Committee.

**Adm. Order No.:** ELECT 29-2009

**Filed with Sec. of State:** 12-31-2009

**Certified to be Effective:** 12-31-09

**Notice Publication Date:** 12-1-2009

**Rules Amended:** 165-012-0240

**Subject:** This proposed rule amendment provides a requirements for the committee to inform the Elections Division of the reasons why the Committee does not met the criteria to be administratively discontinued within 20 days of receipt of certified notice. Additionally conforms language and reference to current standards.

**Rules Coordinator:** Brenda Bayes—(503) 986-1518

**165-012-0240**

**Administrative Discontinuation of a Political Committee**

(1) The Elections Division may administratively discontinue a political committee when:

(a) The committee has not filed any transactions under ORS 260.057 for one calendar year; and

(b) The committee's ending cash balance reflected in ORESTAR is not more than \$2000.

(2) Not later than 30 days before administratively discontinuing a committee under this section, the Elections Division shall attempt to notify the committee of the proposed discontinuation.

(a) For a candidate committee:

(A) By certified mail sent to the mailing address reported on the most recent Statement of Organization for the candidate and by first class mail to the most recent mailing address for the candidate reported in the Oregon Centralized Voter Registration System; and

(B) By first class mail to the mailing address reported on the most recent Statement of Organization for the treasurer, if applicable.

(b) For a political committee notice will be sent by certified mail sent to the mailing address reported on the most recent Statement of Organization for the treasurer and by first class mail to the most recent mailing address for the treasurer reported in the Oregon Centralized Voter Registration System.

(3) The notice shall inform the committee that it will be discontinued by the Elections Division unless the committee informs the Elections Division of reasons why the committee does not meet the criteria of this rule for administrative discontinuation. The committee must inform the Elections Division of the reasons not later than the 20<sup>th</sup> day after the recipient signs for the certified notice. However, if the certified notice is refused or left unclaimed at the post office, the 20-day period begins on the day the post office indicates it has given first notice of the certified letter. The written notice shall also include:

(a) Notification that the statement of organization will be administratively discontinued 30 days from the date of the letter; and

(b) The applicable reasons for discontinuation listed in subsection (1) of this section.

Stat. Auth.: ORS 246.150, 260.046

Stats. Implemented: ORS 260.046

Hist.: ELECT 14-2005, f. & cert. ef. 12-30-05; ELECT 6-2007, f. & cert. ef. 8-27-07; ELECT 29-2009, f. & cert. ef. 12-31-09

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**Rule Caption:** Amendment to Penalty Matrix for Other Campaign Finance Violations.

**Adm. Order No.:** ELECT 30-2009

**Filed with Sec. of State:** 12-31-2009

**Certified to be Effective:** 12-31-09

**Notice Publication Date:** 12-1-2009

**Rules Amended:** 165-013-0010

**Subject:** This rule amendment is proposed to incorporate into Penalty Matrix for Campaign Finance Civil Penalty Election Law Violations updates made to Oregon election law by the 2009 Legislative Assembly. Chapter 818, Oregon Laws updated the process for the Elections Division to conduct perform a spot check review for campaign finance transactions, This rule updates reference to petition committees from chief petitioner committees and requirements for filing campaign account information. Adds to the penalty matrix a penalty enforced on all committee types against conversion of campaign funds to any person's personal use.

**Rules Coordinator:** Brenda Bayes—(503) 986-1518

**165-013-0010**

**Penalty Matrix for Other Campaign Finance Violations**

(1) This penalty matrix applies to civil penalties for campaign finance violations not covered by the penalty matrices in the Campaign Finance Manual.



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(2)(a) Spot Check Review. The Secretary of State, Elections Division, will hold exempt from disclosure as a public record any bank account number(s), credit card number(s) or social security number(s) received as required documentation in response to a request for documentation necessary to perform a spot check review in accordance with ORS 260.215(3).

(b) If a committee fails to provide documentation or provides insufficient documentation in response to a request for documentation necessary to perform a spot check review, each omitted or insufficient item is a violation of ORS 260.055(3).

(c) If the committee fails to provide sufficient documentation for a transaction by the deadline stated in the first spot check review letter, the Elections Division shall send a second review letter notifying the committee which transaction(s) lack sufficient documentation. The second review letter shall provide the committee a deadline for response.

(d) Omitted or insufficient information submitted after the deadline provided in the second review letter, but prior to the deadline for a candidate or treasurer to request a hearing will result in a 50% per item reduction of the penalty. If a public hearing is requested, the omitted or insufficient documentation may be submitted up to the date of the hearing. In such an event, the candidate or treasurer will be entitled to a 50% per item reduction of the assessed penalty.

(e) The candidate or treasurer of record at the time the first spot check review letter is generated, along with the candidate if applicable, is responsible for submitting documentation for all transactions selected in the spot check review.

(f) For the purpose of imposing a civil penalty for a violation of ORS 260.055(3), the candidate of the principal campaign committee; and the treasurer of a political or petition committee are the parties responsible for the payment of any civil penalty.

(3) Mitigating Circumstances. Except as specifically provided in paragraph (2)(d), the only mitigating circumstances that will be considered in a campaign finance violation covered by this rule include:

(a) The violation is a direct result of a valid personal emergency of the candidate or treasurer. A valid personal emergency is an emergency, such as a serious personal illness or death in the immediate family of the candidate or treasurer which caused the violation to occur. Personal emergency does not include a common cold or flu, or a long-term illness where other arrangements could have been made. In this case, independent written verification must be provided;

(b) The violation is the direct result of an error by the elections filing officer;

(c) The violation is the direct result of clearly-established fraud, embezzlement, or other criminal activity against the committee, committee treasurer or candidate, 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 bookkeeper or the person who actually engaged in the criminal activity;

(d) The violation is the direct result of fire, flood or other calamitous event, resulting in physical destruction of, or inaccessibility to, committee records. ("Calamitous event" means a phenomenon of an exceptional character, the effects of which could not have been reasonably prevented or avoided by the exercise of due care or foresight);

(e) The violation is the direct result of failure of a professional delivery service to deliver documents in the time guaranteed for delivery by written receipt of the service provider (this does not include delivery by fax); or

(f) The violation is the direct result of negligent record keeping by a former treasurer. Former treasurer refers to the person who was the treasurer of record at the time the transaction was filed or should have been filed.

(4)(a) Penalty Matrix. These mitigating circumstances may be considered in reducing, in whole or in part, the civil penalty. If the violation is a direct result of an error by the elections filing officer, the violation is waived and no penalty is assessed.

(b) The penalty amount for a violation will be calculated against the same candidate or treasurer based on the number of violations by the candidate or treasurer of the same offense.

(c) For purposes of determining penalty amounts for violations of campaign finance violations covered by this rule Appendix A of this rule will apply. [Appendix not included. See ED. NOTE.]

[ED. NOTE: Appendix referenced is available from the agency.]

Stat. Auth.: ORS 246.150, 260.200

Stats. Implemented: ORS 260.200, 260.215, 260.232, 260.995

Hist.: ELECT 13-2000, f. 7-31-00, cert. ef. 8-4-00; ELECT 22-2003, f. & cert. ef. 12-5-03; ELECT 1-2004, f. & cert. ef. 2-13-04; ELECT 16-2005, f. & cert. ef. 12-30-05; ELECT 10-2006(Temp), f. & cert. ef. 7-6-06 thru 1-2-07; ELECT 17-2006, f. & cert. ef. 12-29-06; ELECT 14-2007, f. & cert. ef. 12-31-07; ELECT 30-2009, f. & cert. ef. 12-31-09

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**Rule Caption:** Update of the Penalty Matrix for Non-Campaign Finance Civil Penalty Election Law Violations.

**Adm. Order No.:** ELECT 31-2009

**Filed with Sec. of State:** 12-31-2009

**Certified to be Effective:** 12-31-09

**Notice Publication Date:** 12-1-2009

**Rules Amended:** 165-013-0020

**Subject:** This rule describes the penalty matrix and mitigating circumstances for non-campaign finance election law violations. The amendments incorporate the changes made by the 2009 Legislative Assembly.

**Rules Coordinator:** Brenda Bayes—(503) 986-1518

**165-013-0020**

**Penalty Matrix for Non-Campaign Finance Civil Penalty Election Law Violations**

(1)(a) This penalty matrix applies to civil penalties for violations of election laws that are not covered by the penalty matrices in the Campaign Finance Manual (late and insufficient campaign finance reports and new transactions to campaign finance reports), or other campaign finance violations as outlined in 165-013-0010.

(b) The penalty amount will be calculated against the same person, candidate or entity as described below for a period of four years from the date the violation occurs, for any election law violation, other than campaign finance violations covered in the penalty matrices in the Campaign Finance Manual and other campaign finance violations as outlined in 165-013-0010. In determining whether the offense is to be considered against the same person, candidate or entity, the following factors are to be considered:

(A) A person is considered the same candidate, regardless of the office(s) for which the person runs within this state, or whether there is a lapse in time between candidacies.

(B) A political committee is considered the same, regardless of who the treasurer is, or if the political committee has changed names but is established by the same group of persons.

(C) The same individual.

(D) One occurrence is considered one violation.

(E) Notwithstanding (F) or (G), if a violation is the first on record for the person, and multiple occurrences of the same statutory provision are described in an election law complaint, the occurrences will be combined (to be considered as one violation) and considered a first violation of the statutory provision, except in such cases where specific circumstances warrant separating the occurrences to impose fines for each violation. This would be appropriate when different persons were affected by the election law offense. Each subsequent occurrence of violation of the same statutory provision after the issuance of a notification letter or a determination of election law violation, within the four-year cycle, may be considered as separate violations.

(F) Violations of Article IV, Section (1)(b) will be calculated by deeming each individual signature sheet that contains signatures that were collected in violation of Section (1)(b) as a single occurrence with a minimum civil penalty of \$2,500.

(G) Violations of ORS 260.569, will be calculated by deeming each individual signature sheet that contains a signature a violation of 260.569 or each signed voter registration card in violation of 260.569 as a single occurrence with a minimum civil penalty of \$100.

(2) Mitigating Circumstances: The burden is on the person alleged to have committed the election law violation to show that a mitigating circumstance exists and caused the election law violation. The only mitigating circumstances which will be considered, if applicable to the specific situation, include:

(a) The violation is a direct result of a valid personal emergency of the involved person(s). A valid personal emergency is an emergency such as a serious personal illness or death in the immediate family of the involved person(s). Personal emergency does not include a common cold or flu, or a long-term illness where other arrangements could have been made. In this case, independent written verification must be provided;

(b) The violation is the direct result of an error by an elections officer;

(c) The violation is the direct result of fire, flood or other calamitous event, resulting in physical destruction of, or inaccessibility to, any records required to be kept to document compliance with Oregon election law. ("Calamitous event" means a phenomenon of an exceptional character, the effects of which could not have been reasonably prevented or avoided by the exercise of due care or foresight);

(d) The violation of ORS 260.432 occurred after a publication produced and distributed by a governing body relating to a ballot measure was reviewed by the governing body's legal counsel before its distribution. The legal counsel must have advised the governing body in writing that the publication as distributed was impartial information that the governing body could legally produce and distribute, and was not in violation of election law;

(e) The violation of ORS 260.432 occurred after a publication produced and distributed by a governing body relating to a ballot measure was reviewed by the Secretary of State's office, Elections Division. The Secretary of State must have advised the governing body in writing that the publication as drafted was impartial information that the governing body could legally produce and distribute or for which suggestions were provided towards the goal of assuring the publication was impartial information regarding the ballot measure. If the Secretary of State issued an advice letter with suggested changes, the governing body must have substantially followed the advice provided. However, this mitigating factor may be disallowed, even if such an advice

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letter was issued, if a complaint and investigation indicates sufficient evidence that the public body presented inaccurate or unbalanced information, not within the purview of this office to have knowledge of prior to the complaint, which has the effect of promoting or opposing the adoption of the measure;

(f) The violation of ORS 260.432(2) occurred, but the public employee had voiced their objection to the person who coerced, commanded or required the employee to perform the prohibited campaign activity during their work time. Despite the stated objection, the person was still required to perform the activity that violated 260.432(2); or

(g) The violation of ORS 260.432(2) occurred when a supervisor asked the public employee to perform the prohibited campaign activity, consisting of clerical tasks, as a part of the public employee's job duties during work time. A "request" made by a supervisor is considered a command or requirement within the meaning of 260.432(1). If the violation involves a written document, the public employee performed clerical tasks only and is not the author of the material.

(3)(a) Penalty Matrix. These mitigating circumstances may be considered in reducing, in whole or in part, the civil penalty. If the violation is a direct result of an error by an elections officer, the violation is waived and no penalty is assessed.

(b) For purposes of determining penalty amounts for violations of non-campaign finance civil penalty election law violations, Appendix B of this rule will apply. [Appendix not included. See ED. NOTE.]

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

Stat. Auth.: ORS 246.150

Stat. Implemented: ORS 260.995

Hist.: ELECT 14-2000, f. 7-31-00, cert. ef. 8-4-00; ELECT 22-2003, f. & cert. ef. 12-5-03; ELECT 16-2005, f. & cert. ef. 12-30-05; ELECT 15-2007, f. & cert. ef. 12-31-07; ELECT 9-2009, f. & cert. ef. 5-4-09; ELECT 31-2009, f. & cert. ef. 12-31-09

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**Rule Caption:** Adopts the 2010 State and County Initiative, Referendum, and recall Manuals and Referral Manual.

**Adm. Order No.:** ELECT 32-2009

**Filed with Sec. of State:** 12-31-2009

**Certified to be Effective:** 12-31-09

**Notice Publication Date:** 12-1-2009

**Rules Amended:** 165-014-0005

**Subject:** This proposed rule amendment designates the *2010 State Initiative and Referendum Manual*; *2010 Recall Manual*; and the *2010 County Initiative and Referendum Manual* and associated forms as the procedures and forms to be used for the initiative, referendum and recall processes. In addition this proposed rule amendment designates the *2010 County, City and District Referral Manual* to be used for the local referendum process.

**Rules Coordinator:** Brenda Bayes—(503) 986-1518

## 165-014-0005

### Designating the Initiative, Referendum and Recall Manuals and Forms

(1) The Secretary of State designates the *2010 State Initiative and Referendum Manual* and associated forms as the procedures and forms to be used for the state initiative and referendum process.

(2) The Secretary of State designates the *2010 Recall Manual* and associated forms as the procedures and forms to be used for the recall process.

(3) The Secretary of State designates the *2010 County Initiative and Referendum Manual* and associated forms as the procedures, except where state law permits the procedure to be otherwise under local charter or ordinance, and forms to be used for the county initiative and referendum process.

(4) The Secretary of State designates the *2010 County, City and District Referral Manual* and associated forms as the procedures, except where state law permits the procedure to be otherwise under local charter or ordinance, and forms to be used for the local referral process.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 264.120, 246.150 & 250.015

Stat. Implemented: ORS 246.120, 246.150 & 250.015

Hist.: SD 120, f. & ef. 12-21-77; SD 7-1979(Temp), f. & ef. 11-5-79; SD 31-1980, f. & ef. 3-6-80; SD 10-1984, f. & ef. 6-19-84; SD 21-1984(Temp), f. & ef. 10-8-84; SD 4-1986, f. & ef. 2-26-86; ELECT 33-1988(Temp), f. & cert. ef. 8-26-88; ELECT 4-1989(Temp), f. & cert. ef. 8-11-89; ELECT 4-1991(Temp), f. & cert. ef. 3-18-91; ELECT 10-1992(Temp), f. & cert. ef. 4-9-92; ELECT 19-1992(Temp), f. & cert. ef. 7-1-92; ELECT 39-1992, f. & cert. ef. 12-17-92; ELECT 3-1993(Temp), f. & cert. ef. 1-22-93; ELECT 10-1993, f. & cert. ef. 3-25-93; ELECT 35-1993, f. & cert. ef. 11-1-93; ELECT 1-1996, f. & cert. ef. 1-3-96; ELECT 8-1997, f. & cert. ef. 10-3-97; ELECT 3-1998, f. & cert. ef. 2-11-98; ELECT 10-1999, f. & cert. ef. 10-18-99; ELECT 3-2002, f. & cert. ef. 3-13-02; Elect 9-2002(Temp), f. & cert. ef. 12-5-02 thru 6-3-03; ELECT 4-2003, f. & cert. ef. 4-25-03; ELECT 20-2003, f. & cert. ef. 12-5-03; ELECT 10-2005, f. & cert. ef. 12-14-05; ELECT 3-2007(Temp), f. & cert. ef. 5-14-07 thru 11-10-07; Administrative correction 11-17-07; ELECT 16-2007, f. & cert. ef. 12-31-07; ELECT 32-2009, f. & cert. ef. 12-31-09

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**Rule Caption:** Amends Method for Submitting Required Accounts to Elections Division.

**Adm. Order No.:** ELECT 33-2009

**Filed with Sec. of State:** 12-31-2009

**Certified to be Effective:** 12-31-09

**Notice Publication Date:** 12-1-2009

**Rules Amended:** 165-014-0100

**Subject:** This rule is proposed for amendment to incorporate recent changes made by the 2009 Legislative Assembly requiring chief petitioners to maintain accounts on prospective petitions. Additionally this rule amendment requires chief petitions who submit copies of signatures sheets in accordance with ORS 260.262(1)(e) complete and SEL 320 each time accounts are submitted. The amendment changes the date the accounts are due are not later than the deadline specified in the notice. The rule amendment sets forth a procedure for a chief petitioner of a suspended petition to submit notarized written testimony contesting the suspension and detailing why the accounts submitted are complete. Provides that any signatures gathered during a suspension will not be accepted for verification.

**Rules Coordinator:** Brenda Bayes—(503) 986-1518

## 165-014-0100

### Review of Specified Chief Petitioner Accounts

(1) Each chief petitioner of an initiative, referendum or prospective petition who pays any person money or other valuable consideration to obtain signatures on the petition shall keep detailed accounts in accordance with ORS 260.262. The Elections Division will review these accounts in the manner and in accordance with the schedule set out in paragraphs (2) and (3) of this rule.

(2) Not later than six months after approval to circulate the Elections Division will notify each chief petitioner by first class mail of the deadline to submit copies of their accounts.

(a) The Elections Division may request original documentation of chief petitioner accounts, in addition to or in lieu of copies.

(b) The Elections Division may choose to conduct on-site reviews of chief petitioner accounts.

(3) Detailed copies of accounts must be submitted no later than the deadline specified in the notice. The Elections Division may require accounts to be submitted in shortened time frame depending on the circumstances of each petition.

(a) If original signature sheets are submitted for verification prior to accounts being requested, chief petitioners are required to retain copies of the signature sheets in order to comply with ORS 260.262(1)(e).

(b) Copies of signature sheets provided under ORS 260.262(1)(e) must be submitted together with the payroll records of the circulator who was paid to gather the signatures on those signature sheets, in a manner that separates these associated records from all other records submitted with the accounts. This can be accomplished by paper clip, binder clip, separate folder, or any other manner (other than stapling) that joins the signature sheets and associated payroll records, separate from the rest of the accounts. For example, if circulator John Doe is paid \$430, the chief petitioner must submit, in a separate, distinct grouping, payroll records for that payment and a copy of any signature sheet associated with that payment. This requirement is effective for any signature sheet gathered, in whole or in part, after the effective date of this rule.

(5) Chief petitioners must submit a completed SEL 320, each time accounts are provided, detailing the nature of the accounts provided under ORS 260.262.

(6) The Elections Division shall review accounts to determine whether all of the required information appears to have been provided. If after review it is determined that the accounts submitted are incomplete the Elections Division may take action under ORS 260.262(6).

(7) If the Elections Division takes action under ORS 260.262(6) the chief petitioners may file notarized written explanation contesting the suspension and providing evidence that the accounts submitted are complete.

(8) If a petition is suspended under ORS 260.262(6) the chief petitioners are prohibited from obtaining any additional signatures on the petition until it has been determined by the Elections Division that the accounts are complete. Any signatures gathered in violation of the suspension will not be accepted for signature verification.

(9) If the petition has multiple chief petitioners, only one set of copies of the detailed accounts for each petition need to be produced by the deadline.

(10) Accounts must be kept current as of not later than the 7<sup>th</sup> calendar day after the date a payment is made to a person for obtaining signatures on a petition.

(11) The Elections Division reserves the right to conduct a review of chief petitioner accounts in accordance with ORS 260.262(4).

Stat. Auth.: ORS 246.150, 260.262

Stat. Implemented: ORS 260.262

Hist.: ELECT 21-2007, f. & cert. ef. 12-31-07; ELECT 3-2008(Temp), f. & cert. ef. 3-14-08 thru 5-2-08; ELECT 6-2008(Temp), f. & cert. ef. 5-2-08 thru 9-10-08; ELECT 8-2008, f. & cert. ef. 8-12-08; ELECT 33-2009, f. & cert. ef. 12-31-09

# ADMINISTRATIVE RULES

**Rule Caption:** Amending Paid Circulator Training and Registration.

**Adm. Order No.:** ELECT 34-2009

**Filed with Sec. of State:** 12-31-2009

**Certified to be Effective:** 12-31-09

**Notice Publication Date:** 12-1-2009

**Rules Amended:** 165-014-0280

**Subject:** This rule designates the web based 2010 Circular Training and associated forms as the curriculum and forms to be used by any person who will be paid to gather signatures on a state initiative, referendum, recall or prospective petition to satisfy the training component of the Secretary of State's circulator registration process. Additionally this rule is proposed for amendment to add language specifically prohibiting any person from attempting to register as a paid circulator who, in the five-year period prior to the date of application, has been convicted in any state for a criminal offense involving fraud, forgery, or identification theft, has a civil penalty imposed under ORS 260.995 for a violation of ORS 260.048 or 260.262, or has had a civil or criminal penalty imposed for violation of a statute subject to a criminal penalty under ORS 260.993, as provided for by the 2009 Legislative assembly.

**Rules Coordinator:** Brenda Bayes—(503) 986-1518

## 165-014-0280

### Circulator Training and Registration

(1) Any person who will be paid to gather signatures on a state initiative, referendum recall or prospective petition must register with the Secretary of State after completing a training program prescribed by rule of the Secretary. Any person who, in the five-year period prior to the date of application, has been convicted in any state for a criminal offense involving fraud, forgery or identification theft, has had a civil penalty imposed under ORS 260.995 for a violation of 260.048 or 260.262, or has had a civil or criminal penalty imposed for violation of a statute subject to a criminal penalty under 260.993, may not apply for registration.

(2) The Secretary of State designates the web based 2010 Circulator Training and associated forms as the curriculum and forms to be used by any person who will be paid to gather signatures on a state initiative, referendum or recall petition to satisfy the training component of the Secretary of State's circulator registration process.

(3) To register, a person must complete and file the SEL 308 Circulator Registration, the SEL 306 Circulator Training Certificate, the SEL 309 Chief Petitioner Acknowledgement and must provide or have taken by the Elections Division staff a digital photograph.

(4) A circulator's photograph must be:

(a) Less than four years old when it is filed; and

(b) Portrait style, front-facing, showing the face, neck and shoulders only.

(5) The photograph will be used for production of a circulator badge. This badge will include the words "Paid Circulator," the registration number assigned to the circulator by the Elections Division, and the circulator's photograph.

(a) A circulator must carry this badge while circulating as evidence of registration.

(b) A circulator is required to produce the badge for inspection as evidence of registration upon a request from a representative of the Secretary of State, Attorney General or Commissioner of the Bureau of Labor and Industries.

(c) If a paid circulator can not produce the badge issued by the Elections Division upon a request from a representative of the Secretary of State, Attorney General or Commissioner of the Bureau of Labor and Industries the petition sheets signed by that circulator will not be accepted for verification unless the circulator can prove registration at the time of circulation. Only those signature sheets gathered by paid circulators who are registered in accordance with ORS 250.048 may be accepted for verification.

(6) Whenever any of the information disclosed on the Circulator Registration (SEL 308) changes, the circulator must report the change within 10 calendar days by filing an amended SEL 308 with the Elections Division. If the change being disclosed is additional or different initiatives, referendums or recalls for which the person will be circulating, the circulator may not begin gathering signatures for the additional or different petitions until an updated SEL 309 signed by the chief petitioners is submitted.

(7) Any signatures obtained by a person who the Secretary of State determines, during the five year period prior to the date the signatures were obtained has been convicted for a criminal offense involving fraud, forgery or identification theft, has had a civil penalty imposed under ORS 260.995 for a violation of 260.048 or 260.262, or has had a civil or criminal penalty imposed for violation of a statute subject to a criminal penalty under 260.993, will not be included in a count under 250.045 (3) or 250.105 or ORS Chapter

249 for purposes of determining whether an initiative, referendum or recall petition or prospective petition for a state measure to be initiated contains the required number of signatures of electors.

Stat. Auth.: ORS 246.150, Sec. 2, Ch. 848 OL 2007

Stats. Implemented: Sec. 2, Ch. 848 OL 2007

Hist.: ELECT 7-2007, f. & cert. ef. 12-31-07; ELECT 34-2009, f. & cert. ef. 12-31-09

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**Rule Caption:** Adopts the 2010 City Electors Manual and the 2010 District Elections Manual.

**Adm. Order No.:** ELECT 35-2009

**Filed with Sec. of State:** 12-31-2009

**Certified to be Effective:** 12-31-09

**Notice Publication Date:** 12-1-2009

**Rules Amended:** 165-020-0005

**Subject:** The proposed rule amendment designates the 2010 City Elections Manual and the 2010 District Elections Manual and associated forms as the procedures and forms used for in city and district elections processes.

**Rules Coordinator:** Brenda Bayes—(503) 986-1518

## 165-020-0005

### Designating the City and District Elections Manuals and Forms

(1) The Secretary of State designates the 2010 City Elections Manual and associated forms as the procedures and forms to be used for city elections processes.

(2) The Secretary of State designates the 2010 District Elections Manual and associated forms as the procedures and forms to be used for district elections processes.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 246.120 & 246.150

Stats. Implemented: ORS 246.120 & 246.150

Hist.: SD 33-1980, f. & ef. 3-6-80; SD 47-1980, f. & ef. 10-17-80; SD 12-1984, f. & ef. 6-20-84; SD 40-1985, f. & ef. 11-15-85; SD 12-1986, f. & ef. 4-3-86; ELECT 34-1988(Temp), f. & cert. ef. 8-26-88; ELECT 4-1991(Temp), f. & cert. ef. 3-18-91; ELECT 11-1992(Temp), f. & cert. ef. 4-14-92; ELECT 33-1992, f. & cert. ef. 10-8-92; ELECT 36-1993, f. & cert. ef. 11-1-93; ELECT 1-1996, f. & cert. ef. 1-3-96; ELECT 8-1997, f. & cert. ef. 10-3-97; ELECT 3-1998, f. & cert. ef. 2-11-98; ELECT 10-1998, f. & cert. ef. 11-3-98; ELECT 4-1999, f. & cert. ef. 3-1-99; ELECT 10-1999, f. & cert. ef. 10-18-99; ELECT 3-2002, f. & cert. ef. 3-13-02; Elect 9-2002(Temp), f. & cert. ef. 12-5-02 thru 6-3-03; ELECT 4-2003, f. & cert. ef. 4-25-03; ELECT 16-2003, f. & cert. ef. 12-5-03; ELECT 11-2005, f. & cert. ef. 12-14-05; ELECT 25-2007, f. & cert. ef. 12-31-07; ELECT 35-2009, f. & cert. ef. 12-31-09

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**Rule Caption:** Notice of Election Board Members for Special District.

**Adm. Order No.:** ELECT 36-2009

**Filed with Sec. of State:** 12-31-2009

**Certified to be Effective:** 12-31-09

**Notice Publication Date:** 12-1-2009

**Rules Amended:** 165-020-0020

**Subject:** This rule is proposed for amendment to allow county election officials to provide a similar form that contains at a minimum the same information as the SEL 815 to district elections authorities.

**Rules Coordinator:** Brenda Bayes—(503) 986-1518

## 165-020-0020

### Notice of Election of Board Members for Special Districts

(1) The Secretary of State hereby adopts by reference and designates SEL 815, Notice of Election of Board Members for Special Districts to comply with ORS 255.069.

(2) The elections officer shall deliver the SEL 815, or similar form that contains at a minimum the information set forth in subsection (3) of this rule, to each district elections authority, no later than the dates prescribed in ORS 255.069(1). The elections officer shall instruct the district elections authority to review the information on the form and make additions and corrections as necessary. If the information supplied by the elections officer to the district elections authority is correct, the district elections authority shall so indicate.

(3) The SEL 815 shall contain:

(a) Name of district;

(b) Date of election;

(c) Open board positions;

(d) Title of office;

(e) Term of each office;

(f) Name of county in which declaration of candidacy or petition of nomination is to be filed;

(g) Deadline for candidate filings;

(h) Designation of newspaper in which legal notice is to be published; and

(i) Signature of authorized district election authority, title and date signed.

# ADMINISTRATIVE RULES

(4) The elections officer shall prepare the notice required by ORS 255.075 using the updated information submitted by the district elections authority under subsection (2) of this rule.

(5) In making the designation of a newspaper of general circulation in the district for publication of the district's notices the elections officer shall consider the criteria set forth in ORS 193.020.

(6) In addition to the information required in a publication made pursuant to ORS 255.075, the elections officer shall also include a statement as to where declarations of candidacy and petitions for nomination may be filed.

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

Stat. Auth.: ORS 246.120 & 246.150

Stats. Implemented: ORS 255.075

Hist.: SD 13-1980, f. & ef. 2-1-80; ELECT 29-1993, f. & cert. ef. 7-23-93; ELECT 10-2003, f. & cert. ef. 9-3-03; ELECT 26-2007, f. & cert. ef. 12-31-07; ELECT 36-2009, f. & cert. ef. 12-31-09

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**Rule Caption:** Amending the Billing Formula for Local Elections.

**Adm. Order No.:** ELECT 37-2009

**Filed with Sec. of State:** 12-31-2009

**Certified to be Effective:** 12-31-09

**Notice Publication Date:** 12-1-2009

**Rules Amended:** 165-020-0050, 165-020-0060

**Subject:** These amendments adopt a new form the SEL 955, Voter's Pamphlet Cost worksheet as the form used for computing the voter's pamphlet cost allocated to each district.

**Rules Coordinator:** Brenda Bayes—(503) 986-1518

## 165-020-0050

### Purpose

(1) This rule provides a uniform billing system for state, county, city and special district elections as authorized under ORS 246.179, 254.046, and 255.305:

(a) All chargeable costs incurred by the county election officer for the conduct of an election held for the state on a date other than the primary or general election, shall be paid by the state, if provided by the act calling for the election or pursuant to ORS 246.179;

(b) All chargeable costs incurred by the county election officer for the conduct of an election held for a city on a date other than the primary or general election, shall be paid by the city;

(c) All chargeable costs incurred by the county election officer for the conduct of an election held for a special district shall be paid by the special district. Chargeable costs do not include expenses incurred by the county election officer for the election of directors of a soil and water conservation district organized under ORS 568.210 to 568.808 and 568.900 to 568.933.

(2) An "Election Equipment Amortization Worksheet" (SEL 950, SEL 950A, or SEL 950B), "Average Ballots Cast/Average Aggregate Registration Worksheet" (SEL 951), "Allocated Cost Worksheet for Vote By Mail Elections" (SEL 952), "Local Elections Billing Worksheet" (SEL 953), and "Voters' Pamphlet Cost Worksheet" (SEL 955) are adopted by reference and designated for use to detail all costs to be billed to each electoral district holding an election.

(3) Any chargeable cost billed for an election shall be supported by such documentation as copies of payroll registers, invoices, vouchers, sales slips, billings, and receipts. Any cost not specified in this rule, or any unsupported chargeable cost, need not be paid.

(4) Documentation will be provided to the electoral districts upon request.

(5) Any electoral district bills and supporting documentation shall be subject to audit by the secretary of state at any time for the purpose of verifying the accuracy of the chargeable costs.

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

Stat. Auth.: ORS 246.150, 246.179 & 255.305

Stats. Implemented: ORS 246.179, 251.365, 254.046 & 255.305

Hist.: SD 40-1980, f. & ef. 4-2-80; SD 16-1984, f. & ef. 9-5-84; ELECT 2-1990(Temp), f. & cert. ef. 1-19-90; ELECT 22-1990, f. & cert. ef. 6-4-90; ELECT 11-2000, f. & cert. ef. 6-7-00; ELECT 10-2003, f. & cert. ef. 9-3-03; ELECT 4-2004, f. & cert. ef. 4-15-04; ELECT 26-2007, f. & cert. ef. 12-31-07; ELECT 14-2009, f. & cert. ef. 6-30-09; ELECT 37-2009, f. & cert. ef. 12-31-09

## 165-020-0060

### Computation of Costs

(1) The Election Equipment Amortization Worksheet Form SEL 950, SEL 950A, or SEL 950B shall be the form used for calculating the amortization of election equipment.

(2) The total amortization costs billed to electoral districts over the years the election equipment is used cannot exceed the total cost of purchasing, operating and maintaining the equipment during the years the equipment is used.

(3) Amortization of election equipment is not mandatory; however, any county election official who chooses to amortize such equipment must use the method designated by this rule.

(4) The Average Ballots Cast/Average Aggregate Registration Worksheet Form SEL 951 shall be the form used for computing the average number of ballots cast per election for prior four years.

(5) The Allocated Cost Worksheet Form SEL 952 shall be the form used for computing the allocated cost of the election.

(6) The Local Elections Billing Worksheet Form SEL 953 shall be the form used for computing the total district cost.

(7) The Voters' Pamphlet Cost Worksheet Form SEL 955 shall be the form used for computing the voters' pamphlet cost allocated to each district.

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

Stat. Auth.: ORS 246.120, 246.150, 246.179, 246.540, 254.046 & 255.305

Stats. Implemented: ORS 246.179, 246.540, 251.365, 254.046 & 255.305

Hist.: SD 40-1980, f. & ef. 4-2-80; SD 16-1984, f. & ef. 9-5-84; ELECT 2-1990(Temp), f. & cert. ef. 1-19-90; ELECT 22-1990, f. & cert. ef. 6-4-90; ELECT 13-1997, f. & cert. ef. 10-27-97; ELECT 6-1998, f. & cert. ef. 5-8-98; ELECT 10-2003, f. & cert. ef. 9-3-03; ELECT 14-2009, f. & cert. ef. 6-30-09; ELECT 37-2009, f. & cert. ef. 12-31-09

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## Teacher Standards and Practices Commission

### Chapter 584

**Rule Caption:** Amends and corrects version of rule filed. Effective 12/18/09.

**Adm. Order No.:** TSPC 9-2009

**Filed with Sec. of State:** 12-18-2009

**Certified to be Effective:** 12-18-09

**Notice Publication Date:** 6-1-2009, 10-1-2009

**Rules Amended:** 584-060-0071

**Subject:** Amends 584-060-0071 Endorsements Requiring Special Preparation to clarify qualifications for the Early Childhood Authorization. Updates rule to use correct version.

**Rules Coordinator:** Victoria Chamberlain—(503) 378-6813

## 584-060-0071

### Endorsements Requiring Special Preparation

(1) Passage of the commission-approved multiple subjects examination may be necessary in order for a newly hired teacher with a special education or an ESOL endorsement to meet the definition of highly qualified under the federal No Child Left Behind Act (NCLBA) or under the Individuals with Disabilities Education Improvement Act (IDEIA) in the position in which they are hired if placed in grades K-8.

(2)(a) Teachers of the following specialty endorsement must qualify, through approved academic preparation in the desired authorization levels and through supervised work experience or student teaching for any authorization:

(A) Art;

(B) Bilingual education with English for speakers of other languages

(ESOL);

(C) ESOL;

(D) Music;

(E) Physical education;

(F) Adaptive physical education;

(G) Reading;

(H) Library Media Specialist;

(I) Special education;

(J) Vision Impaired;

(K) Hearing Impaired;

(L) Communications Disorders; or

(M) Early Intervention/Special Education.

(b) Candidates for specialty endorsement completing a practica experience at either early childhood or elementary and at either middle or high school level may qualify for authorization for prekindergarten (pre k) through grade twelve (12).

(3) Teachers applying for the visual impairments endorsement must demonstrate proficiency in reading and writing Braille by obtaining a certificate of competency from the National Library Service for the Blind and Physically Handicapped or an equivalent certificate currently approved by the commission.

(4) Teachers applying for the communication disorders endorsement may obtain authorization at all four levels by earning a certificate of clinical competence from the American Speech and Hearing Association or successor approved by the commission.

(5) Candidates for endorsements in Early Intervention and Early Childhood Special Education must qualify for the Early Childhood Authorization only by:

(a) Completing preparation in psychological foundations and methods appropriate for Early Childhood Education/Early Intervention;

(b) Completing a supervised practicum in early intervention and early childhood special education; and

(c) Documenting knowledge of the endorsement by passing the required commission-approved licensure examination in Special Education; Preschool/Early Childhood.

## ADMINISTRATIVE RULES

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(d) The commission-approved licensure Multiple Subjects Examination (MSE) is not required for Early Childhood Education/Early Intervention endorsement.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120 - 342.143, 342.153, 342.165, 342.223 - 342.232

Hist.: TSPC 4-1999, f. & cert. ef. 8-2-99; TSPC 6-2002, f. & cert. ef. 10-23-02; TSPC 3-2003, f. & cert. ef. 5-15-03; TSPC 7-2005, f. & cert. ef. 8-24-05; TSPC 13-2006, f. & cert. ef. 11-22-06; TSPC 5-2007, f. & cert. ef. 8-15-07; TSPC 4-2009, f. & cert. ef. 9-22-09; TSPC 8-2009, f. & cert. ef. 12-15-09; TSPC 9-2009, f. & cert. ef. 12-18-09

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123-022-0090	12-1-2009	Amend	1-1-2010	123-165-0020	1-14-2010	Adopt(T)	2-1-2010
123-022-0100	12-1-2009	Amend	1-1-2010	123-165-0030	1-14-2010	Adopt(T)	2-1-2010
123-022-0110	12-1-2009	Amend	1-1-2010	123-165-0040	1-14-2010	Adopt(T)	2-1-2010
123-024-0011	12-1-2009	Amend	1-1-2010	123-165-0045	1-14-2010	Adopt(T)	2-1-2010
123-024-0031	12-1-2009	Amend	1-1-2010	123-165-0050	1-14-2010	Adopt(T)	2-1-2010
123-024-0046	12-1-2009	Adopt	1-1-2010	125-045-0210	11-19-2009	Amend	1-1-2010
123-043-0000	12-1-2009	Amend	1-1-2010	125-045-0215	11-19-2009	Amend	1-1-2010
123-043-0010	12-1-2009	Amend	1-1-2010	125-045-0225	11-19-2009	Amend	1-1-2010
123-043-0010	1-14-2010	Amend(T)	2-1-2010	125-246-0110	1-1-2010	Amend	2-1-2010
123-043-0015	12-1-2009	Amend	1-1-2010	125-246-0130	1-1-2010	Amend	2-1-2010
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125-246-0170	1-1-2010	Amend	2-1-2010	125-248-0200	1-1-2010	Amend	2-1-2010
125-246-0200	1-1-2010	Amend	2-1-2010	125-248-0210	1-1-2010	Amend	2-1-2010
125-246-0210	1-1-2010	Amend	2-1-2010	125-248-0220	1-1-2010	Amend	2-1-2010
125-246-0220	1-1-2010	Amend	2-1-2010	125-248-0230	1-1-2010	Amend	2-1-2010
125-246-0310	1-1-2010	Amend	2-1-2010	125-248-0240	1-1-2010	Amend	2-1-2010
125-246-0312	1-1-2010	Adopt	2-1-2010	125-248-0260	1-1-2010	Amend	2-1-2010
125-246-0314	1-1-2010	Adopt	2-1-2010	125-248-0300	1-1-2010	Amend	2-1-2010
125-246-0330	1-1-2010	Amend	2-1-2010	125-248-0310	1-1-2010	Amend	2-1-2010
125-246-0333	1-1-2010	Amend	2-1-2010	125-248-0330	1-1-2010	Amend	2-1-2010
125-246-0335	1-1-2010	Amend	2-1-2010	125-248-0340	1-1-2010	Amend	2-1-2010
125-246-0345	1-1-2010	Amend	2-1-2010	125-249-0120	1-1-2010	Amend	2-1-2010
125-246-0351	1-1-2010	Amend	2-1-2010	125-249-0130	1-1-2010	Amend	2-1-2010
125-246-0352	1-1-2010	Repeal	2-1-2010	125-249-0145	1-1-2010	Adopt	2-1-2010
125-246-0360	1-1-2010	Amend	2-1-2010	125-249-0200	1-1-2010	Amend	2-1-2010
125-246-0365	1-1-2010	Amend	2-1-2010	125-249-0230	1-1-2010	Amend	2-1-2010
125-246-0550	1-1-2010	Repeal	2-1-2010	125-249-0260	1-1-2010	Amend	2-1-2010
125-246-0560	1-1-2010	Amend	2-1-2010	125-249-0270	1-1-2010	Amend	2-1-2010
125-246-0570	1-1-2010	Amend	2-1-2010	125-249-0280	1-1-2010	Amend	2-1-2010
125-246-0575	1-1-2010	Repeal	2-1-2010	125-249-0300	1-1-2010	Amend	2-1-2010
125-246-0576	1-1-2010	Amend	2-1-2010	125-249-0330	1-1-2010	Amend	2-1-2010
125-246-0621	1-1-2010	Adopt	2-1-2010	125-249-0350	1-1-2010	Amend	2-1-2010
125-246-0635	1-1-2010	Amend	2-1-2010	125-249-0360	1-1-2010	Amend	2-1-2010
125-247-0005	1-1-2010	Repeal	2-1-2010	125-249-0370	1-1-2010	Amend	2-1-2010
125-247-0110	1-1-2010	Adopt	2-1-2010	125-249-0390	1-1-2010	Amend	2-1-2010
125-247-0200	1-1-2010	Amend	2-1-2010	125-249-0420	1-1-2010	Amend	2-1-2010
125-247-0255	1-1-2010	Amend	2-1-2010	125-249-0430	1-1-2010	Amend	2-1-2010
125-247-0256	1-1-2010	Repeal	2-1-2010	125-249-0440	1-1-2010	Amend	2-1-2010
125-247-0260	1-1-2010	Amend	2-1-2010	125-249-0450	1-1-2010	Amend	2-1-2010
125-247-0261	1-1-2010	Repeal	2-1-2010	125-249-0620	1-1-2010	Amend	2-1-2010
125-247-0270	1-1-2010	Amend	2-1-2010	125-249-0640	1-1-2010	Amend	2-1-2010
125-247-0275	1-1-2010	Amend	2-1-2010	125-249-0645	1-1-2010	Amend	2-1-2010
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125-247-0500	1-1-2010	Amend	2-1-2010	125-249-0900	1-1-2010	Amend	2-1-2010
125-247-0550	1-1-2010	Amend	2-1-2010	137-045-0010	1-1-2010	Amend	1-1-2010
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125-247-0691	1-1-2010	Amend	2-1-2010	137-045-0052	1-1-2010	Amend	1-1-2010
125-247-0700	1-1-2010	Amend	2-1-2010	137-045-0060	1-1-2010	Amend	1-1-2010
125-247-0710	1-1-2010	Amend	2-1-2010	137-045-0070	1-1-2010	Amend	1-1-2010
125-247-0720	1-1-2010	Amend	2-1-2010	137-046-0110	1-1-2010	Amend	1-1-2010
125-247-0740	1-1-2010	Amend	2-1-2010	137-046-0210	1-1-2010	Amend	1-1-2010
125-247-0750	1-1-2010	Amend	2-1-2010	137-047-0250	1-1-2010	Amend	1-1-2010
125-247-0770	1-1-2010	Repeal	2-1-2010	137-047-0255	1-1-2010	Amend	1-1-2010
125-247-0800	1-1-2010	Repeal	2-1-2010	137-047-0260	1-1-2010	Amend	1-1-2010

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137-047-0262	1-1-2010	Amend	1-1-2010	137-050-0420	1-4-2010	Repeal	1-1-2010
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137-047-0470	1-1-2010	Amend	1-1-2010	137-050-0485	1-4-2010	Repeal	1-1-2010
137-047-0550	1-1-2010	Amend	1-1-2010	137-050-0490	1-4-2010	Repeal	1-1-2010
137-047-0600	1-1-2010	Amend	1-1-2010	137-050-0700	1-4-2010	Adopt	1-1-2010
137-047-0640	1-1-2010	Amend	1-1-2010	137-050-0710	1-4-2010	Adopt	1-1-2010
137-047-0800	1-1-2010	Amend	1-1-2010	137-050-0715	1-4-2010	Adopt	1-1-2010
137-048-0130	1-1-2010	Amend	1-1-2010	137-050-0720	1-4-2010	Adopt	1-1-2010
137-048-0200	1-1-2010	Amend	1-1-2010	137-050-0725	1-4-2010	Adopt	1-1-2010
137-048-0210	1-1-2010	Amend	1-1-2010	137-050-0730	1-4-2010	Adopt	1-1-2010
137-048-0220	1-1-2010	Amend	1-1-2010	137-050-0735	1-4-2010	Adopt	1-1-2010
137-048-0250	1-1-2010	Amend	1-1-2010	137-050-0740	1-4-2010	Adopt	1-1-2010
137-048-0260	1-1-2010	Amend	1-1-2010	137-050-0745	1-4-2010	Adopt	1-1-2010
137-048-0300	1-1-2010	Amend	1-1-2010	137-050-0750	1-4-2010	Adopt	1-1-2010
137-048-0310	1-1-2010	Amend	1-1-2010	137-050-0755	1-4-2010	Adopt	1-1-2010
137-048-0320	1-1-2010	Amend	1-1-2010	137-050-0760	1-4-2010	Adopt	1-1-2010
137-049-0150	1-1-2010	Amend	1-1-2010	137-050-0760	1-8-2010	Amend(T)	2-1-2010
137-049-0200	1-1-2010	Amend	1-1-2010	137-050-0760(T)	1-8-2010	Suspend	2-1-2010
137-049-0210	1-1-2010	Amend	1-1-2010	137-050-0765	1-4-2010	Adopt	1-1-2010
137-049-0220	1-1-2010	Amend	1-1-2010	137-055-1020	1-4-2010	Amend	2-1-2010
137-049-0260	1-1-2010	Amend	1-1-2010	137-055-1070	1-4-2010	Amend(T)	2-1-2010
137-049-0270	1-1-2010	Amend	1-1-2010	137-055-1090	1-4-2010	Amend	2-1-2010
137-049-0290	1-1-2010	Amend	1-1-2010	137-055-1120	1-4-2010	Amend	2-1-2010
137-049-0320	1-1-2010	Amend	1-1-2010	137-055-1140	1-4-2010	Amend	2-1-2010
137-049-0330	1-1-2010	Amend	1-1-2010	137-055-1145	1-4-2010	Amend	2-1-2010
137-049-0350	1-1-2010	Amend	1-1-2010	137-055-2160	1-4-2010	Amend(T)	2-1-2010
137-049-0360	1-1-2010	Amend	1-1-2010	137-055-2360	1-4-2010	Amend	2-1-2010
137-049-0390	1-1-2010	Amend	1-1-2010	137-055-2380	1-4-2010	Amend	2-1-2010
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137-049-0440	1-1-2010	Amend	1-1-2010	137-055-3220	1-4-2010	Amend	2-1-2010
137-049-0620	1-1-2010	Amend	1-1-2010	137-055-3260	1-4-2010	Amend	2-1-2010
137-049-0645	1-1-2010	Amend	1-1-2010	137-055-3300	1-4-2010	Amend	2-1-2010
137-049-0650	1-1-2010	Amend	1-1-2010	137-055-3340	1-4-2010	Amend(T)	2-1-2010
137-049-0670	1-1-2010	Amend	1-1-2010	137-055-3340	1-12-2010	Amend(T)	2-1-2010
137-049-0680	1-1-2010	Amend	1-1-2010	137-055-3340(T)	1-12-2010	Suspend	2-1-2010
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137-049-0860	1-1-2010	Amend	1-1-2010	137-055-3660	1-4-2010	Amend	2-1-2010
137-050-0320	1-4-2010	Repeal	1-1-2010	137-055-4210	1-4-2010	Adopt	2-1-2010
137-050-0330	1-4-2010	Repeal	1-1-2010	137-055-4420	1-4-2010	Amend	2-1-2010
137-050-0333	1-4-2010	Repeal	1-1-2010	137-055-4450	1-4-2010	Amend	2-1-2010
137-050-0335	1-4-2010	Repeal	1-1-2010	137-055-4455	1-4-2010	Amend	2-1-2010
137-050-0340	1-4-2010	Repeal	1-1-2010	137-055-4620	1-4-2010	Amend	2-1-2010
137-050-0350	1-4-2010	Repeal	1-1-2010	137-055-4640	1-4-2010	Amend	2-1-2010
137-050-0360	1-4-2010	Repeal	1-1-2010	137-055-5110	1-4-2010	Amend	2-1-2010
137-050-0370	1-4-2010	Repeal	1-1-2010	137-055-5220	1-4-2010	Amend	2-1-2010
137-050-0390	1-4-2010	Repeal	1-1-2010	137-055-6022	1-4-2010	Amend	2-1-2010
137-050-0400	1-4-2010	Repeal	1-1-2010	137-055-6024	1-4-2010	Amend	2-1-2010
137-050-0405	1-4-2010	Repeal	1-1-2010	137-055-6260	1-4-2010	Amend	2-1-2010



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141-085-0510	1-1-2010	Amend	1-1-2010	150-311.668(1)(a)-(B)	1-1-2010	Amend	2-1-2010
141-085-0515	1-1-2010	Amend	1-1-2010	150-311.688	1-1-2010	Amend	2-1-2010
141-085-0530	1-1-2010	Amend	1-1-2010	150-311.689	1-1-2010	Amend	2-1-2010
141-085-0534	1-1-2010	Adopt	1-1-2010	150-311.691	1-1-2010	Amend	2-1-2010
141-085-0535	1-1-2010	Amend	1-1-2010	150-311.706	1-1-2010	Amend	2-1-2010
141-085-0545	1-1-2010	Amend	1-1-2010	150-314.280-(N)	1-1-2010	Amend	2-1-2010
141-085-0550	1-1-2010	Amend	1-1-2010	150-314.610(4)	1-1-2010	Repeal	2-1-2010
141-085-0555	1-1-2010	Amend	1-1-2010	150-315.204-(A)	1-1-2010	Amend	2-1-2010
141-085-0565	1-1-2010	Amend	1-1-2010	150-315.262	1-1-2010	Amend	2-1-2010
141-085-0570	1-1-2010	Am. & Ren.	1-1-2010	150-317.097	1-1-2010	Amend	2-1-2010
141-085-0585	1-1-2010	Amend	1-1-2010	150-317.326	1-1-2010	Repeal	2-1-2010
141-085-0590	1-1-2010	Amend	1-1-2010	150-323.500(9)	1-1-2010	Adopt	2-1-2010
141-085-0665	1-1-2010	Amend	1-1-2010	150-323.500(9)(T)	1-1-2010	Repeal	2-1-2010
141-085-0670	1-1-2010	Repeal	1-1-2010	150-358.505	1-1-2010	Adopt	2-1-2010
141-085-0675	1-1-2010	Amend	1-1-2010	160-005-0008	1-1-2010	Adopt	2-1-2010
141-085-0680	1-1-2010	Amend	1-1-2010	160-010-0200	1-1-2010	Repeal	2-1-2010
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141-085-0700	1-1-2010	Amend	1-1-2010	160-010-0230	1-1-2010	Adopt	2-1-2010
141-085-0705	1-1-2010	Amend	1-1-2010	160-010-0240	1-1-2010	Adopt	2-1-2010
141-085-0720	1-1-2010	Amend	1-1-2010	160-040-0103	1-1-2010	Amend	2-1-2010
141-085-0725	1-1-2010	Amend	1-1-2010	160-040-0104	1-1-2010	Amend	2-1-2010
141-085-0730	1-1-2010	Amend	1-1-2010	160-040-0311	1-1-2010	Amend	2-1-2010
141-085-0735	1-1-2010	Amend	1-1-2010	160-040-0507	1-1-2010	Adopt	2-1-2010
141-085-0745	1-1-2010	Amend	1-1-2010	160-100-0040	1-1-2010	Amend	2-1-2010
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141-089-0350	1-1-2010	Repeal	1-1-2010	161-002-0000	1-1-2010	Amend(T)	1-1-2010
141-089-0355	1-1-2010	Repeal	1-1-2010	161-025-0060	1-1-2010	Amend(T)	1-1-2010
141-089-0360	1-1-2010	Repeal	1-1-2010	165-001-0015	12-31-2009	Amend	2-1-2010
141-089-0365	1-1-2010	Repeal	1-1-2010	165-001-0025	12-31-2009	Amend	2-1-2010
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141-089-0380	1-1-2010	Repeal	1-1-2010	165-001-0045	12-31-2009	Amend	2-1-2010
141-089-0385	1-1-2010	Repeal	1-1-2010	165-001-0050	12-31-2009	Amend	2-1-2010
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141-142-0015	12-15-2009	Adopt	1-1-2010	165-001-0080	12-31-2009	Amend	2-1-2010
141-142-0020	12-15-2009	Adopt	1-1-2010	165-002-0010	12-31-2009	Amend	2-1-2010
141-142-0025	12-15-2009	Adopt	1-1-2010	165-002-0020	12-31-2009	Amend	2-1-2010
141-142-0030	12-15-2009	Adopt	1-1-2010	165-005-0130	12-31-2009	Amend	2-1-2010
141-142-0035	12-15-2009	Adopt	1-1-2010	165-007-0035	12-31-2009	Amend	2-1-2010
141-142-0040	12-15-2009	Adopt	1-1-2010	165-007-0290	12-31-2009	Amend	2-1-2010
150-118.225	1-1-2010	Amend	2-1-2010	165-007-0300	12-4-2009	Adopt	1-1-2010
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150-305.290	1-1-2010	Repeal	2-1-2010	165-010-0120	12-31-2009	Repeal	2-1-2010
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150-307.250(1)(b)	1-1-2010	Am. & Ren.	2-1-2010	165-012-0050	12-31-2009	Amend	2-1-2010
150-307.270(1)-(A)	1-1-2010	Amend	2-1-2010	165-012-0240	12-31-2009	Amend	2-1-2010
150-307.330	1-1-2010	Amend	2-1-2010	165-013-0010	12-31-2009	Amend	2-1-2010
150-307.547	1-1-2010	Adopt	2-1-2010	165-013-0020	12-31-2009	Amend	2-1-2010
150-308.875-(A)	1-1-2010	Amend	2-1-2010	165-014-0005	12-31-2009	Amend	2-1-2010
150-309.100-(D)	1-1-2010	Adopt	2-1-2010	165-014-0100	12-31-2009	Amend	2-1-2010

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165-014-0280	12-31-2009	Amend	2-1-2010	257-050-0140	1-1-2010	Amend(T)	2-1-2010
165-020-0005	12-31-2009	Amend	2-1-2010	257-050-0145	1-1-2010	Amend(T)	2-1-2010
165-020-0020	12-31-2009	Amend	2-1-2010	257-050-0150	1-1-2010	Amend(T)	2-1-2010
165-020-0050	12-31-2009	Amend	2-1-2010	257-050-0155	1-1-2010	Amend(T)	2-1-2010
165-020-0060	12-31-2009	Amend	2-1-2010	257-050-0157	1-1-2010	Amend(T)	2-1-2010
166-150-0035	12-23-2009	Amend	2-1-2010	257-050-0170	1-1-2010	Amend(T)	2-1-2010
170-040-0110	11-19-2009	Adopt	1-1-2010	257-050-0180	1-1-2010	Amend(T)	2-1-2010
170-061-0015	1-15-2010	Amend	2-1-2010	257-050-0200	1-1-2010	Amend(T)	2-1-2010
170-061-0015(T)	1-15-2010	Repeal	2-1-2010	259-008-0000	12-15-2009	Amend	1-1-2010
170-063-0000	1-15-2010	Amend	2-1-2010	259-008-0015	1-11-2010	Amend	2-1-2010
170-063-0000(T)	1-15-2010	Repeal	2-1-2010	259-008-0025	12-15-2009	Amend	1-1-2010
213-003-0001	1-1-2010	Amend	2-1-2010	259-008-0025(T)	12-15-2009	Repeal	1-1-2010
213-003-0001(T)	1-1-2010	Repeal	2-1-2010	259-008-0060	1-11-2010	Amend	2-1-2010
213-017-0004	12-13-2009	Amend	1-1-2010	259-008-0064	1-11-2010	Amend	2-1-2010
213-017-0004	1-1-2010	Amend	2-1-2010	259-009-0005	12-15-2009	Amend(T)	1-1-2010
213-017-0004(T)	12-13-2009	Repeal	1-1-2010	259-009-0062	12-15-2009	Amend(T)	1-1-2010
213-017-0005	1-1-2010	Amend	2-1-2010	274-006-0001	1-1-2010	Adopt	2-1-2010
213-017-0006	12-13-2009	Amend	1-1-2010	274-006-0002	1-1-2010	Adopt	2-1-2010
213-017-0006	1-1-2010	Amend	2-1-2010	274-006-0004	1-1-2010	Adopt	2-1-2010
213-017-0006(T)	12-13-2009	Repeal	1-1-2010	274-006-0005	1-1-2010	Adopt	2-1-2010
213-017-0009(T)	1-1-2010	Suspend	1-1-2010	274-006-0010	1-1-2010	Adopt	2-1-2010
213-018-0022	12-13-2009	Adopt	1-1-2010	274-006-0011	1-1-2010	Adopt	2-1-2010
213-018-0022(T)	12-13-2009	Repeal	1-1-2010	274-006-0012	1-1-2010	Adopt	2-1-2010
213-018-0058	1-1-2010	Adopt	2-1-2010	274-006-0013	1-1-2010	Adopt	2-1-2010
250-010-0154	1-15-2010	Amend	2-1-2010	274-006-0014	1-1-2010	Adopt	2-1-2010
250-010-0650	1-5-2010	Amend(T)	2-1-2010	274-006-0015	1-1-2010	Adopt	2-1-2010
250-010-0650	1-15-2010	Amend(T)	2-1-2010	274-006-0018	1-1-2010	Adopt	2-1-2010
250-010-0650(T)	1-15-2010	Suspend	2-1-2010	274-006-0020	1-1-2010	Adopt	2-1-2010
250-020-0221	1-15-2010	Amend	2-1-2010	291-070-0130	11-20-2009	Amend	1-1-2010
250-020-0240	1-15-2010	Amend	2-1-2010	291-084-0010	11-20-2009	Repeal	1-1-2010
250-030-0030	1-15-2010	Amend(T)	2-1-2010	291-084-0020	11-20-2009	Repeal	1-1-2010
255-062-0005	1-5-2010	Adopt(T)	2-1-2010	291-084-0030	11-20-2009	Repeal	1-1-2010
255-062-0010	1-5-2010	Adopt(T)	2-1-2010	291-084-0040	11-20-2009	Repeal	1-1-2010
255-062-0015	1-5-2010	Adopt(T)	2-1-2010	291-097-0005	11-20-2009	Amend	1-1-2010
255-062-0020	1-5-2010	Adopt(T)	2-1-2010	291-097-0010	11-20-2009	Amend	1-1-2010
255-062-0025	1-5-2010	Adopt(T)	2-1-2010	291-097-0015	11-20-2009	Amend	1-1-2010
255-062-0030	1-5-2010	Adopt(T)	2-1-2010	291-097-0020	11-20-2009	Amend	1-1-2010
255-070-0001	1-1-2010	Amend	2-1-2010	291-097-0023	11-20-2009	Adopt	1-1-2010
257-001-0005	1-1-2010	Amend(T)	2-1-2010	291-097-0025	11-20-2009	Amend	1-1-2010
257-045-0010	1-1-2010	Adopt(T)	2-1-2010	291-097-0040	11-20-2009	Amend	1-1-2010
257-045-0020	1-1-2010	Adopt(T)	2-1-2010	291-097-0080	11-20-2009	Amend	1-1-2010
257-045-0030	1-1-2010	Adopt(T)	2-1-2010	291-097-0100	11-20-2009	Amend	1-1-2010
257-045-0040	1-1-2010	Adopt(T)	2-1-2010	291-180-0274	1-4-2010	Adopt(T)	2-1-2010
257-045-0050	1-1-2010	Adopt(T)	2-1-2010	309-033-0270	12-17-2009	Amend	2-1-2010
257-050-0020	1-1-2010	Amend(T)	2-1-2010	309-035-0155	12-17-2009	Amend	2-1-2010
257-050-0040	1-1-2010	Amend(T)	2-1-2010	309-035-0380	12-17-2009	Amend	2-1-2010
257-050-0050	1-1-2010	Amend(T)	2-1-2010	309-041-0550	12-9-2009	Renumber	1-1-2010
257-050-0060	1-1-2010	Amend(T)	2-1-2010	309-041-0560	12-9-2009	Renumber	1-1-2010
257-050-0070	1-1-2010	Amend(T)	2-1-2010	309-041-0570	12-9-2009	Renumber	1-1-2010
257-050-0090	1-1-2010	Amend(T)	2-1-2010	309-041-0580	12-9-2009	Renumber	1-1-2010
257-050-0095	1-1-2010	Amend(T)	2-1-2010	309-041-0590	12-9-2009	Renumber	1-1-2010
257-050-0100	1-1-2010	Amend(T)	2-1-2010	309-041-0600	12-9-2009	Renumber	1-1-2010
257-050-0110	1-1-2010	Amend(T)	2-1-2010	309-041-0610	12-9-2009	Renumber	1-1-2010
257-050-0115	1-1-2010	Amend(T)	2-1-2010	309-041-0620	12-9-2009	Renumber	1-1-2010
257-050-0125	1-1-2010	Amend(T)	2-1-2010	309-041-0630	12-9-2009	Renumber	1-1-2010
257-050-0130	1-1-2010	Amend(T)	2-1-2010	309-041-0640	12-9-2009	Renumber	1-1-2010

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309-041-0660	12-9-2009	Renumber	1-1-2010	333-029-0115	12-23-2009	Amend	2-1-2010
309-041-0670	12-9-2009	Renumber	1-1-2010	333-050-0020	12-21-2009	Amend(T)	2-1-2010
309-041-0680	12-9-2009	Renumber	1-1-2010	333-050-0050	12-21-2009	Amend(T)	2-1-2010
309-041-0690	12-9-2009	Renumber	1-1-2010	333-050-0120	12-21-2009	Amend(T)	2-1-2010
309-041-0700	12-9-2009	Renumber	1-1-2010	333-060-0125	12-23-2009	Amend	2-1-2010
309-041-0710	12-9-2009	Renumber	1-1-2010	333-060-0128	12-23-2009	Adopt	2-1-2010
309-041-0715	12-9-2009	Renumber	1-1-2010	333-060-0505	12-23-2009	Amend	2-1-2010
309-041-0720	12-9-2009	Renumber	1-1-2010	333-060-0510	12-23-2009	Amend	2-1-2010
309-041-0730	12-9-2009	Renumber	1-1-2010	333-062-0100	12-23-2009	Amend	2-1-2010
309-041-0740	12-9-2009	Renumber	1-1-2010	333-062-0103	12-23-2009	Adopt	2-1-2010
309-041-0750	12-9-2009	Renumber	1-1-2010	333-092-0000	12-21-2009	Repeal	2-1-2010
309-041-0760	12-9-2009	Renumber	1-1-2010	333-092-0005	12-21-2009	Repeal	2-1-2010
309-041-0770	12-9-2009	Renumber	1-1-2010	333-092-0010	12-21-2009	Repeal	2-1-2010
309-041-0780	12-9-2009	Renumber	1-1-2010	333-092-0015	12-21-2009	Repeal	2-1-2010
309-041-0790	12-9-2009	Renumber	1-1-2010	333-092-0020	12-21-2009	Repeal	2-1-2010
309-041-0800	12-9-2009	Renumber	1-1-2010	333-092-0025	12-21-2009	Repeal	2-1-2010
309-041-0805	12-9-2009	Renumber	1-1-2010	333-092-0030	12-21-2009	Repeal	2-1-2010
309-041-0810	12-9-2009	Renumber	1-1-2010	333-092-0035	12-21-2009	Repeal	2-1-2010
309-041-0820	12-9-2009	Renumber	1-1-2010	333-092-0040	12-21-2009	Repeal	2-1-2010
309-041-0830	12-9-2009	Renumber	1-1-2010	333-092-0045	12-21-2009	Repeal	2-1-2010
309-114-0005	12-28-2009	Amend	2-1-2010	333-092-0050	12-21-2009	Repeal	2-1-2010
330-075-0005	12-21-2009	Amend(T)	2-1-2010	333-092-0055	12-21-2009	Repeal	2-1-2010
330-075-0010	12-21-2009	Amend(T)	2-1-2010	333-092-0060	12-21-2009	Repeal	2-1-2010
330-075-0015	12-21-2009	Amend(T)	2-1-2010	333-092-0065	12-21-2009	Repeal	2-1-2010
330-075-0025	12-21-2009	Amend(T)	2-1-2010	333-092-0070	12-21-2009	Repeal	2-1-2010
330-075-0030	12-21-2009	Suspend	2-1-2010	333-092-0075	12-21-2009	Repeal	2-1-2010
330-075-0035	12-21-2009	Amend(T)	2-1-2010	333-092-0080	12-21-2009	Repeal	2-1-2010
330-090-0140	1-8-2010	Amend	2-1-2010	333-092-0085	12-21-2009	Repeal	2-1-2010
330-090-0140(T)	1-8-2010	Repeal	2-1-2010	333-092-0090	12-21-2009	Repeal	2-1-2010
331-705-0060	12-1-2009	Amend(T)	1-1-2010	333-092-0095	12-21-2009	Repeal	2-1-2010
333-012-0500	1-14-2010	Amend	2-1-2010	333-270-0010	12-3-2009	Adopt	1-1-2010
333-015-0035	1-14-2010	Amend	2-1-2010	333-270-0020	12-3-2009	Adopt	1-1-2010
333-015-0040	1-14-2010	Amend	2-1-2010	333-270-0030	12-3-2009	Adopt	1-1-2010
333-015-0075	1-14-2010	Amend	2-1-2010	333-270-0040	12-3-2009	Adopt	1-1-2010
333-015-0085	1-14-2010	Amend	2-1-2010	333-270-0050	12-3-2009	Adopt	1-1-2010
333-015-0100	1-1-2010	Adopt	2-1-2010	333-270-0060	12-3-2009	Adopt	1-1-2010
333-015-0105	1-1-2010	Adopt	2-1-2010	333-270-0070	12-3-2009	Adopt	1-1-2010
333-015-0110	1-1-2010	Adopt	2-1-2010	333-270-0080	12-3-2009	Adopt	1-1-2010
333-015-0115	1-1-2010	Adopt	2-1-2010	333-300-0000	12-21-2009	Repeal	2-1-2010
333-015-0120	1-1-2010	Adopt	2-1-2010	335-070-0065	11-16-2009	Amend	1-1-2010
333-015-0125	1-1-2010	Adopt	2-1-2010	335-095-0060	11-16-2009	Amend	1-1-2010
333-015-0130	1-1-2010	Adopt	2-1-2010	339-005-0000	3-1-2010	Amend	2-1-2010
333-015-0135	1-1-2010	Adopt	2-1-2010	340-071-0140	1-4-2010	Amend	2-1-2010
333-015-0140	1-1-2010	Adopt	2-1-2010	340-200-0040	12-16-2009	Amend	2-1-2010
333-015-0145	1-1-2010	Adopt	2-1-2010	340-209-0030	12-16-2009	Amend	2-1-2010
333-015-0150	1-1-2010	Adopt	2-1-2010	340-210-0100	12-16-2009	Amend	2-1-2010
333-015-0155	1-1-2010	Adopt	2-1-2010	340-210-0110	12-16-2009	Amend	2-1-2010
333-015-0160	1-1-2010	Adopt	2-1-2010	340-210-0120	12-16-2009	Amend	2-1-2010
333-015-0165	1-1-2010	Adopt	2-1-2010	340-215-0050	1-1-2010	Adopt(T)	2-1-2010
333-029-0025	12-23-2009	Amend	2-1-2010	340-216-0020	12-16-2009	Amend	2-1-2010
333-029-0030	12-23-2009	Repeal	2-1-2010	340-216-0020	1-1-2010	Amend(T)	2-1-2010
333-029-0045	12-23-2009	Amend	2-1-2010	340-216-0060	12-16-2009	Amend	2-1-2010
333-029-0050	12-23-2009	Amend	2-1-2010	340-216-0062	12-16-2009	Adopt	2-1-2010
333-029-0060	12-23-2009	Amend	2-1-2010	340-216-0064	12-16-2009	Amend	2-1-2010
333-029-0070	12-23-2009	Amend	2-1-2010	340-220-0050	1-1-2010	Amend(T)	2-1-2010

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340-228-0621	12-16-2009	Amend	2-1-2010	409-040-0105	1-1-2010	Adopt	2-1-2010
340-228-0623	12-16-2009	Amend	2-1-2010	409-040-0110	1-1-2010	Adopt	2-1-2010
340-228-0625	12-16-2009	Amend	2-1-2010	409-040-0115	1-1-2010	Adopt	2-1-2010
340-228-0627	12-16-2009	Amend	2-1-2010	410-120-0030	1-1-2010	Amend	1-1-2010
340-228-0639	12-16-2009	Adopt	2-1-2010	410-120-0030(T)	1-1-2010	Repeal	1-1-2010
340-238-0040	12-16-2009	Amend	2-1-2010	410-120-1200	1-1-2010	Amend	1-1-2010
340-244-0030	12-16-2009	Amend	2-1-2010	410-120-1210	1-1-2010	Amend	1-1-2010
340-244-0220	12-16-2009	Amend	2-1-2010	410-120-1230	1-1-2010	Amend	1-1-2010
340-244-0238	12-16-2009	Amend	2-1-2010	410-120-1295	12-4-2009	Amend(T)	1-1-2010
340-244-0240	12-16-2009	Amend	2-1-2010	410-120-1295	1-1-2010	Amend	1-1-2010
340-244-0242	12-16-2009	Amend	2-1-2010	410-120-1295(T)	12-4-2009	Suspend	1-1-2010
340-244-0246	12-16-2009	Amend	2-1-2010	410-120-1340	1-1-2010	Amend	1-1-2010
345-001-0010	11-24-2009	Amend	1-1-2010	410-120-1380	1-1-2010	Amend	1-1-2010
345-024-0590	11-24-2009	Amend	1-1-2010	410-120-1570	1-1-2010	Amend	1-1-2010
407-007-0000	1-1-2010	Amend	2-1-2010	410-120-1600	1-1-2010	Amend	1-1-2010
407-007-0010	1-1-2010	Amend	2-1-2010	410-121-0000	1-1-2010	Amend	1-1-2010
407-007-0020	1-1-2010	Amend	2-1-2010	410-121-0030	1-1-2010	Amend	1-1-2010
407-007-0030	1-1-2010	Amend	2-1-2010	410-121-0032	1-1-2010	Amend	1-1-2010
407-007-0040	1-1-2010	Amend	2-1-2010	410-121-0040	1-1-2010	Amend	1-1-2010
407-007-0050	1-1-2010	Amend	2-1-2010	410-121-0060	1-1-2010	Amend	1-1-2010
407-007-0060	1-1-2010	Amend	2-1-2010	410-121-0100	1-1-2010	Amend	1-1-2010
407-007-0065	1-1-2010	Adopt	2-1-2010	410-121-0135	1-1-2010	Amend	1-1-2010
407-007-0070	1-1-2010	Amend	2-1-2010	410-121-0420	1-1-2010	Amend	1-1-2010
407-007-0075	1-1-2010	Adopt	2-1-2010	410-122-0182	1-1-2010	Amend	1-1-2010
407-007-0080	1-1-2010	Amend	2-1-2010	410-122-0203	1-1-2010	Amend	1-1-2010
407-007-0090	1-1-2010	Amend	2-1-2010	410-122-0660	1-1-2010	Amend	1-1-2010
407-007-0100	1-1-2010	Amend	2-1-2010	410-122-0662	1-1-2010	Amend	1-1-2010
407-007-0200	1-1-2010	Amend	2-1-2010	410-123-1000	1-1-2010	Amend	1-1-2010
407-007-0210	1-1-2010	Amend	2-1-2010	410-123-1160	1-1-2010	Amend	1-1-2010
407-007-0220	1-1-2010	Amend	2-1-2010	410-123-1220	1-1-2010	Amend	1-1-2010
407-007-0230	1-1-2010	Amend	2-1-2010	410-123-1260	1-1-2010	Amend	1-1-2010
407-007-0240	1-1-2010	Amend	2-1-2010	410-136-0245	1-1-2010	Adopt	1-1-2010
407-007-0250	1-1-2010	Amend	2-1-2010	410-138-0009	1-1-2010	Amend	1-1-2010
407-007-0280	1-1-2010	Amend	2-1-2010	410-138-0020	1-1-2010	Amend	1-1-2010
407-007-0290	1-1-2010	Amend	2-1-2010	410-138-0300	11-16-2009	Amend(T)	1-1-2010
407-007-0300	1-1-2010	Amend	2-1-2010	410-138-0300	1-1-2010	Amend	1-1-2010
407-007-0315	1-1-2010	Adopt	2-1-2010	410-138-0300(T)	1-1-2010	Repeal	1-1-2010
407-007-0320	1-1-2010	Amend	2-1-2010	410-138-0320	1-1-2010	Repeal	1-1-2010
407-007-0325	1-1-2010	Adopt	2-1-2010	410-138-0340	11-16-2009	Suspend	1-1-2010
407-007-0330	1-1-2010	Amend	2-1-2010	410-138-0340	1-1-2010	Repeal	1-1-2010
407-007-0340	1-1-2010	Amend	2-1-2010	410-138-0360	11-16-2009	Amend(T)	1-1-2010
407-007-0350	1-1-2010	Amend	2-1-2010	410-138-0360	1-1-2010	Amend	1-1-2010
407-007-0355	1-1-2010	Repeal	2-1-2010	410-138-0360(T)	1-1-2010	Repeal	1-1-2010
407-007-0370	1-1-2010	Amend	2-1-2010	410-138-0380	11-16-2009	Amend(T)	1-1-2010
407-007-0440	1-8-2010	Adopt(T)	2-1-2010	410-138-0380	1-1-2010	Amend	1-1-2010
407-043-0010	1-1-2010	Amend	2-1-2010	410-138-0380(T)	1-1-2010	Repeal	1-1-2010
407-043-0010(T)	1-1-2010	Repeal	2-1-2010	410-138-0390	11-16-2009	Adopt(T)	1-1-2010
407-045-0260	1-1-2010	Amend(T)	2-1-2010	410-138-0390	1-1-2010	Adopt	1-1-2010
407-045-0290	1-1-2010	Amend(T)	2-1-2010	410-138-0390(T)	1-1-2010	Repeal	1-1-2010
407-045-0350	1-1-2010	Amend(T)	2-1-2010	410-138-0520	1-1-2010	Repeal	1-1-2010
409-026-0100	1-1-2010	Adopt	2-1-2010	410-138-0560	1-1-2010	Amend	1-1-2010
409-026-0110	1-1-2010	Adopt	2-1-2010	410-138-0620	1-1-2010	Repeal	1-1-2010
409-026-0120	1-1-2010	Adopt	2-1-2010	410-138-0680	1-1-2010	Amend	1-1-2010
409-026-0130	1-1-2010	Adopt	2-1-2010	410-138-0720	1-1-2010	Repeal	1-1-2010
409-026-0140	1-1-2010	Adopt	2-1-2010	410-140-0050	1-1-2010	Amend	1-1-2010

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410-140-0115	1-1-2010	Repeal	1-1-2010	411-050-0487	1-1-2010	Amend(T)	2-1-2010
410-140-0140	1-1-2010	Amend	1-1-2010	411-054-0005	1-1-2010	Amend(T)	2-1-2010
410-140-0160	1-1-2010	Amend	1-1-2010	411-054-0016	1-1-2010	Amend(T)	2-1-2010
410-140-0200	1-1-2010	Amend	1-1-2010	411-054-0025	1-1-2010	Amend(T)	2-1-2010
410-140-0260	1-1-2010	Amend	1-1-2010	411-054-0065	1-1-2010	Amend(T)	2-1-2010
410-141-0000	1-1-2010	Amend	1-1-2010	411-054-0105	1-1-2010	Amend(T)	2-1-2010
410-141-0261	1-1-2010	Amend	1-1-2010	411-054-0120	1-1-2010	Amend(T)	2-1-2010
410-141-0263	1-1-2010	Amend	1-1-2010	411-054-0133	1-1-2010	Adopt(T)	2-1-2010
410-141-0264	1-1-2010	Amend	1-1-2010	411-070-0000	12-1-2009	Amend	1-1-2010
410-141-0405	1-1-2010	Amend	1-1-2010	411-070-0005	12-1-2009	Amend	1-1-2010
410-141-0420	1-1-2010	Amend	1-1-2010	411-070-0005(T)	12-1-2009	Repeal	1-1-2010
410-141-0520	1-1-2010	Amend(T)	1-1-2010	411-070-0010	12-1-2009	Amend	1-1-2010
410-141-0520	1-15-2010	Amend(T)	2-1-2010	411-070-0025	12-1-2009	Amend	1-1-2010
410-141-0520(T)	1-1-2010	Suspend	1-1-2010	411-070-0027	12-1-2009	Amend	1-1-2010
410-141-0520(T)	1-15-2010	Suspend	2-1-2010	411-070-0029	12-1-2009	Amend	1-1-2010
410-146-0021	1-1-2010	Amend	1-1-2010	411-070-0033	12-1-2009	Amend	1-1-2010
410-146-0085	1-1-2010	Amend	1-1-2010	411-070-0035	12-1-2009	Amend	1-1-2010
410-146-0240	1-1-2010	Amend	1-1-2010	411-070-0040	12-1-2009	Amend	1-1-2010
410-146-0340	1-1-2010	Repeal	1-1-2010	411-070-0043	12-1-2009	Amend	1-1-2010
410-147-0120	1-1-2010	Amend	1-1-2010	411-070-0080	12-1-2009	Amend	1-1-2010
410-147-0320	1-1-2010	Amend	1-1-2010	411-070-0110	12-1-2009	Amend	1-1-2010
410-147-0400	1-1-2010	Amend	1-1-2010	411-070-0125	12-1-2009	Amend	1-1-2010
410-147-0620	1-1-2010	Repeal	1-1-2010	411-070-0130	12-1-2009	Amend	1-1-2010
410-149-0000	1-1-2010	Repeal	1-1-2010	411-070-0300	12-1-2009	Amend	1-1-2010
410-149-0020	1-1-2010	Repeal	1-1-2010	411-070-0350	12-1-2009	Amend	1-1-2010
410-149-0040	1-1-2010	Repeal	1-1-2010	411-070-0359	12-1-2009	Amend	1-1-2010
410-149-0060	1-1-2010	Repeal	1-1-2010	411-070-0415	12-1-2009	Amend	1-1-2010
410-149-0080	1-1-2010	Repeal	1-1-2010	411-070-0417	12-1-2009	Amend	1-1-2010
410-150-0080	1-1-2010	Amend	1-1-2010	411-070-0430	12-1-2009	Amend	1-1-2010
410-150-0120	1-1-2010	Repeal	1-1-2010	411-070-0442	12-1-2009	Amend	1-1-2010
410-150-0160	1-1-2010	Repeal	1-1-2010	411-070-0442(T)	12-1-2009	Repeal	1-1-2010
410-150-0240	1-1-2010	Repeal	1-1-2010	411-070-0452	12-1-2009	Amend	1-1-2010
411-001-0100	1-1-2010	Amend	2-1-2010	411-070-0470	12-1-2009	Amend	1-1-2010
411-001-0110	1-1-2010	Amend	2-1-2010	411-085-0005	1-1-2010	Amend(T)	2-1-2010
411-001-0115	1-1-2010	Adopt	2-1-2010	411-085-0020	1-1-2010	Amend	2-1-2010
411-001-0118	1-1-2010	Adopt	2-1-2010	411-085-0020	1-1-2010	Amend(T)	2-1-2010
411-001-0120	1-1-2010	Amend	2-1-2010	411-089-0030	1-1-2010	Amend(T)	2-1-2010
411-020-0002	1-1-2010	Amend(T)	2-1-2010	411-089-0075	1-1-2010	Adopt(T)	2-1-2010
411-020-0020	1-1-2010	Amend(T)	2-1-2010	411-089-0140	1-1-2010	Amend(T)	2-1-2010
411-020-0025	1-1-2010	Adopt(T)	2-1-2010	411-089-0150	1-1-2010	Suspend	2-1-2010
411-020-0030	1-1-2010	Amend(T)	2-1-2010	411-300-0110	1-1-2010	Amend(T)	2-1-2010
411-020-0085	1-1-2010	Adopt(T)	2-1-2010	411-300-0155	1-1-2010	Amend(T)	2-1-2010
411-020-0100	1-1-2010	Amend(T)	2-1-2010	411-300-0170	1-1-2010	Amend(T)	2-1-2010
411-020-0120	1-1-2010	Amend(T)	2-1-2010	411-300-0200	1-1-2010	Amend(T)	2-1-2010
411-031-0040	12-1-2009	Amend(T)	1-1-2010	411-300-0220	1-1-2010	Amend(T)	2-1-2010
411-050-0400	1-1-2010	Amend(T)	2-1-2010	411-305-0010	1-1-2010	Amend(T)	2-1-2010
411-050-0410	1-1-2010	Amend(T)	2-1-2010	411-305-0020	1-1-2010	Amend(T)	2-1-2010
411-050-0412	1-1-2010	Amend(T)	2-1-2010	411-305-0023	1-1-2010	Amend(T)	2-1-2010
411-050-0415	1-1-2010	Amend(T)	2-1-2010	411-305-0110	1-1-2010	Amend(T)	2-1-2010
411-050-0420	1-1-2010	Amend(T)	2-1-2010	411-305-0115	1-1-2010	Amend(T)	2-1-2010
411-050-0440	1-1-2010	Amend(T)	2-1-2010	411-305-0140	1-1-2010	Amend(T)	2-1-2010
411-050-0444	1-1-2010	Amend(T)	2-1-2010	411-308-0010	12-28-2009	Adopt	2-1-2010
411-050-0455	1-1-2010	Amend(T)	2-1-2010	411-308-0010(T)	12-28-2009	Repeal	2-1-2010
411-050-0460	1-1-2010	Amend(T)	2-1-2010	411-308-0020	12-28-2009	Adopt	2-1-2010
411-050-0480	1-1-2010	Amend(T)	2-1-2010	411-308-0020	1-1-2010	Amend(T)	2-1-2010
411-050-0481	1-1-2010	Amend(T)	2-1-2010	411-308-0020(T)	12-28-2009	Repeal	2-1-2010

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411-308-0030	1-1-2010	Amend(T)	2-1-2010	411-340-0080	1-1-2010	Amend(T)	2-1-2010
411-308-0030(T)	12-28-2009	Repeal	2-1-2010	411-340-0130	1-1-2010	Amend(T)	2-1-2010
411-308-0040	12-28-2009	Adopt	2-1-2010	411-340-0140	1-1-2010	Amend(T)	2-1-2010
411-308-0040(T)	12-28-2009	Repeal	2-1-2010	411-340-0160	1-1-2010	Amend(T)	2-1-2010
411-308-0050	12-28-2009	Adopt	2-1-2010	411-345-0020	1-1-2010	Amend(T)	2-1-2010
411-308-0050(T)	12-28-2009	Repeal	2-1-2010	411-345-0080	1-1-2010	Amend(T)	2-1-2010
411-308-0060	12-28-2009	Adopt	2-1-2010	411-345-0100	1-1-2010	Amend(T)	2-1-2010
411-308-0060(T)	12-28-2009	Repeal	2-1-2010	411-345-0210	1-1-2010	Amend(T)	2-1-2010
411-308-0070	12-28-2009	Adopt	2-1-2010	411-345-0230	1-1-2010	Amend(T)	2-1-2010
411-308-0070(T)	12-28-2009	Repeal	2-1-2010	411-345-0290	1-1-2010	Amend(T)	2-1-2010
411-308-0080	12-28-2009	Adopt	2-1-2010	411-346-0110	1-1-2010	Amend(T)	2-1-2010
411-308-0080(T)	12-28-2009	Repeal	2-1-2010	411-346-0150	1-1-2010	Amend(T)	2-1-2010
411-308-0090	12-28-2009	Adopt	2-1-2010	411-346-0180	1-1-2010	Amend(T)	2-1-2010
411-308-0090	1-1-2010	Amend(T)	2-1-2010	411-346-0220	1-1-2010	Amend(T)	2-1-2010
411-308-0090(T)	12-28-2009	Repeal	2-1-2010	411-350-0020	1-1-2010	Amend(T)	2-1-2010
411-308-0100	12-28-2009	Adopt	2-1-2010	411-350-0050	1-1-2010	Amend(T)	2-1-2010
411-308-0100	1-1-2010	Amend(T)	2-1-2010	411-350-0080	1-1-2010	Amend(T)	2-1-2010
411-308-0100(T)	12-28-2009	Repeal	2-1-2010	411-350-0110	1-1-2010	Amend(T)	2-1-2010
411-308-0110	12-28-2009	Adopt	2-1-2010	411-350-0120	1-1-2010	Amend(T)	2-1-2010
411-308-0110	1-1-2010	Amend(T)	2-1-2010	411-355-0010	1-1-2010	Amend(T)	2-1-2010
411-308-0110(T)	12-28-2009	Repeal	2-1-2010	411-355-0040	1-1-2010	Amend(T)	2-1-2010
411-308-0120	12-28-2009	Adopt	2-1-2010	411-355-0050	1-1-2010	Amend(T)	2-1-2010
411-308-0120(T)	12-28-2009	Repeal	2-1-2010	411-355-0060	1-1-2010	Amend(T)	2-1-2010
411-308-0130	12-28-2009	Adopt	2-1-2010	411-355-0090	1-1-2010	Amend(T)	2-1-2010
411-308-0130	1-1-2010	Amend(T)	2-1-2010	411-355-0120	1-1-2010	Amend(T)	2-1-2010
411-308-0130(T)	12-28-2009	Repeal	2-1-2010	411-360-0020	1-1-2010	Amend(T)	2-1-2010
411-308-0140	12-28-2009	Adopt	2-1-2010	411-360-0040	1-1-2010	Amend(T)	2-1-2010
411-308-0140(T)	12-28-2009	Repeal	2-1-2010	411-360-0050	1-1-2010	Amend(T)	2-1-2010
411-308-0150	12-28-2009	Adopt	2-1-2010	411-360-0090	1-1-2010	Amend(T)	2-1-2010
411-308-0150(T)	12-28-2009	Repeal	2-1-2010	411-360-0110	1-1-2010	Amend(T)	2-1-2010
411-320-0020	1-1-2010	Amend(T)	2-1-2010	411-360-0210	1-1-2010	Amend(T)	2-1-2010
411-320-0030	1-1-2010	Amend(T)	2-1-2010	411-360-0270	1-1-2010	Amend(T)	2-1-2010
411-320-0140	1-1-2010	Amend(T)	2-1-2010	413-010-0500	12-29-2009	Amend	2-1-2010
411-325-0020	1-1-2010	Amend(T)	2-1-2010	413-010-0505	12-29-2009	Adopt	2-1-2010
411-325-0100	1-1-2010	Amend(T)	2-1-2010	413-010-0510	12-29-2009	Adopt	2-1-2010
411-325-0160	1-1-2010	Amend(T)	2-1-2010	413-010-0515	12-29-2009	Adopt	2-1-2010
411-325-0190	1-1-2010	Amend(T)	2-1-2010	413-010-0520	12-29-2009	Adopt	2-1-2010
411-328-0560	1-1-2010	Amend(T)	2-1-2010	413-010-0525	12-29-2009	Adopt	2-1-2010
411-328-0610	1-1-2010	Amend(T)	2-1-2010	413-010-0530	12-29-2009	Adopt	2-1-2010
411-328-0670	1-1-2010	Amend(T)	2-1-2010	413-010-0535	12-29-2009	Adopt	2-1-2010
411-330-0010	1-1-2010	Amend(T)	2-1-2010	413-015-0415	1-1-2010	Amend(T)	2-1-2010
411-330-0020	1-1-2010	Amend(T)	2-1-2010	413-020-0200	12-29-2009	Amend	2-1-2010
411-330-0060	1-1-2010	Amend(T)	2-1-2010	413-020-0210	12-29-2009	Amend	2-1-2010
411-330-0070	1-1-2010	Amend(T)	2-1-2010	413-020-0230	12-29-2009	Amend	2-1-2010
411-330-0100	1-1-2010	Amend(T)	2-1-2010	413-020-0233	12-29-2009	Amend	2-1-2010
411-330-0120	1-1-2010	Amend(T)	2-1-2010	413-020-0236	12-29-2009	Amend	2-1-2010
411-330-0140	1-1-2010	Amend(T)	2-1-2010	413-020-0240	12-29-2009	Amend	2-1-2010
411-330-0160	1-1-2010	Amend(T)	2-1-2010	413-020-0245	12-29-2009	Amend	2-1-2010
411-335-0020	1-1-2010	Amend(T)	2-1-2010	413-020-0255	12-29-2009	Amend	2-1-2010
411-335-0030	1-1-2010	Amend(T)	2-1-2010	413-040-0000	12-29-2009	Amend	2-1-2010
411-335-0100	1-1-2010	Amend(T)	2-1-2010	413-040-0005	12-29-2009	Amend	2-1-2010
411-340-0020	1-1-2010	Amend(T)	2-1-2010	413-040-0006	12-29-2009	Amend	2-1-2010
411-340-0030	1-1-2010	Amend(T)	2-1-2010	413-040-0008	12-29-2009	Amend	2-1-2010
411-340-0040	1-1-2010	Amend(T)	2-1-2010	413-040-0009	12-29-2009	Amend	2-1-2010
411-340-0050	1-1-2010	Amend(T)	2-1-2010	413-040-0010	12-29-2009	Amend	2-1-2010

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413-040-0013	12-29-2009	Amend	2-1-2010	413-090-0160	12-29-2009	Repeal	2-1-2010
413-040-0016	12-29-2009	Amend	2-1-2010	413-090-0170	12-29-2009	Repeal	2-1-2010
413-040-0017	12-29-2009	Amend	2-1-2010	413-090-0180	12-29-2009	Repeal	2-1-2010
413-040-0024	12-29-2009	Amend	2-1-2010	413-090-0190	12-29-2009	Repeal	2-1-2010
413-040-0032	12-29-2009	Amend	2-1-2010	413-090-0200	12-29-2009	Repeal	2-1-2010
413-070-0600	12-29-2009	Amend	2-1-2010	413-090-0210	12-29-2009	Amend	2-1-2010
413-070-0620	12-29-2009	Amend	2-1-2010	413-100-0020	12-16-2009	Amend(T)	2-1-2010
413-070-0625	12-29-2009	Amend	2-1-2010	413-100-0335	12-16-2009	Adopt(T)	2-1-2010
413-070-0630	12-29-2009	Amend	2-1-2010	413-100-0345	12-16-2009	Adopt(T)	2-1-2010
413-070-0640	12-29-2009	Amend	2-1-2010	413-130-0000	12-29-2009	Amend	2-1-2010
413-070-0645	12-29-2009	Amend	2-1-2010	413-130-0010	12-29-2009	Amend	2-1-2010
413-070-0900	12-16-2009	Amend(T)	2-1-2010	413-130-0020	12-29-2009	Amend	2-1-2010
413-070-0905	12-16-2009	Amend(T)	2-1-2010	413-130-0030	12-29-2009	Amend	2-1-2010
413-070-0909	12-16-2009	Amend(T)	2-1-2010	413-130-0040	12-29-2009	Amend	2-1-2010
413-070-0915	12-16-2009	Amend(T)	2-1-2010	413-130-0045	12-29-2009	Adopt	2-1-2010
413-070-0917	12-16-2009	Amend(T)	2-1-2010	413-130-0050	12-29-2009	Amend	2-1-2010
413-070-0919	12-16-2009	Adopt(T)	2-1-2010	413-130-0060	12-29-2009	Amend	2-1-2010
413-070-0920	12-16-2009	Am. & Ren.(T)	2-1-2010	413-130-0070	12-29-2009	Amend	2-1-2010
413-070-0925	12-16-2009	Amend(T)	2-1-2010	413-130-0075	12-29-2009	Amend	2-1-2010
413-070-0930	12-16-2009	Am. & Ren.(T)	2-1-2010	413-130-0080	12-29-2009	Amend	2-1-2010
413-070-0935	12-16-2009	Am. & Ren.(T)	2-1-2010	413-130-0090	12-29-2009	Amend	2-1-2010
413-070-0937	12-16-2009	Am. & Ren.(T)	2-1-2010	413-130-0100	12-29-2009	Amend	2-1-2010
413-070-0940	12-16-2009	Am. & Ren.(T)	2-1-2010	413-130-0110	12-29-2009	Amend	2-1-2010
413-070-0945	12-16-2009	Am. & Ren.(T)	2-1-2010	413-130-0115	12-29-2009	Amend	2-1-2010
413-070-0955	12-16-2009	Am. & Ren.(T)	2-1-2010	413-130-0120	12-29-2009	Repeal	2-1-2010
413-070-0960	12-16-2009	Am. & Ren.(T)	2-1-2010	413-130-0125	12-29-2009	Amend	2-1-2010
413-070-0965	12-16-2009	Am. & Ren.(T)	2-1-2010	413-130-0127	12-29-2009	Repeal	2-1-2010
413-070-0969	12-16-2009	Adopt(T)	2-1-2010	413-130-0130	12-29-2009	Amend	2-1-2010
413-070-0970	12-16-2009	Amend(T)	2-1-2010	414-061-0000	1-1-2010	Amend(T)	2-1-2010
413-080-0000	12-29-2009	Repeal	2-1-2010	414-061-0010	1-1-2010	Amend(T)	2-1-2010
413-080-0010	12-29-2009	Repeal	2-1-2010	414-061-0020	1-1-2010	Amend(T)	2-1-2010
413-080-0020	12-29-2009	Repeal	2-1-2010	414-061-0030	1-1-2010	Amend(T)	2-1-2010
413-080-0030	12-29-2009	Repeal	2-1-2010	414-061-0040	1-1-2010	Amend(T)	2-1-2010
413-080-0040	12-29-2009	Amend	2-1-2010	414-061-0050	1-1-2010	Amend(T)	2-1-2010
413-080-0050	12-29-2009	Amend	2-1-2010	414-061-0060	1-1-2010	Amend(T)	2-1-2010
413-080-0052	12-29-2009	Amend	2-1-2010	414-061-0070	1-1-2010	Amend(T)	2-1-2010
413-080-0055	12-29-2009	Amend	2-1-2010	414-061-0080	1-1-2010	Amend(T)	2-1-2010
413-080-0059	12-29-2009	Amend	2-1-2010	414-061-0090	1-1-2010	Amend(T)	2-1-2010
413-080-0063	12-29-2009	Amend	2-1-2010	414-061-0100	1-1-2010	Amend(T)	2-1-2010
413-080-0067	12-29-2009	Amend	2-1-2010	414-061-0110	1-1-2010	Amend(T)	2-1-2010
413-090-0000	12-29-2009	Amend	2-1-2010	414-061-0120	1-1-2010	Amend(T)	2-1-2010
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413-090-0010	12-29-2009	Amend	2-1-2010	414-205-0010	1-1-2010	Amend(T)	2-1-2010
413-090-0021	12-29-2009	Adopt	2-1-2010	414-205-0020	1-1-2010	Amend(T)	2-1-2010
413-090-0030	12-29-2009	Amend	2-1-2010	414-205-0035	1-1-2010	Amend(T)	2-1-2010
413-090-0040	12-29-2009	Amend	2-1-2010	414-205-0040	1-1-2010	Amend(T)	2-1-2010
413-090-0050	12-29-2009	Amend	2-1-2010	414-205-0055	1-1-2010	Amend(T)	2-1-2010
413-090-0100	12-29-2009	Amend	2-1-2010	414-205-0065	1-1-2010	Amend(T)	2-1-2010
413-090-0110	12-29-2009	Amend	2-1-2010	414-205-0075	1-1-2010	Amend(T)	2-1-2010
413-090-0120	12-29-2009	Amend	2-1-2010	414-205-0085	1-1-2010	Amend(T)	2-1-2010
413-090-0130	12-29-2009	Amend	2-1-2010	414-205-0090	1-1-2010	Amend(T)	2-1-2010
413-090-0133	12-29-2009	Adopt	2-1-2010	414-205-0100	1-1-2010	Amend(T)	2-1-2010
413-090-0135	12-29-2009	Adopt	2-1-2010	414-205-0110	1-1-2010	Amend(T)	2-1-2010
413-090-0136	12-29-2009	Adopt	2-1-2010	414-205-0120	1-1-2010	Amend(T)	2-1-2010
413-090-0140	12-29-2009	Amend	2-1-2010	414-205-0130	1-1-2010	Amend(T)	2-1-2010

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414-205-0150	1-1-2010	Amend(T)	2-1-2010	414-350-0060	1-1-2010	Amend(T)	2-1-2010
414-205-0160	1-1-2010	Amend(T)	2-1-2010	414-350-0070	1-1-2010	Amend(T)	2-1-2010
414-205-0170	1-1-2010	Amend(T)	2-1-2010	414-350-0080	1-1-2010	Amend(T)	2-1-2010
414-300-0000	1-1-2010	Amend(T)	2-1-2010	414-350-0090	1-1-2010	Amend(T)	2-1-2010
414-300-0005	1-1-2010	Amend(T)	2-1-2010	414-350-0100	1-1-2010	Amend(T)	2-1-2010
414-300-0010	1-1-2010	Amend(T)	2-1-2010	414-350-0110	1-1-2010	Amend(T)	2-1-2010
414-300-0015	1-1-2010	Amend(T)	2-1-2010	414-350-0115	1-1-2010	Amend(T)	2-1-2010
414-300-0020	1-1-2010	Amend(T)	2-1-2010	414-350-0120	1-1-2010	Amend(T)	2-1-2010
414-300-0030	1-1-2010	Amend(T)	2-1-2010	414-350-0130	1-1-2010	Amend(T)	2-1-2010
414-300-0040	1-1-2010	Amend(T)	2-1-2010	414-350-0140	1-1-2010	Amend(T)	2-1-2010
414-300-0050	1-1-2010	Amend(T)	2-1-2010	414-350-0150	1-1-2010	Amend(T)	2-1-2010
414-300-0060	1-1-2010	Amend(T)	2-1-2010	414-350-0160	1-1-2010	Amend(T)	2-1-2010
414-300-0070	1-1-2010	Amend(T)	2-1-2010	414-350-0170	1-1-2010	Amend(T)	2-1-2010
414-300-0080	1-1-2010	Amend(T)	2-1-2010	414-350-0180	1-1-2010	Amend(T)	2-1-2010
414-300-0090	1-1-2010	Amend(T)	2-1-2010	414-350-0190	1-1-2010	Amend(T)	2-1-2010
414-300-0100	1-1-2010	Amend(T)	2-1-2010	414-350-0200	1-1-2010	Amend(T)	2-1-2010
414-300-0110	1-1-2010	Amend(T)	2-1-2010	414-350-0210	1-1-2010	Amend(T)	2-1-2010
414-300-0115	1-1-2010	Amend(T)	2-1-2010	414-350-0220	1-1-2010	Amend(T)	2-1-2010
414-300-0120	1-1-2010	Amend(T)	2-1-2010	414-350-0230	1-1-2010	Amend(T)	2-1-2010
414-300-0130	1-1-2010	Amend(T)	2-1-2010	414-350-0235	1-1-2010	Amend(T)	2-1-2010
414-300-0140	1-1-2010	Amend(T)	2-1-2010	414-350-0240	1-1-2010	Amend(T)	2-1-2010
414-300-0150	1-1-2010	Amend(T)	2-1-2010	414-350-0250	1-1-2010	Amend(T)	2-1-2010
414-300-0160	1-1-2010	Amend(T)	2-1-2010	414-350-0375	1-1-2010	Amend(T)	2-1-2010
414-300-0170	1-1-2010	Amend(T)	2-1-2010	414-350-0380	1-1-2010	Amend(T)	2-1-2010
414-300-0180	1-1-2010	Amend(T)	2-1-2010	414-350-0390	1-1-2010	Amend(T)	2-1-2010
414-300-0190	1-1-2010	Amend(T)	2-1-2010	414-350-0400	1-1-2010	Amend(T)	2-1-2010
414-300-0200	1-1-2010	Amend(T)	2-1-2010	414-350-0405	1-1-2010	Adopt(T)	2-1-2010
414-300-0210	1-1-2010	Amend(T)	2-1-2010	415-052-0100	12-3-2009	Adopt	1-1-2010
414-300-0215	1-1-2010	Amend(T)	2-1-2010	415-052-0105	12-3-2009	Adopt	1-1-2010
414-300-0220	1-1-2010	Amend(T)	2-1-2010	415-052-0110	12-3-2009	Adopt	1-1-2010
414-300-0230	1-1-2010	Amend(T)	2-1-2010	415-060-0030	1-1-2010	Amend	1-1-2010
414-300-0240	1-1-2010	Amend(T)	2-1-2010	416-530-0090	12-16-2009	Amend	1-1-2010
414-300-0250	1-1-2010	Amend(T)	2-1-2010	436-001-0003	1-1-2010	Amend	1-1-2010
414-300-0260	1-1-2010	Amend(T)	2-1-2010	436-001-0019	1-1-2010	Amend	1-1-2010
414-300-0270	1-1-2010	Amend(T)	2-1-2010	436-001-0265	1-1-2010	Am. & Ren.	1-1-2010
414-300-0280	1-1-2010	Amend(T)	2-1-2010	436-001-0265	1-1-2010	Am. & Ren.	1-1-2010
414-300-0290	1-1-2010	Amend(T)	2-1-2010	436-001-0420	1-1-2010	Adopt	1-1-2010
414-300-0295	1-1-2010	Amend(T)	2-1-2010	436-001-0430	1-1-2010	Adopt	1-1-2010
414-300-0300	1-1-2010	Amend(T)	2-1-2010	436-001-0440	1-1-2010	Adopt	1-1-2010
414-300-0310	1-1-2010	Amend(T)	2-1-2010	436-009-0010	1-1-2010	Amend	1-1-2010
414-300-0320	1-1-2010	Amend(T)	2-1-2010	436-009-0070	1-1-2010	Amend	1-1-2010
414-300-0330	1-1-2010	Amend(T)	2-1-2010	436-010-0008	1-1-2010	Amend	1-1-2010
414-300-0340	1-1-2010	Amend(T)	2-1-2010	436-010-0240	1-1-2010	Amend	1-1-2010
414-300-0350	1-1-2010	Amend(T)	2-1-2010	436-010-0265	1-1-2010	Amend	1-1-2010
414-300-0360	1-1-2010	Amend(T)	2-1-2010	436-010-0280	1-1-2010	Amend	1-1-2010
414-300-0380	1-1-2010	Amend(T)	2-1-2010	436-030-0002	1-1-2010	Amend	1-1-2010
414-300-0390	1-1-2010	Amend(T)	2-1-2010	436-030-0003	1-1-2010	Amend	1-1-2010
414-300-0400	1-1-2010	Amend(T)	2-1-2010	436-030-0005	1-1-2010	Amend	1-1-2010
414-300-0410	1-1-2010	Amend(T)	2-1-2010	436-030-0007	1-1-2010	Amend	1-1-2010
414-300-0415	1-1-2010	Adopt(T)	2-1-2010	436-030-0009	1-1-2010	Repeal	1-1-2010
414-350-0000	1-1-2010	Amend(T)	2-1-2010	436-030-0015	1-1-2010	Amend	1-1-2010
414-350-0010	1-1-2010	Amend(T)	2-1-2010	436-030-0017	1-1-2010	Amend	1-1-2010
414-350-0020	1-1-2010	Amend(T)	2-1-2010	436-030-0020	1-1-2010	Amend	1-1-2010
414-350-0030	1-1-2010	Amend(T)	2-1-2010	436-030-0034	1-1-2010	Amend	1-1-2010
414-350-0040	1-1-2010	Amend(T)	2-1-2010	436-030-0065	1-1-2010	Amend	1-1-2010



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436-030-0135	1-1-2010	Amend	1-1-2010	436-120-0320	1-1-2010	Am. & Ren.	1-1-2010
436-030-0145	1-1-2010	Amend	1-1-2010	436-120-0320	1-1-2010	Am. & Ren.	1-1-2010
436-030-0155	1-1-2010	Amend	1-1-2010	436-120-0320	1-1-2010	Am. & Ren.	1-1-2010
436-030-0165	1-1-2010	Amend	1-1-2010	436-120-0320	1-1-2010	Am. & Ren.	1-1-2010
436-030-0185	1-1-2010	Amend	1-1-2010	436-120-0340	1-1-2010	Amend	1-1-2010
436-030-0580	1-1-2010	Amend	1-1-2010	436-120-0350	1-1-2010	Am. & Ren.	1-1-2010
436-060-0003	1-1-2010	Amend	1-1-2010	436-120-0350	1-1-2010	Am. & Ren.	1-1-2010
436-060-0008	1-1-2010	Amend	1-1-2010	436-120-0360	1-1-2010	Am. & Ren.	1-1-2010
436-060-0009	1-1-2010	Amend	1-1-2010	436-120-0410	1-1-2010	Amend	1-1-2010
436-060-0010	1-1-2010	Amend	1-1-2010	436-120-0440	1-1-2010	Amend	1-1-2010
436-060-0012	1-1-2010	Adopt	1-1-2010	436-120-0500	1-1-2010	Amend	1-1-2010
436-060-0015	1-1-2010	Amend	1-1-2010	436-120-0510	1-1-2010	Amend	1-1-2010
436-060-0017	1-1-2010	Amend	1-1-2010	436-120-0720	1-1-2010	Amend	1-1-2010
436-060-0018	1-1-2010	Amend	1-1-2010	436-120-0800	1-1-2010	Amend	1-1-2010
436-060-0020	1-1-2010	Amend	1-1-2010	436-120-0810	1-1-2010	Amend	1-1-2010
436-060-0025	1-1-2010	Amend	1-1-2010	436-120-0820	1-1-2010	Amend	1-1-2010
436-060-0035	1-1-2010	Amend	1-1-2010	436-120-0830	1-1-2010	Amend	1-1-2010
436-060-0095	1-1-2010	Amend	1-1-2010	436-120-0840	1-1-2010	Amend	1-1-2010
436-060-0105	1-1-2010	Amend	1-1-2010	436-120-0900	1-1-2010	Amend	1-1-2010
436-060-0135	1-1-2010	Amend	1-1-2010	436-120-0915	1-1-2010	Amend	1-1-2010
436-060-0137	1-1-2010	Amend	1-1-2010	436-150-0005	1-1-2010	Amend	1-1-2010
436-060-0140	1-1-2010	Amend	1-1-2010	436-150-0010	1-1-2010	Amend	1-1-2010
436-060-0147	1-1-2010	Amend	1-1-2010	436-150-0030	1-1-2010	Amend	1-1-2010
436-060-0150	1-1-2010	Amend	1-1-2010	436-160-0310	1-1-2010	Amend	1-1-2010
436-060-0153	1-1-2010	Amend	1-1-2010	436-160-0340	1-1-2010	Amend	1-1-2010
436-060-0155	1-1-2010	Amend	1-1-2010	441-505-3046	12-7-2009	Amend	1-1-2010
436-060-0180	1-1-2010	Amend	1-1-2010	441-505-3046(T)	12-7-2009	Repeal	1-1-2010
436-060-0195	1-1-2010	Amend	1-1-2010	441-710-0540	12-7-2009	Amend	1-1-2010
436-060-0200	1-1-2010	Amend	1-1-2010	441-710-0540(T)	12-7-2009	Repeal	1-1-2010
436-060-0400	1-1-2010	Adopt	1-1-2010	441-730-0246	12-7-2009	Amend	1-1-2010
436-060-0500	1-1-2010	Amend	1-1-2010	441-730-0246(T)	12-7-2009	Repeal	1-1-2010
436-060-0510	1-1-2010	Amend	1-1-2010	441-850-0005	1-4-2010	Amend	2-1-2010
436-075-0110	1-1-2010	Repeal	1-1-2010	441-850-0035	1-4-2010	Amend	2-1-2010
436-105-0003	1-1-2010	Amend	1-1-2010	441-850-0042	12-7-2009	Amend	1-1-2010
436-105-0005	1-1-2010	Amend	1-1-2010	441-850-0042(T)	12-7-2009	Repeal	1-1-2010
436-105-0500	1-1-2010	Amend	1-1-2010	441-850-0050	1-4-2010	Adopt	2-1-2010
436-105-0520	1-1-2010	Amend	1-1-2010	441-860-0010	1-4-2010	Repeal	2-1-2010
436-105-0540	1-1-2010	Amend	1-1-2010	441-860-0020	1-1-2010	Amend	1-1-2010
436-105-0550	1-1-2010	Amend	1-1-2010	441-860-0020	1-4-2010	Amend	2-1-2010
436-110-0005	1-1-2010	Amend	1-1-2010	441-860-0025	1-4-2010	Amend	2-1-2010
436-110-0310	1-1-2010	Amend	1-1-2010	441-860-0030	1-1-2010	Amend	1-1-2010
436-110-0325	1-1-2010	Amend	1-1-2010	441-860-0030	1-4-2010	Amend	2-1-2010
436-110-0330	1-1-2010	Amend	1-1-2010	441-860-0040	1-4-2010	Amend	2-1-2010
436-110-0335	1-1-2010	Amend	1-1-2010	441-860-0050	1-1-2010	Amend	1-1-2010
436-110-0336	1-1-2010	Amend	1-1-2010	441-860-0050	1-4-2010	Amend	2-1-2010
436-110-0337	1-1-2010	Amend	1-1-2010	441-860-0060	1-4-2010	Amend	2-1-2010
436-110-0345	1-1-2010	Amend	1-1-2010	441-860-0070	1-4-2010	Amend	2-1-2010
436-110-0347	1-1-2010	Amend	1-1-2010	441-860-0080	1-4-2010	Amend	2-1-2010
436-110-0350	1-1-2010	Amend	1-1-2010	441-860-0101	1-1-2010	Adopt	1-1-2010
436-110-0900	1-1-2010	Amend	1-1-2010	441-860-0130	1-4-2010	Amend	2-1-2010
436-120-0004	1-1-2010	Amend	1-1-2010	441-860-0400	1-1-2010	Adopt	1-1-2010
436-120-0005	1-1-2010	Amend	1-1-2010	441-865-0010	1-4-2010	Amend	2-1-2010
436-120-0007	1-1-2010	Amend	1-1-2010	441-865-0020	1-4-2010	Amend	2-1-2010
436-120-0008	1-1-2010	Amend	1-1-2010	441-865-0025	1-4-2010	Amend	2-1-2010
436-120-0320	1-1-2010	Am. & Ren.	1-1-2010	441-865-0030	1-4-2010	Amend	2-1-2010

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441-865-0050	1-4-2010	Amend	2-1-2010	461-025-0310	1-1-2010	Amend	2-1-2010
441-865-0080	1-4-2010	Amend	2-1-2010	461-101-0010	1-1-2010	Amend	2-1-2010
441-865-0090	1-4-2010	Amend	2-1-2010	461-101-0010	1-1-2010	Amend(T)	2-1-2010
441-870-0030	1-4-2010	Amend	2-1-2010	461-101-0010(T)	1-1-2010	Repeal	2-1-2010
441-870-0040	1-4-2010	Amend	2-1-2010	461-105-0006	1-1-2010	Adopt	2-1-2010
441-870-0050	1-4-2010	Amend	2-1-2010	461-105-0006(T)	1-1-2010	Repeal	2-1-2010
441-870-0070	1-4-2010	Amend	2-1-2010	461-110-0210	1-1-2010	Amend	2-1-2010
441-870-0080	1-4-2010	Amend	2-1-2010	461-110-0210	1-1-2010	Amend(T)	2-1-2010
441-875-0010	1-4-2010	Repeal	2-1-2010	461-110-0210(T)	1-1-2010	Repeal	2-1-2010
441-875-0020	1-4-2010	Amend	2-1-2010	461-110-0370	1-1-2010	Amend	2-1-2010
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441-875-0040	1-4-2010	Amend	2-1-2010	461-110-0430	1-1-2010	Amend	2-1-2010
441-880-0010	1-4-2010	Amend	2-1-2010	461-110-0530	1-1-2010	Amend(T)	2-1-2010
441-880-0020	1-4-2010	Am. & Ren.	2-1-2010	461-110-0630	1-1-2010	Amend(T)	2-1-2010
441-880-0021	1-4-2010	Adopt	2-1-2010	461-115-0030	1-1-2010	Amend	2-1-2010
441-880-0022	1-4-2010	Adopt	2-1-2010	461-115-0030	1-1-2010	Amend(T)	2-1-2010
441-880-0030	1-4-2010	Amend	2-1-2010	461-115-0030(T)	1-1-2010	Repeal	2-1-2010
441-880-0040	1-4-2010	Amend	2-1-2010	461-115-0050	1-1-2010	Amend	2-1-2010
441-880-0050	1-4-2010	Am. & Ren.	2-1-2010	461-115-0050	1-1-2010	Amend(T)	2-1-2010
441-880-0200	1-4-2010	Adopt	2-1-2010	461-115-0050(T)	1-1-2010	Repeal	2-1-2010
441-880-0205	1-4-2010	Adopt	2-1-2010	461-115-0071	1-1-2010	Amend	2-1-2010
441-880-0210	1-4-2010	Adopt	2-1-2010	461-115-0090	1-1-2010	Amend	2-1-2010
441-880-0300	1-4-2010	Adopt	2-1-2010	461-115-0230	1-1-2010	Amend(T)	2-1-2010
441-880-0310	1-4-2010	Adopt	2-1-2010	461-115-0430	1-1-2010	Amend(T)	2-1-2010
441-885-0010	1-4-2010	Amend	2-1-2010	461-115-0705	1-1-2010	Amend	2-1-2010
441-910-0000	1-1-2010	Amend	2-1-2010	461-115-0705	1-1-2010	Amend(T)	2-1-2010
441-910-0005	1-1-2010	Adopt	2-1-2010	461-115-0705(T)	1-1-2010	Repeal	2-1-2010
441-910-0010	1-1-2010	Amend	2-1-2010	461-120-0010	1-1-2010	Amend(T)	2-1-2010
441-910-0020	1-1-2010	Repeal	2-1-2010	461-120-0125	1-1-2010	Amend	2-1-2010
441-910-0030	1-1-2010	Amend	2-1-2010	461-120-0125	1-1-2010	Amend(T)	2-1-2010
441-910-0040	1-1-2010	Repeal	2-1-2010	461-120-0125(T)	1-1-2010	Repeal	2-1-2010
441-910-0050	1-1-2010	Amend	2-1-2010	461-120-0210	1-1-2010	Amend	2-1-2010
441-910-0055	1-1-2010	Amend	2-1-2010	461-120-0210	1-1-2010	Amend(T)	2-1-2010
441-910-0080	1-1-2010	Amend	2-1-2010	461-120-0210(T)	1-1-2010	Repeal	2-1-2010
441-910-0090	1-1-2010	Repeal	2-1-2010	461-120-0310	1-1-2010	Amend	2-1-2010
441-910-0091	1-1-2010	Adopt	2-1-2010	461-120-0310(T)	1-1-2010	Repeal	2-1-2010
441-910-0092	1-1-2010	Amend	2-1-2010	461-120-0315	1-1-2010	Amend	2-1-2010
441-910-0092(T)	1-1-2010	Repeal	2-1-2010	461-120-0315(T)	1-1-2010	Repeal	2-1-2010
441-910-0093	1-1-2010	Repeal	2-1-2010	461-120-0345	1-1-2010	Amend	2-1-2010
441-910-0094	1-1-2010	Adopt	2-1-2010	461-120-0345(T)	1-1-2010	Repeal	2-1-2010
441-910-0095	1-1-2010	Repeal	2-1-2010	461-120-0510	1-1-2010	Amend	2-1-2010
441-910-0099	1-1-2010	Adopt	2-1-2010	461-120-0510(T)	1-1-2010	Repeal	2-1-2010
441-910-0110	1-1-2010	Repeal	2-1-2010	461-125-0170	1-1-2010	Amend	2-1-2010
441-910-0120	1-1-2010	Repeal	2-1-2010	461-125-0170(T)	1-1-2010	Repeal	2-1-2010
441-910-0135	1-1-2010	Adopt	2-1-2010	461-125-0310	1-1-2010	Amend	2-1-2010
441-910-0145	1-1-2010	Adopt	2-1-2010	461-135-0095	1-1-2010	Amend	2-1-2010
441-910-0150	1-1-2010	Adopt	2-1-2010	461-135-0095(T)	1-1-2010	Repeal	2-1-2010
441-910-0151	1-1-2010	Adopt	2-1-2010	461-135-0096	1-1-2010	Amend	2-1-2010
441-910-0200	1-1-2010	Adopt	2-1-2010	461-135-0096(T)	1-1-2010	Repeal	2-1-2010
441-910-9000(T)	1-6-2010	Suspend	2-1-2010	461-135-0835	1-1-2010	Amend	2-1-2010
441-910-9001(T)	1-6-2010	Suspend	2-1-2010	461-135-0990	1-1-2010	Amend	2-1-2010
442-005-0010	1-7-2010	Amend(T)	2-1-2010	461-135-0990(T)	1-1-2010	Repeal	2-1-2010
442-005-0050	1-7-2010	Amend(T)	2-1-2010	461-135-1100	12-1-2009	Amend(T)	1-1-2010
442-005-0060	1-7-2010	Amend(T)	2-1-2010	461-135-1100	1-1-2010	Amend	2-1-2010
442-005-0100	1-7-2010	Amend(T)	2-1-2010	461-135-1100	1-1-2010	Amend(T)	2-1-2010

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461-135-1100(T)	1-1-2010	Repeal	2-1-2010	461-170-0011	1-1-2010	Amend(T)	2-1-2010
461-135-1101	1-1-2010	Adopt(T)	2-1-2010	461-175-0270	1-1-2010	Amend	2-1-2010
461-135-1125	1-1-2010	Amend	2-1-2010	461-180-0085	1-1-2010	Amend	2-1-2010
461-135-1125(T)	1-1-2010	Repeal	2-1-2010	461-180-0085(T)	1-1-2010	Repeal	2-1-2010
461-135-1149	1-1-2010	Adopt	2-1-2010	461-180-0090	1-1-2010	Amend	2-1-2010
461-135-1149	1-1-2010	Amend(T)	2-1-2010	461-180-0090	1-1-2010	Amend(T)	2-1-2010
461-135-1149(T)	1-1-2010	Repeal	2-1-2010	461-180-0090(T)	1-1-2010	Repeal	2-1-2010
461-135-1180	1-1-2010	Repeal	2-1-2010	461-190-0199	1-1-2010	Amend	2-1-2010
461-135-1185	1-1-2010	Amend	2-1-2010	461-193-0031	1-1-2010	Amend	2-1-2010
461-135-1195	11-16-2009	Amend(T)	1-1-2010	461-193-0121	1-1-2010	Repeal	2-1-2010
461-135-1225	1-1-2010	Amend	2-1-2010	461-193-0240	1-1-2010	Amend	2-1-2010
461-135-1230	1-1-2010	Amend	2-1-2010	461-193-0920	1-1-2010	Repeal	2-1-2010
461-145-0130	1-1-2010	Amend	2-1-2010	461-193-0980	1-1-2010	Repeal	2-1-2010
461-145-0130	1-1-2010	Amend(T)	2-1-2010	461-193-1360	1-1-2010	Repeal	2-1-2010
461-145-0130(T)	1-1-2010	Repeal	2-1-2010	461-193-1370	1-1-2010	Repeal	2-1-2010
461-145-0143	1-1-2010	Amend	2-1-2010	461-193-1380	1-1-2010	Amend	2-1-2010
461-145-0143	1-1-2010	Amend(T)	2-1-2010	461-195-0501	1-1-2010	Amend	2-1-2010
461-145-0143(T)	1-1-2010	Repeal	2-1-2010	461-195-0511	1-1-2010	Repeal	2-1-2010
461-145-0220	1-1-2010	Amend	2-1-2010	461-195-0521	1-1-2010	Amend	2-1-2010
461-145-0260	1-1-2010	Amend	2-1-2010	461-195-0531	1-1-2010	Repeal	2-1-2010
461-145-0405	1-1-2010	Amend	2-1-2010	461-195-0541	1-1-2010	Amend	2-1-2010
461-145-0550	11-24-2009	Amend(T)	1-1-2010	461-195-0551	1-1-2010	Amend	2-1-2010
461-145-0810	1-1-2010	Amend	2-1-2010	461-195-0561	1-1-2010	Amend	2-1-2010
461-145-0930	1-1-2010	Amend	2-1-2010	573-041-0005	1-11-2010	Repeal	2-1-2010
461-150-0055	1-1-2010	Amend	2-1-2010	573-041-0010	1-11-2010	Repeal	2-1-2010
461-150-0055(T)	1-1-2010	Repeal	2-1-2010	573-041-0020	1-11-2010	Repeal	2-1-2010
461-150-0090	12-1-2009	Amend(T)	1-1-2010	573-041-0025	1-11-2010	Repeal	2-1-2010
461-155-0175	1-1-2010	Repeal	2-1-2010	573-041-0027	1-11-2010	Repeal	2-1-2010
461-155-0225	1-1-2010	Amend	2-1-2010	573-041-0030	1-11-2010	Repeal	2-1-2010
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461-155-0250	1-1-2010	Amend	2-1-2010	573-041-0036	1-11-2010	Repeal	2-1-2010
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461-155-0360	1-1-2010	Amend	2-1-2010	573-041-0040	1-11-2010	Repeal	2-1-2010
461-155-0360(T)	1-1-2010	Repeal	2-1-2010	573-041-0045	1-11-2010	Repeal	2-1-2010
461-155-0530	1-1-2010	Amend	2-1-2010	573-041-0050	1-11-2010	Repeal	2-1-2010
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461-155-0670	1-1-2010	Amend	2-1-2010	573-041-0090	1-11-2010	Repeal	2-1-2010
461-155-0680	1-1-2010	Amend	2-1-2010	573-041-0095	1-11-2010	Repeal	2-1-2010
461-155-0688	1-1-2010	Adopt	2-1-2010	573-041-0096	1-11-2010	Repeal	2-1-2010
461-155-0693	1-1-2010	Adopt	2-1-2010	573-041-0100	1-11-2010	Repeal	2-1-2010
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461-160-0015	1-1-2010	Amend(T)	2-1-2010	579-020-0006	12-15-2009	Amend	1-1-2010
461-160-0015(T)	1-1-2010	Repeal	2-1-2010	581-001-0053	12-10-2009	Amend	1-1-2010
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461-165-0200	1-1-2010	Amend	2-1-2010	581-015-2571	12-10-2009	Adopt	1-1-2010
461-165-0210	1-1-2010	Amend	2-1-2010	581-015-2572	12-10-2009	Adopt	1-1-2010
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581-016-0520	12-10-2009	Amend	1-1-2010	584-050-0035	12-15-2009	Amend	1-1-2010
581-016-0526	12-10-2009	Amend	1-1-2010	584-052-0015	12-15-2009	Amend	1-1-2010
581-016-0536	12-10-2009	Amend	1-1-2010	584-060-0012	12-15-2009	Amend	1-1-2010
581-016-0537	12-10-2009	Amend	1-1-2010	584-060-0013	12-15-2009	Amend	1-1-2010
581-016-0538	12-10-2009	Amend	1-1-2010	584-060-0071	12-15-2009	Amend	1-1-2010
581-016-0541	12-10-2009	Amend	1-1-2010	584-060-0071	12-18-2009	Amend	2-1-2010
581-016-0560	12-10-2009	Amend	1-1-2010	584-060-0162	1-1-2010	Amend	1-1-2010
581-016-0890	12-10-2009	Repeal	1-1-2010	584-060-0171	12-15-2009	Amend	1-1-2010
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581-016-0910	12-10-2009	Repeal	1-1-2010	584-060-0220	12-15-2009	Adopt	1-1-2010
581-016-0920	12-10-2009	Repeal	1-1-2010	584-065-0030	12-15-2009	Repeal	1-1-2010
581-016-0930	12-10-2009	Repeal	1-1-2010	584-065-0035	12-15-2009	Adopt	1-1-2010
581-016-0940	12-10-2009	Repeal	1-1-2010	584-065-0040	12-15-2009	Repeal	1-1-2010
581-016-0950	12-10-2009	Repeal	1-1-2010	584-070-0012	12-15-2009	Amend	1-1-2010
581-016-0960	12-10-2009	Repeal	1-1-2010	584-070-0111	12-15-2009	Amend	1-1-2010
581-016-0970	12-10-2009	Repeal	1-1-2010	584-070-0112	12-15-2009	Amend	1-1-2010
581-016-0980	12-10-2009	Repeal	1-1-2010	584-070-0310	12-15-2009	Amend	1-1-2010
581-016-0990	12-10-2009	Repeal	1-1-2010	584-080-0022	12-15-2009	Amend	1-1-2010
581-016-1000	12-10-2009	Repeal	1-1-2010	584-080-0151	12-15-2009	Amend	1-1-2010
581-016-1010	12-10-2009	Repeal	1-1-2010	584-080-0152	12-15-2009	Amend	1-1-2010
581-016-1020	12-10-2009	Repeal	1-1-2010	584-080-0153	12-15-2009	Amend	1-1-2010
581-016-1030	12-10-2009	Repeal	1-1-2010	584-080-0161	12-15-2009	Amend	1-1-2010
581-016-1040	12-10-2009	Repeal	1-1-2010	589-007-0700	12-14-2009	Adopt	1-1-2010
581-016-1050	12-10-2009	Repeal	1-1-2010	603-010-0056	1-7-2010	Adopt	2-1-2010
581-020-0301	12-10-2009	Amend(T)	1-1-2010	603-027-0410	1-1-2010	Amend	2-1-2010
581-020-0333	12-10-2009	Adopt(T)	1-1-2010	603-027-0410(T)	1-1-2010	Repeal	2-1-2010
581-020-0335	12-10-2009	Adopt(T)	1-1-2010	603-027-0420	1-1-2010	Amend	2-1-2010
581-020-0337	12-10-2009	Adopt(T)	1-1-2010	603-027-0420(T)	1-1-2010	Repeal	2-1-2010
581-020-0359	12-10-2009	Amend(T)	1-1-2010	603-027-0430	1-1-2010	Amend	2-1-2010
581-020-0362	12-10-2009	Adopt(T)	1-1-2010	603-027-0430(T)	1-1-2010	Repeal	2-1-2010
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581-021-0500	12-10-2009	Amend	1-1-2010	603-027-0490(T)	1-1-2010	Repeal	2-1-2010
581-022-0610	12-10-2009	Amend	1-1-2010	603-057-0160	12-7-2009	Amend	1-1-2010
581-022-0615	12-10-2009	Amend	1-1-2010	603-076-0101	1-15-2010	Adopt	2-1-2010
581-022-0615(T)	12-10-2009	Repeal	1-1-2010	603-076-0106	1-15-2010	Adopt	2-1-2010
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581-022-1133	12-10-2009	Adopt	1-1-2010	635-004-0016	1-1-2010	Amend(T)	2-1-2010
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581-022-1135	12-10-2009	Amend	1-1-2010	635-004-0027	1-1-2010	Amend(T)	2-1-2010
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581-045-0522	12-10-2009	Amend	1-1-2010	635-004-0070	1-1-2010	Amend	2-1-2010
581-045-0586	12-10-2009	Amend	1-1-2010	635-004-0080	1-1-2010	Amend	2-1-2010
584-010-0020	12-15-2009	Amend	1-1-2010	635-005-0005	1-1-2010	Amend	2-1-2010
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584-021-0165	12-15-2009	Amend	1-1-2010	635-006-0232	1-13-2010	Amend	2-1-2010
584-036-0055	12-15-2009	Amend	1-1-2010	635-006-0850	1-1-2010	Amend	2-1-2010
584-036-0081	12-15-2009	Amend	1-1-2010	635-006-0890	1-1-2010	Amend	2-1-2010
584-038-0300	12-15-2009	Amend	1-1-2010	635-006-0910	1-1-2010	Amend	1-1-2010

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635-006-1085	1-1-2010	Amend	1-1-2010	635-090-0035	1-1-2010	Amend	1-1-2010
635-007-0605	1-1-2010	Amend	1-1-2010	635-090-0050	1-1-2010	Amend	1-1-2010
635-007-0910	1-1-2010	Amend	1-1-2010	635-500-0703	1-1-2010	Amend	2-1-2010
635-008-0145	1-1-2010	Amend	1-1-2010	635-600-0000	1-1-2010	Amend	1-1-2010
635-011-0100	1-1-2010	Amend	1-1-2010	635-600-0005	1-1-2010	Amend	1-1-2010
635-012-0020	6-30-2011	Adopt	2-1-2010	635-600-0010	1-1-2010	Amend	1-1-2010
635-012-0030	6-30-2011	Adopt	2-1-2010	635-600-0030	1-1-2010	Amend	1-1-2010
635-012-0040	6-30-2011	Adopt	2-1-2010	635-600-0040	1-1-2010	Amend	1-1-2010
635-012-0050	6-30-2011	Adopt	2-1-2010	660-033-0120	12-7-2009	Amend	1-1-2010
635-012-0060	6-30-2011	Adopt	2-1-2010	660-033-0130	12-7-2009	Amend	1-1-2010
635-013-0003	1-1-2010	Amend	1-1-2010	660-036-0005	11-25-2009	Adopt	1-1-2010
635-013-0004	1-1-2010	Amend	1-1-2010	661-010-0015	1-1-2010	Amend	2-1-2010
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635-016-0080	1-1-2010	Amend	1-1-2010	690-020-0021	1-1-2010	Am. & Ren.	1-1-2010
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635-023-0125	1-1-2010	Amend	1-1-2010	690-382-0400	12-15-2009	Amend	1-1-2010
635-023-0128	1-1-2010	Amend	1-1-2010	731-005-0410	1-1-2010	Amend(T)	2-1-2010
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635-043-0105	1-12-2010	Amend	2-1-2010	731-035-0050	11-17-2009	Amend	1-1-2010
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635-059-0050	1-12-2010	Adopt	2-1-2010	731-070-0120	12-22-2009	Amend	2-1-2010
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731-070-0190	12-22-2009	Amend	2-1-2010	735-080-0040	1-1-2010	Amend	2-1-2010
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731-070-0210	12-22-2009	Amend	2-1-2010	735-090-0120	1-1-2010	Amend	2-1-2010
731-070-0220	12-22-2009	Amend	2-1-2010	735-090-0125	1-1-2010	Adopt	2-1-2010
731-070-0240	12-22-2009	Amend	2-1-2010	735-150-0010	1-1-2010	Amend	2-1-2010
731-070-0245	12-22-2009	Adopt	2-1-2010	735-150-0020	1-1-2010	Amend	2-1-2010
731-070-0250	12-22-2009	Amend	2-1-2010	735-150-0042	1-1-2010	Adopt	2-1-2010
731-070-0260	12-22-2009	Amend	2-1-2010	735-150-0047	1-1-2010	Adopt	2-1-2010
731-070-0270	12-22-2009	Repeal	2-1-2010	735-150-0110	1-1-2010	Amend	2-1-2010
731-070-0280	12-22-2009	Amend	2-1-2010	735-158-0000	1-1-2010	Amend(T)	2-1-2010
731-070-0295	12-22-2009	Amend	2-1-2010	735-158-0005	1-1-2010	Amend(T)	2-1-2010
731-070-0300	12-22-2009	Amend	2-1-2010	735-158-0010	1-1-2010	Amend(T)	2-1-2010
731-070-0320	12-22-2009	Amend	2-1-2010	736-004-0005	12-8-2009	Amend	1-1-2010
731-070-0350	12-22-2009	Amend	2-1-2010	736-004-0010	12-8-2009	Amend	1-1-2010
731-070-0360	12-22-2009	Amend	2-1-2010	736-004-0015	12-8-2009	Amend	1-1-2010
731-146-0010	1-1-2010	Amend(T)	2-1-2010	736-004-0020	12-8-2009	Amend	1-1-2010
731-147-0010	1-1-2010	Amend(T)	2-1-2010	736-004-0025	12-8-2009	Amend	1-1-2010
731-148-0010	1-1-2010	Amend(T)	2-1-2010	736-004-0030	12-8-2009	Amend	1-1-2010
731-149-0010	1-1-2010	Amend(T)	2-1-2010	736-004-0035	12-8-2009	Adopt	1-1-2010
734-065-0005	11-17-2009	Repeal	1-1-2010	736-004-0060	12-8-2009	Amend	1-1-2010
734-065-0010	11-17-2009	Amend	1-1-2010	736-004-0062	12-8-2009	Amend	1-1-2010
734-065-0015	11-17-2009	Amend	1-1-2010	736-004-0065	12-8-2009	Amend	1-1-2010
734-065-0020	11-17-2009	Amend	1-1-2010	736-004-0080	12-8-2009	Repeal	1-1-2010
734-065-0025	11-17-2009	Amend	1-1-2010	736-004-0085	12-8-2009	Amend	1-1-2010
734-065-0030	11-17-2009	Repeal	1-1-2010	736-004-0090	12-8-2009	Amend	1-1-2010
734-065-0035	11-17-2009	Amend	1-1-2010	736-004-0095	12-8-2009	Amend	1-1-2010
734-065-0040	11-17-2009	Amend	1-1-2010	736-004-0110	12-8-2009	Amend	1-1-2010
734-065-0045	11-17-2009	Amend	1-1-2010	736-004-0115	12-8-2009	Amend	1-1-2010
734-065-0050	11-17-2009	Amend	1-1-2010	736-004-0120	12-8-2009	Adopt	1-1-2010
735-020-0080	1-1-2010	Amend	2-1-2010	736-004-0125	12-8-2009	Adopt	1-1-2010
735-024-0075	1-1-2010	Amend(T)	2-1-2010	736-009-0005	12-8-2009	Repeal	1-1-2010
735-024-0080	1-1-2010	Suspend	2-1-2010	736-009-0006	12-8-2009	Adopt	1-1-2010
735-024-0130	1-1-2010	Amend(T)	2-1-2010	736-009-0010	12-8-2009	Repeal	1-1-2010
735-050-0050	1-1-2010	Amend	2-1-2010	736-009-0015	12-8-2009	Repeal	1-1-2010
735-050-0060	1-1-2010	Amend	2-1-2010	736-009-0020	12-8-2009	Amend	1-1-2010
735-050-0062	1-1-2010	Amend	2-1-2010	736-009-0021	12-8-2009	Adopt	1-1-2010
735-050-0064	1-1-2010	Amend	2-1-2010	736-009-0022	12-8-2009	Adopt	1-1-2010
735-050-0070	1-1-2010	Amend	2-1-2010	736-009-0025	12-8-2009	Amend	1-1-2010
735-050-0080	1-1-2010	Amend	2-1-2010	736-009-0030	12-8-2009	Amend	1-1-2010
735-050-0120	1-1-2010	Amend	2-1-2010	736-015-0020	1-5-2010	Amend	2-1-2010
735-062-0003	1-1-2010	Repeal	2-1-2010	736-015-0030	1-5-2010	Amend	2-1-2010
735-062-0007	1-1-2010	Amend	2-1-2010	736-015-0035	1-5-2010	Amend	2-1-2010
735-062-0010	1-1-2010	Amend	2-1-2010	736-015-0040	1-5-2010	Amend	2-1-2010
735-062-0015	1-1-2010	Amend	2-1-2010	736-140-0005	12-8-2009	Adopt	1-1-2010
735-062-0020	1-1-2010	Amend	2-1-2010	736-140-0015	12-8-2009	Adopt	1-1-2010
735-062-0035	1-1-2010	Amend	2-1-2010	736-146-0010	12-4-2009	Amend	1-1-2010
735-062-0090	1-1-2010	Amend	2-1-2010	736-146-0012	12-4-2009	Amend	1-1-2010
735-062-0125	1-1-2010	Amend	2-1-2010	736-146-0015	12-4-2009	Amend	1-1-2010
735-062-0190	1-1-2010	Amend	2-1-2010	736-146-0020	12-4-2009	Amend	1-1-2010
735-064-0100	1-1-2010	Amend	2-1-2010	736-146-0025	12-4-2009	Repeal	1-1-2010
735-064-0220	1-1-2010	Amend	2-1-2010	736-146-0030	12-4-2009	Repeal	1-1-2010
735-070-0000	1-1-2010	Amend	2-1-2010	736-146-0040	12-4-2009	Repeal	1-1-2010
735-070-0043	1-1-2010	Repeal	2-1-2010	736-146-0050	12-4-2009	Amend	1-1-2010

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736-146-0070	12-4-2009	Amend	1-1-2010	808-002-0884	1-1-2010	Adopt	2-1-2010
736-146-0080	12-4-2009	Amend	1-1-2010	808-002-0895	1-1-2010	Adopt	2-1-2010
736-146-0090	12-4-2009	Amend	1-1-2010	808-003-0020	1-1-2010	Amend	2-1-2010
736-146-0100	12-4-2009	Amend	1-1-2010	808-003-0040	1-1-2010	Amend	2-1-2010
736-146-0110	12-4-2009	Amend	1-1-2010	808-003-0055	1-1-2010	Amend	2-1-2010
736-146-0120	12-4-2009	Amend	1-1-2010	808-003-0060	1-1-2010	Amend	2-1-2010
736-146-0130	12-4-2009	Amend	1-1-2010	808-003-0075	1-1-2010	Amend	2-1-2010
736-146-0140	12-4-2009	Amend	1-1-2010	808-003-0080	1-1-2010	Amend	2-1-2010
736-147-0010	12-4-2009	Amend	1-1-2010	808-003-0085	1-1-2010	Amend	2-1-2010
736-147-0020	12-4-2009	Repeal	1-1-2010	808-003-0100	1-1-2010	Amend	2-1-2010
736-147-0030	12-4-2009	Amend	1-1-2010	808-003-0105	1-1-2010	Repeal	2-1-2010
736-147-0040	12-4-2009	Adopt	1-1-2010	808-003-0125	1-1-2010	Amend	2-1-2010
736-147-0050	12-4-2009	Amend	1-1-2010	808-003-0210	1-1-2010	Amend	2-1-2010
736-147-0060	12-4-2009	Amend	1-1-2010	808-003-0610	12-1-2009	Amend(T)	1-1-2010
736-147-0070	12-4-2009	Adopt	1-1-2010	809-055-0000	12-11-2009	Amend	1-1-2010
736-148-0010	12-4-2009	Amend	1-1-2010	811-010-0071	12-22-2009	Amend	2-1-2010
736-148-0020	12-4-2009	Amend	1-1-2010	811-035-0005	12-22-2009	Amend	2-1-2010
736-149-0010	12-4-2009	Amend	1-1-2010	811-035-0015	12-22-2009	Amend	2-1-2010
738-010-0025	1-7-2010	Amend(T)	2-1-2010	812-001-0200	1-1-2010	Amend	1-1-2010
738-010-0035	1-7-2010	Amend(T)	2-1-2010	812-003-0120	1-1-2010	Amend	1-1-2010
738-015-0005	1-7-2010	Amend(T)	2-1-2010	812-003-0140	1-1-2010	Amend	1-1-2010
740-055-0020	12-22-2009	Amend	2-1-2010	812-004-0320	1-1-2010	Amend	1-1-2010
740-200-0040	1-1-2010	Amend	2-1-2010	812-008-0070	1-1-2010	Amend	1-1-2010
740-200-0045	1-1-2010	Amend	2-1-2010	812-008-0090	1-1-2010	Amend	2-1-2010
801-001-0035	1-1-2010	Amend	1-1-2010	812-008-0110	1-1-2010	Amend	1-1-2010
801-005-0010	1-1-2010	Amend	1-1-2010	812-008-0202	1-1-2010	Amend	1-1-2010
801-010-0010	1-1-2010	Amend	1-1-2010	812-012-0110	1-1-2010	Amend	2-1-2010
801-010-0060	1-1-2010	Amend	1-1-2010	812-020-0062	1-1-2010	Amend	1-1-2010
801-010-0075	1-1-2010	Amend	1-1-2010	812-021-0025	1-1-2010	Amend	2-1-2010
801-010-0080	1-1-2010	Amend	1-1-2010	813-007-0005	1-7-2010	Adopt	2-1-2010
801-010-0100	1-1-2010	Amend	1-1-2010	813-007-0010	1-7-2010	Adopt	2-1-2010
801-010-0120	1-1-2010	Amend	1-1-2010	813-007-0015	1-7-2010	Adopt	2-1-2010
801-010-0345	1-1-2010	Amend	1-1-2010	813-007-0020	1-7-2010	Adopt	2-1-2010
801-020-0690	1-1-2010	Amend	1-1-2010	813-007-0025	1-7-2010	Adopt	2-1-2010
801-030-0020	1-1-2010	Amend	1-1-2010	813-007-0030	1-7-2010	Adopt	2-1-2010
801-040-0010	1-1-2010	Amend	1-1-2010	813-007-0035	1-7-2010	Adopt	2-1-2010
801-050-0005	1-1-2010	Amend	1-1-2010	813-007-0040	1-7-2010	Adopt	2-1-2010
801-050-0010	1-1-2010	Amend	1-1-2010	813-007-0045	1-7-2010	Adopt	2-1-2010
801-050-0020	1-1-2010	Amend	1-1-2010	813-007-0050	1-7-2010	Adopt	2-1-2010
801-050-0030	1-1-2010	Amend	1-1-2010	813-007-0055	1-7-2010	Adopt	2-1-2010
801-050-0035	1-1-2010	Amend	1-1-2010	813-007-0060	1-7-2010	Adopt	2-1-2010
801-050-0040	1-1-2010	Amend	1-1-2010	813-007-0065	1-7-2010	Adopt	2-1-2010
801-050-0065	1-1-2010	Amend	1-1-2010	813-007-0070	1-7-2010	Adopt	2-1-2010
801-050-0070	1-1-2010	Amend	1-1-2010	813-041-0000	12-15-2009	Amend(T)	1-1-2010
801-050-0080	1-1-2010	Amend	1-1-2010	813-041-0005	12-15-2009	Amend(T)	1-1-2010
804-020-0003	12-11-2009	Amend	1-1-2010	813-041-0010	12-15-2009	Amend(T)	1-1-2010
804-022-0025	12-11-2009	Adopt	1-1-2010	813-041-0015	12-15-2009	Amend(T)	1-1-2010
804-030-0000	12-11-2009	Amend	1-1-2010	813-041-0020	12-15-2009	Amend(T)	1-1-2010
804-040-0000	12-11-2009	Amend	1-1-2010	813-041-0025	12-15-2009	Amend(T)	1-1-2010
808-002-0200	1-1-2010	Amend	2-1-2010	813-041-0027	12-15-2009	Adopt(T)	1-1-2010
808-002-0220	1-1-2010	Amend	2-1-2010	813-041-0030	12-15-2009	Amend(T)	1-1-2010
808-002-0500	1-1-2010	Amend	2-1-2010	813-041-0035	12-15-2009	Adopt(T)	1-1-2010
808-002-0620	1-1-2010	Amend	2-1-2010	813-044-0000	12-22-2009	Amend	2-1-2010
808-002-0775	1-1-2010	Adopt	2-1-2010	813-044-0010	12-22-2009	Amend	2-1-2010
808-002-0808	1-1-2010	Adopt	2-1-2010	813-044-0020	12-22-2009	Amend	2-1-2010

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813-044-0040	12-22-2009	Amend	2-1-2010	833-020-0201	1-11-2010	Adopt(T)	2-1-2010
813-044-0050	12-22-2009	Amend	2-1-2010	833-025-0001	1-5-2010	Repeal	2-1-2010
813-044-0060	12-22-2009	Adopt	2-1-2010	833-025-0005	1-5-2010	Repeal	2-1-2010
813-055-0001	12-22-2009	Adopt	2-1-2010	833-025-0006	1-5-2010	Repeal	2-1-2010
813-055-0010	12-22-2009	Adopt	2-1-2010	833-025-0050	1-5-2010	Repeal	2-1-2010
813-055-0020	12-22-2009	Adopt	2-1-2010	833-025-0060	1-5-2010	Repeal	2-1-2010
813-055-0030	12-22-2009	Adopt	2-1-2010	833-030-0001	1-5-2010	Repeal	2-1-2010
813-055-0040	12-22-2009	Adopt	2-1-2010	833-030-0005	1-5-2010	Repeal	2-1-2010
813-055-0050	12-22-2009	Adopt	2-1-2010	833-030-0010	1-5-2010	Repeal	2-1-2010
813-055-0060	12-22-2009	Adopt	2-1-2010	833-030-0011	1-5-2010	Adopt	2-1-2010
813-055-0070	12-22-2009	Adopt	2-1-2010	833-030-0015	1-5-2010	Repeal	2-1-2010
813-055-0080	12-22-2009	Adopt	2-1-2010	833-030-0020	1-5-2010	Repeal	2-1-2010
813-055-0090	12-22-2009	Adopt	2-1-2010	833-030-0021	1-5-2010	Adopt	2-1-2010
813-055-0100	12-22-2009	Adopt	2-1-2010	833-030-0031	1-5-2010	Adopt	2-1-2010
813-055-0110	12-22-2009	Adopt	2-1-2010	833-030-0041	1-5-2010	Adopt	2-1-2010
813-140-0096	1-7-2010	Amend	2-1-2010	833-030-0051	1-5-2010	Adopt	2-1-2010
813-300-0010	1-7-2010	Amend	2-1-2010	833-040-0001	1-5-2010	Repeal	2-1-2010
813-300-0100	1-7-2010	Amend	2-1-2010	833-040-0010	1-5-2010	Repeal	2-1-2010
817-040-0003	12-26-2009	Amend(T)	2-1-2010	833-040-0011	1-5-2010	Adopt	2-1-2010
833-001-0000	1-5-2010	Amend	2-1-2010	833-040-0020	1-5-2010	Repeal	2-1-2010
833-001-0005	1-5-2010	Amend	2-1-2010	833-040-0021	1-5-2010	Adopt	2-1-2010
833-001-0010	1-5-2010	Amend	2-1-2010	833-040-0031	1-5-2010	Adopt	2-1-2010
833-001-0015	1-5-2010	Amend	2-1-2010	833-040-0041	1-5-2010	Adopt	2-1-2010
833-001-0020	1-5-2010	Amend	2-1-2010	833-040-0051	1-5-2010	Adopt	2-1-2010
833-010-0001	1-5-2010	Amend	2-1-2010	833-050-0001	1-5-2010	Repeal	2-1-2010
833-020-0001	1-5-2010	Repeal	2-1-2010	833-050-0010	1-5-2010	Repeal	2-1-2010
833-020-0010	1-5-2010	Repeal	2-1-2010	833-050-0011	1-5-2010	Adopt	2-1-2010
833-020-0011	1-5-2010	Adopt	2-1-2010	833-050-0020	1-5-2010	Repeal	2-1-2010
833-020-0015	1-5-2010	Repeal	2-1-2010	833-050-0021	1-5-2010	Adopt	2-1-2010
833-020-0020	1-5-2010	Repeal	2-1-2010	833-050-0025	1-5-2010	Repeal	2-1-2010
833-020-0021	1-5-2010	Adopt	2-1-2010	833-050-0030	1-5-2010	Repeal	2-1-2010
833-020-0022	1-5-2010	Repeal	2-1-2010	833-050-0031	1-5-2010	Adopt	2-1-2010
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833-020-0041	1-5-2010	Adopt	2-1-2010	833-050-0061	1-5-2010	Adopt	2-1-2010
833-020-0050	1-5-2010	Repeal	2-1-2010	833-050-0071	1-5-2010	Adopt	2-1-2010
833-020-0051	1-5-2010	Adopt	2-1-2010	833-050-0081	1-5-2010	Adopt	2-1-2010
833-020-0060	1-5-2010	Repeal	2-1-2010	833-050-0091	1-5-2010	Adopt	2-1-2010
833-020-0061	1-5-2010	Adopt	2-1-2010	833-050-0111	1-5-2010	Adopt	2-1-2010
833-020-0071	1-5-2010	Adopt	2-1-2010	833-050-0121	1-5-2010	Adopt	2-1-2010
833-020-0080	1-5-2010	Repeal	2-1-2010	833-050-0131	1-5-2010	Adopt	2-1-2010
833-020-0081	1-5-2010	Adopt	2-1-2010	833-050-0141	1-5-2010	Adopt	2-1-2010
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833-020-0112	1-5-2010	Adopt	2-1-2010	833-060-0021	1-5-2010	Repeal	2-1-2010
833-020-0111	1-5-2010	Repeal	2-1-2010	833-060-0022	1-5-2010	Adopt	2-1-2010
833-020-0120	1-5-2010	Repeal	2-1-2010	833-060-0031	1-5-2010	Repeal	2-1-2010
833-020-0140	1-5-2010	Repeal	2-1-2010	833-060-0032	1-5-2010	Adopt	2-1-2010
833-020-0150	1-5-2010	Repeal	2-1-2010	833-060-0041	1-5-2010	Repeal	2-1-2010
833-020-0155	1-5-2010	Repeal	2-1-2010	833-060-0042	1-5-2010	Adopt	2-1-2010
833-020-0160	1-5-2010	Repeal	2-1-2010	833-060-0051	1-5-2010	Repeal	2-1-2010
833-020-0164	1-5-2010	Repeal	2-1-2010	833-060-0052	1-5-2010	Adopt	2-1-2010



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833-060-0071	1-5-2010	Repeal	2-1-2010	836-053-0865	1-8-2010	Amend(T)	2-1-2010
833-070-0011	1-5-2010	Adopt	2-1-2010	836-053-0865(T)	1-8-2010	Suspend	2-1-2010
833-070-0011	1-11-2010	Amend(T)	2-1-2010	836-071-0101	2-1-2010	Amend	2-1-2010
833-070-0021	1-5-2010	Adopt	2-1-2010	836-071-0113	2-1-2010	Adopt	2-1-2010
833-070-0031	1-5-2010	Adopt	2-1-2010	836-071-0127	2-1-2010	Amend	2-1-2010
833-080-0011	1-5-2010	Adopt	2-1-2010	836-071-0130	2-1-2010	Amend	2-1-2010
833-080-0021	1-5-2010	Adopt	2-1-2010	836-071-0185	2-1-2010	Amend	2-1-2010
833-080-0031	1-5-2010	Adopt	2-1-2010	836-080-0240	1-1-2010	Amend	2-1-2010
833-080-0041	1-5-2010	Adopt	2-1-2010	837-040-0010	4-1-2010	Amend	1-1-2010
833-080-0051	1-5-2010	Adopt	2-1-2010	837-040-0140	4-1-2010	Amend	1-1-2010
833-080-0061	1-5-2010	Adopt	2-1-2010	837-040-02020	4-1-2010	Amend	1-1-2010
833-090-0010	1-5-2010	Adopt	2-1-2010	837-046-0000	11-21-2009	Adopt	1-1-2010
833-090-0020	1-5-2010	Adopt	2-1-2010	837-046-0020	11-21-2009	Adopt	1-1-2010
833-090-0030	1-5-2010	Adopt	2-1-2010	837-046-0040	11-21-2009	Adopt	1-1-2010
833-090-0040	1-5-2010	Adopt	2-1-2010	837-046-0060	11-21-2009	Adopt	1-1-2010
833-100-0011	1-5-2010	Adopt	2-1-2010	837-046-0080	11-21-2009	Adopt	1-1-2010
833-100-0021	1-5-2010	Adopt	2-1-2010	837-046-0100	11-21-2009	Adopt	1-1-2010
833-100-0031	1-5-2010	Adopt	2-1-2010	837-046-0120	11-21-2009	Adopt	1-1-2010
833-100-0041	1-5-2010	Adopt	2-1-2010	837-046-0140	11-21-2009	Adopt	1-1-2010
833-100-0051	1-5-2010	Adopt	2-1-2010	837-046-0160	11-21-2009	Adopt	1-1-2010
833-100-0061	1-5-2010	Adopt	2-1-2010	837-046-0180	11-21-2009	Adopt	1-1-2010
833-100-0071	1-5-2010	Adopt	2-1-2010	837-090-1145	11-18-2009	Amend	1-1-2010
833-110-0011	1-5-2010	Adopt	2-1-2010	839-001-0495	1-1-2010	Amend	1-1-2010
833-110-0021	1-5-2010	Adopt	2-1-2010	839-001-0496	1-1-2010	Amend	1-1-2010
833-120-0011	1-5-2010	Adopt	2-1-2010	839-001-0515	1-1-2010	Amend	1-1-2010
833-120-0021	1-5-2010	Adopt	2-1-2010	839-001-0520	1-1-2010	Amend	1-1-2010
833-120-0031	1-5-2010	Adopt	2-1-2010	839-001-0700	1-1-2010	Amend	1-1-2010
833-120-0041	1-5-2010	Adopt	2-1-2010	839-001-0750	1-1-2010	Repeal	1-1-2010
836-009-0007	2-1-2010	Amend	2-1-2010	839-021-0070	1-1-2010	Amend	1-1-2010
836-011-0000	12-9-2009	Amend	1-1-2010	839-021-0280	1-1-2010	Amend	1-1-2010
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836-014-0205	1-5-2010	Adopt	2-1-2010	839-025-0010	1-1-2010	Amend	1-1-2010
836-014-0210	1-5-2010	Amend	2-1-2010	839-025-0013	1-1-2010	Amend	1-1-2010
836-014-0220	1-5-2010	Amend	2-1-2010	839-025-0013(T)	1-1-2010	Repeal	1-1-2010
836-014-0226	1-5-2010	Adopt	2-1-2010	839-025-0015	1-1-2010	Amend	1-1-2010
836-014-0240	1-5-2010	Amend	2-1-2010	839-025-0020	1-1-2010	Amend	1-1-2010
836-014-0250	1-5-2010	Amend	2-1-2010	839-025-0020(T)	1-1-2010	Repeal	1-1-2010
836-014-0260	1-5-2010	Amend	2-1-2010	839-025-0030	1-1-2010	Amend	1-1-2010
836-014-0263	1-5-2010	Adopt	2-1-2010	839-025-0030(T)	1-1-2010	Repeal	1-1-2010
836-014-0265	1-5-2010	Amend	2-1-2010	839-025-0035	1-1-2010	Amend	1-1-2010
836-014-0270	1-5-2010	Amend	2-1-2010	839-025-0035(T)	1-1-2010	Repeal	1-1-2010
836-014-0280	1-5-2010	Amend	2-1-2010	839-025-0085	1-1-2010	Amend	1-1-2010
836-014-0285	1-5-2010	Adopt	2-1-2010	839-025-0085(T)	1-1-2010	Repeal	1-1-2010
836-014-0290	1-5-2010	Amend	2-1-2010	839-025-0200	1-1-2010	Amend	1-1-2010
836-014-0300	1-5-2010	Amend	2-1-2010	839-025-0200(T)	1-1-2010	Repeal	1-1-2010
836-014-0310	1-5-2010	Amend	2-1-2010	839-025-0210	1-1-2010	Amend	1-1-2010
836-014-0320	1-5-2010	Amend	2-1-2010	839-025-0210(T)	1-1-2010	Repeal	1-1-2010
836-014-0325	1-5-2010	Adopt	2-1-2010	839-025-0530	1-1-2010	Amend	1-1-2010
836-052-1000	12-18-2009	Amend	2-1-2010	839-025-0530(T)	1-1-2010	Repeal	1-1-2010
836-053-0855	12-23-2009	Amend(T)	2-1-2010	839-025-0700	11-23-2009	Amend	1-1-2010
836-053-0855	1-8-2010	Amend(T)	2-1-2010	839-025-0700	1-1-2010	Amend	2-1-2010
836-053-0855(T)	1-8-2010	Suspend	2-1-2010	839-025-0700	1-12-2010	Amend	2-1-2010
836-053-0860	12-23-2009	Amend(T)	2-1-2010	839-025-0700	1-13-2010	Amend	2-1-2010
836-053-0860	1-8-2010	Amend(T)	2-1-2010	850-060-0225	1-1-2010	Amend	1-1-2010
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851-002-0035	1-1-2010	Amend	2-1-2010	855-110-0007	12-24-2009	Amend	2-1-2010
851-002-0040	1-1-2010	Amend	2-1-2010	855-110-0010	12-24-2009	Amend	2-1-2010
851-050-0000	1-1-2010	Amend	2-1-2010	858-010-0001	1-8-2010	Amend	2-1-2010
851-050-0001	1-1-2010	Amend	2-1-2010	858-010-0005	1-8-2010	Amend	2-1-2010
851-050-0002	7-1-2010	Amend	2-1-2010	858-010-0007	1-8-2010	Amend	2-1-2010
851-050-0004	1-1-2010	Amend	2-1-2010	858-010-0010	1-8-2010	Amend	2-1-2010
851-050-0005	1-1-2010	Amend	2-1-2010	858-010-0015	1-8-2010	Amend	2-1-2010
851-050-0006	7-1-2010	Amend	2-1-2010	858-010-0016	1-8-2010	Adopt	2-1-2010
851-050-0008	1-1-2010	Adopt	2-1-2010	858-010-0017	1-8-2010	Adopt	2-1-2010
851-050-0010	1-1-2010	Amend	2-1-2010	858-010-0018	1-8-2010	Adopt	2-1-2010
851-050-0138	1-1-2010	Amend	2-1-2010	858-010-0020	1-8-2010	Amend	2-1-2010
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851-056-0000	1-1-2010	Amend	2-1-2010	858-010-0030	1-8-2010	Amend	2-1-2010
851-056-0006	1-1-2010	Amend	2-1-2010	858-010-0034	1-8-2010	Adopt	2-1-2010
851-056-0010	1-1-2010	Amend	2-1-2010	858-010-0036	1-8-2010	Amend	2-1-2010
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851-063-0030	12-17-2009	Amend	2-1-2010	858-010-0050	1-8-2010	Amend	2-1-2010
851-063-0035	12-17-2009	Amend	2-1-2010	858-010-0055	1-8-2010	Amend	2-1-2010
851-063-0090	12-17-2009	Amend	2-1-2010	858-010-0060	1-8-2010	Amend	2-1-2010
852-005-0015	12-11-2009	Adopt	1-1-2010	858-010-0065	1-8-2010	Amend	2-1-2010
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852-020-0060	12-11-2009	Amend	1-1-2010	858-020-0035	1-8-2010	Amend	2-1-2010
852-050-0006	12-11-2009	Amend	1-1-2010	858-020-0045	1-8-2010	Amend	2-1-2010
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855-007-0040	12-24-2009	Amend	2-1-2010	858-030-0005	1-8-2010	Amend	2-1-2010
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855-007-0090	12-24-2009	Amend	2-1-2010	858-040-0026	1-8-2010	Adopt	2-1-2010
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855-007-0120	12-24-2009	Amend	2-1-2010	858-040-0055	1-8-2010	Amend	2-1-2010
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855-062-0005	12-24-2009	Adopt	2-1-2010	858-040-0085	1-8-2010	Repeal	2-1-2010
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863-015-0186	1-1-2010	Amend	1-1-2010	918-225-0600	1-1-2010	Amend	2-1-2010
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863-024-0100	1-1-2010	Amend	1-1-2010	918-400-0630	1-1-2010	Amend	2-1-2010
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863-049-0010	1-1-2010	Adopt	1-1-2010	918-400-0740	1-1-2010	Amend	2-1-2010
863-049-0015	1-1-2010	Adopt	1-1-2010	918-400-0800	1-1-2010	Amend	2-1-2010
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